R68. Agriculture and Food, Plant Industry.
R68-24. Industrial Hemp Research Pilot Program for Growers.
R68-24-1. Authority and Purpose.

Pursuant to Section 4-41-103(4), this rule establishes the standards, practices, procedures, and requirements for participation in the Utah Industrial Hemp Research Pilot Program for the growing and cultivation of industrial hemp.

R68-24-2. Definitions.

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

2) "Growing Area" means a contiguous area on which hemp is grown whether inside or outside.

3) "Handle" or "handling" means possessing, transporting or storing industrial hemp for any period of time.

4) "Industrial Hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by weight.

5) "Licensee" means a person authorized by the department to grow industrial hemp.

6) "THC" means total composite tetrahydrocannabinol, including delta -9- tetrahydrocannabinol and tetrahydrocannabinolic acid.

R68-24-3. Grower License Application Requirements.

1) The applicant shall be a minimum of eighteen (18) years old.

2) The applicant is not eligible to receive a license if they have:

a) been convicted of a felony or its equivalent; or

b) been convicted of a drug-related misdemeanor within the last ten (10) years.

3) An applicant seeking an industrial hemp cultivation license shall submit the following to the department:

a) a completed application form provided by the department;

b) the legal description of the growing area;

c) the global positioning coordinates for the center of the outdoor growing area;

d) maps of the growing area in acres or square feet, and the location of different varieties within the growing area;

e) a statement of the intended end use or disposal for all parts of the hemp plant grown; and

f) a plan for the storage of seed or clone and harvested industrial hemp material as specified in R68-24-7.

4) An applicant shall submit a nationwide criminal history from the FBI completed within three (3) months of their application.

5) The applicant shall submit a fee as approved by the legislature in the fee schedule.

6) The department shall deny any applicant who does not submit all required information.

R68-24-4. Growing Area.

1) A licensee shall not plant or grow industrial hemp on any site not listed on the grower license application and shall take immediate steps to prevent the inadvertent of industrial hemp the authorized grow area.

2) A licensee shall not grow hemp in any structure used for residential purposes.

3) A licensee shall not handle or store leaf, viable seed, or floral material from hemp in a structure used for residential purposes.

4) A licensee shall not grow industrial hemp outdoors within 1,000 feet of a school or a public recreational area.

5) The licensee shall post signage at the plot location's entrance and where the plot is visible to a public roadway in a manner that would reasonably be expected to be seen by a person in the area.

6) The signage shall include the following information:

a) the statement, "Utah Department of Agriculture Industrial Hemp Research Pilot Program";

b) the name of the licensee;

c) the Utah Department of Agriculture and Food licensee number; and

d) the department's telephone number.

R68-24-5. Reporting Requirements.

1) Prior to planting the growing area, the licensee shall submit a Pre-Planting Report, on a form provided by the department, which includes:

a) a description of the industrial hemp varieties to be planted,

b) a description of all other plant material being grown in the growing area;

c) the number of acres to be planted or the amount of seed or clone to be planted in the growing area, and

d) the source of the seed or clone being planted.

2) Within ten (10) days of planting the licensee shall submit a Planting Report, on a form provided by the department, which includes:

a) a list of all industrial hemp varieties and other plants in the growing area which were planted;

b) the actual acres planted or the seeding rate or number of clones planted in the growing area;

c) adjusted maps and global position coordinates for the area planted; and

d) the amount of seed that was not used.

3) Thirty (30) days prior to harvest the licensee shall submit a Harvest Report, on a form provided by the department, which includes:

a) any contracts entered into between the grower and an industrial hemp processor or a statement of the intended use of all industrial hemp cultivated in the growing area;

b) any intended storage areas for industrial hemp or industrial hemp material; and

c) the harvest dates and location of each variety cultivated in the growing areas;

i) the licensee shall immediately inform the department of any changes in the reported harvest date which exceeds five (5) days.

4) Thirty (30) days after completion of harvest the licensee shall submit a Production Report, on a form provided by the department, which includes:

a) yield from the growing area;

b) THC testing reports, if any, conducted at the licensee's request;

c) water application rates;

d) report of any pest infestations or problems; and

e) a statement on the final disposition of the all industrial hemp product in the growing area.

5) Failure to submit the required reports may result in the revocation of the grower license.

R68-24-6. Inspection and Sampling.

1) The growing area shall be subject to random sampling to verify the THC concentration does not exceed 0.3% on a dry weight basis by department officials.

2) The department shall have complete and unrestricted access to all industrial hemp plants and seeds whether growing or harvested, all land, buildings and other structures used for the cultivation of storage of industrial hemp.

3) Samples of each variety of industrial hemp shall be randomly sampled from the growing area by department officials.

4) The department shall conduct the laboratory testing on the sample to determine the THC concentration on a dry weight

basis by gas chromatography.

5) The sample taken by the department shall be the official sample.

6) The department shall test the growing area within thirty (30) days prior to harvest.

7) The department shall notify the licensee of the test results from the official sample within a reasonable amount of time.

8) Any laboratory test result greater than 0.3% THC may be considered a violation of the terms of the license and may result in a license revocation.

9) Upon a test result with greater than 0.3% THC, the department shall notify the grower.

10) Any laboratory test result with 1% THC or greater will be turned over to the appropriate law enforcement agency and revocation of the license will be immediate.

R68-24-7. Storage of Industrial Hemp and Hemp Material.

1) A licensee may store hemp and hemp material provided:

a) the licensee notifies the department, in writing, of the location of the storage facility;

b) the licensee informs the department of the type and amount of product being stored in the storage facility;

c) the storage facility is owned by the licensee; and

d) the storage facility is outside of the public view.

e) the storage facility is secured with physical containment and reasonable security measures.

2) The storage area is subject to random inspection by department officials.

R68-24-8. Transportation of Industrial Hemp Materials.

1) A licensee shall not transport any industrial hemp materials, except to a storage facility owned by the licensee, until the department has notified the licensee of the test results from the growing area.

2) A licensee may move nonviable hemp products without an industrial hemp transportation permit.

3) An industrial hemp transportation permit is required for each day and each vehicle used to move industrial hemp or industrial hemp products.

4) The licensee shall submit an industrial hemp transportation permit request form provided by the department.

5) Requests for an industrial hemp transportation permit shall be submitted to the department at least five (5) business days prior to movement.

6) An industrial hemp transportation permit authorizes the transportation of industrial hemp materials only within the borders of the state.

7) The department may deny any application for a movement permit that is not completed in accordance with this rule.

R68-24-9. Restrictions on the Sale and Transfer of Industrial Hemp and Hemp Materials.

1) A licensee shall not sell or transfer living plants, viable plants, viable seeds, leaf material, or floral material to any person not licensed by the department or to any person outside the state who is not authorized by the laws of that state.

2) The licensee may sell or transfer stripped stalks, fiber, and nonviable seed to the general public provided the product's THC level is less than 0.3%.

R68-24-10. Renewal.

1) A licensee shall resubmit all documents required in R68-24-3, with updated information, before December 31st of the current year.

2) The department may deny a renewal for an incomplete application.

3) The department may deny renewal for any licensee who has violated any portion of this rule or state law.

R68-24-11. Destruction of Industrial Hemp Material.

1) The licensee shall be responsible for the destruction any plant material which tests greater than 0.3% THC by dry weight.

2) The licensee shall work with the department on an approved plan for the destruction of the plant material.

3) The department may destroy the plant material at cost to the licensee.

4) The department may inspect the growing area to verify the destruction of all plant material.

R68-24-12. Violations.

1) A licensee shall not grow industrial hemp that tests greater than 0.3% THC on a dry weight basis.

2) A licensee shall not sell or transfer material that tests greater than 0.3% THC on a dry weight basis.

3) It is a violation of the grower license to grow or store industrial hemp or industrial hemp material on a site not approved by the department as part of the license.

4) A licensee shall not allow unsupervised public access to hemp plots.

5) A licensee shall not deny an official of the department access for sampling or inspection purposes.

6) A licensee shall not violate any portion of this rule or state law.

7) It is a violation of this rule to grow, cultivate, handle, or possess industrial hemp or viable industrial hemp materials without a license from the department.

9) It is a violation to grow industrial hemp material on a site not approved by the department as listed on the license.

10) It is a violation to grow industrial hemp outdoors within 1,000 feet of a school or public recreational area.

KEY: industrial hemp cultivation
October 31, 2018 **4-41-103(4)**

R68. Agriculture and Food, Plant Industry.
R68-25. Industrial Hemp Research Pilot Program for Processors.
R68-25-1. Authority and Purpose.

Pursuant to Section 4-41-103(4), this rule establishes the standards, practices, procedures, and requirements for participation in the Utah Industrial Hemp Research Pilot Program for the, processing and handling of industrial hemp.

R68-25-2. Definitions.

1) "CBD" means cannabidiol.

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

3) "Industrial Hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by weight

4) "Handle" or "Handling" means possessing, transporting, or storing industrial hemp for any period of time.

5) "Processing" means any or all parts of harvesting, extraction, refining, altering, manufacturing, or making industrial hemp into a finished industrial hemp product ready for market.

6) "Processor" means a person licensed by the department to engage in processing industrial hemp extracting and manufacturing industrial hemp and hemp products.

7) "Manufacturing" means storing, preparing, packaging, or labeling of industrial hemp or hemp products.

8) "THC" means total composite tetrahydrocannabinol, including delta -9- tetrahydrocannabinol and tetrahydrocannabinolic acid.

9) "Third- party laboratory" means a laboratory which has no direct interest in a grower or processor of industrial hemp or industrial hemp products that is capable of performing mandated testing utilizing validated methods.

R68-25-3. Application Requirements.

1) The applicant shall be a minimum of eighteen (18) years old.

2) The applicant is not eligible to receive a license if they have:

a) been convicted of a felony or its equivalent; or

b) been convicted of a drug-related misdemeanor within the last ten (10) years.

3) An applicant seeking an industrial hemp processing license shall submit the following to the department:

a) a complete application form provided by the department;

b) a physical description of the processing facility;

c) a plain review of the building, facilities, and equipment;

d) a photographic aerial map and street address for each building or site where industrial hemp will be processed, handled, or stored;

e) the planned source of industrial hemp material;

f) a statement of the intended end use or disposal for all parts of the industrial hemp plant and hemp material; and

g) a research plan.

4) An applicant shall submit a nationwide criminal history from the FBI completed within three (3) months of their application.

5) The applicant shall submit a fee as approved by the legislature in the fee schedule.

6) The department shall deny any applicant who does not submit all required information.

R68-25-4. Processing Facility Restrictions.

1) A licensee shall not process or store leaf or floral material from industrial hemp in any structure that is used for residential purposes.

2) A licensee shall not process or store industrial hemp within 1,000 feet of a school or a public recreational area.

3) A licensee shall not process or handle industrial hemp or hemp material from any person who is not licensed by the department or from a person outside the state who is not authorized by the laws of that state.

4) A licensee shall not permit a person under the age of eighteen (18) to handle living plants, viable plant parts, viable seeds, leaf material, or floral material.

5) A licensee shall submit a nationwide criminal history from the FBI to the department for each employee with access to hemp material or product which contains over 0.3% THC or has the potential to contain over 0.3% THC within the first month of employment.

R68-25-5. CBD Extraction Methods.

1) In addition to the requirements of R68-25-3, an applicant seeking to engage in the extraction of CBD shall submit to the department a detailed description of the proposed extraction method.

2) The applicant shall describe the proposed process for the removal of all harmful solvents added during the extraction process, if applicable.

3) The applicant shall describe the safety measures proposed to protect the public and employees from dangers associated with extraction methods.

4) The department may deny a license for methods which pose a significant risk to public health and safety.

5) The department shall not allow the use of butane or propane in any extraction method.

R68-25-6. Processing Practices.

1) The department incorporates by reference 21 CFR 111, Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements for a licensee engaged in processing a CBD product intended for human consumption.

2) The department incorporates by reference 21 CFR 110, Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food for a licensee engaged in processing non-CBD products for human or animal consumption.

3) All other licensed processors shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9, and all other applicable state laws and regulations relating to product development, product manufacturing, consumer safety, and public health.

R68-25-7. Required Reports.

1) A licensee shall submit a completed Production Report on a form provided by the department by December 31st.

2) A licensee shall submit a report of the results of the research as set forth in the research plan by December 31st.

3) The failure to submit a timely completed form may result in the denial of a renewal license.

R68-25-8. Additional Records.

1) The licensee shall keep records of receipt for all industrial hemp material obtained including:

a) the date of receipt;

b) quantity received; and

c) an identifying lot number created by the licensee;

d) the seller's information including;

i) the seller's department license number;

ii) seller's contact information; and

iii) the address of the facility or growing area from which the industrial hemp material was shipped.

2) The licensee shall keep records for each batch of industrial hemp material processed containing the following information:

a) the date of processing;
b) the lot number of the material;
c) the amount processed;
d) the type of processing; and
e) any lab test conducted on the industrial hemp material or product during the processing.
3) The licensee shall keep records of all tests conducted with the identifying lot number
4) All records shall be maintained for a minimum of three (3) years.
5) All records are subject to review by department officials at the time of inspection or upon request.

R68-25-9. Testing.
1) For industrial hemp products that will be used for human consumption or absorption the product shall be tested for the following before being made available for retail:
a) cannabinoid profile;
b) solvents;
c) pesticides;
d) microbials; and
e) heavy metals.
2) The testing shall be completed by a third- party laboratory.
3) The department shall conduct random testing of industrial hemp products and materials.
4) The sample taken by the department shall be the official sample.

R68-25-10. Inspections and Sampling.
1) The department shall have complete and unrestricted access to all industrial hemp plants, seeds, and materials and all land, buildings, and other structures used to process industrial hemp.
2) Samples of each industrial hemp product may be randomly taken from the facilities by department officials.
3) The department shall review all records kept in accordance with rule requirements.
4) The department shall notify a licensee of test results greater than 0.3% THC.
5) Any laboratory test with a result greater than 0.3% THC may be considered a violation of the terms of the license and may result in an immediate license revocation.
6) Any laboratory test with a result of 1% THC or greater of final product will be turned over to the appropriate law enforcement agency and revocation of the processor license will be immediate.
7) The department shall notify the licensee of any solvents, metals, microbials, or pesticides found during testing.
8) The presence of deleterious or harmful substances may be considered a violation of the terms of the license and may result in a license revocation.

R68-25-11. Storage of Industrial Hemp and Hemp Material.
1) A licensee may store hemp and hemp products provided:
a) the licensee notifies the department of the location of the storage facility;
b) the licensee informs the department of the type and amount of the product being stored in the storage facility;
c) the storage facility is outside of the public view; and
d) the storage facility is secured with physical containment such as walls, fences, locks, and with an alarm system to provide maximum reasonable security.
2) A licensee may store hemp product that exceeds the 0.3% THC provided:
a) the product is kept in a secure room;
b) the product is kept separate from other hemp products;
c) access to the product is limited; and
d) a record is kept of the amount of product being stored and when it is being moved.
3) All storage facilities shall be maintained in accordance with the practice adopted inR68-25-6.
4) All storage facilities and records are subject to random inspection by department officials.

R68-25-12. Transportation of Industrial Hemp Material.
1) A licensee may move nonviable hemp product without an industrial hemp transportation permit.
2) An industrial hemp transportation permit is required for each day and each vehicle used to move industrial hemp or industrial hemp products.
3) The licensee shall submit an industrial hemp transportation permit request form provided by the department.
4) Requests for an industrial hemp transportation permit shall be submitted to the department at least five (5) business days prior to movement.
5) An industrial hemp transportation permit authorizes the transportation of industrial hemp materials only within the borders of the state.
6) The department may deny any application for an industrial hemp transportation permit that is not completed in accordance with this rule.
7) A licensee extracting CBD shall not transport any product until the department has been notified of the THC test results for the product being transported.

R68-25-13. Restriction on the Sale and Transfer of Industrial Hemp Material.
1) A licensee shall not sell or transfer living plants, viable plants, viable seed, leaf material, or floral material to any person not licensed by the department.
2) A licensee shall not sell or transfer living plants, viable seed, leaf material, or floral material to any person outside the state who is not authorized by the laws of that state.
3) The licensee may sell stripped stalks, fiber, and nonviable seed to the general public provided the product's THC level is less than 0.3%.

R68-25-14. Renewal.
1) A licensee shall resubmit all documents required in R68-25-3, with updated information, before December 31st of the current year.
2) The department may deny a renewal for an incomplete application.
3) The department may deny renewal for any licensee who has violated any portion of this rule or state law.

R68-25-15. Violation.
1) It is a violation to process industrial hemp or industrial hemp material on a site not approved by the department as listed on the license or within 1,000 feet of a school or public recreational area.
2) It is a violation to process industrial hemp or industrial hemp material from a source that is not approved by the department.
3) A licensee shall not allow unsupervised public access to hemp processing facilities.
4) It is a violation to employ a person under the age of eighteen (18) in the processing or handling of industrial hemp or its products.
5) It is a violation to sell a product to the general public in violation of this section or state laws governing the final product.
6) It is a violation to add CBD to a food product.
7) It is a violation to fail to keep records required by this section.
8) It is a violation for a licensee to allow an employee that

has been convicted of a felony or its equivalent access to hemp material or product which contains over 0.3% THC or has the potential to contain over 0.3% THC.

9) It is a violation for a licensee to allow an employee that has been convicted of a drug-related misdemeanor within the last ten (10) years access to hemp material or product which contains over 0.3% THC or has the potential to contain over 0.3% THC.

KEY: cannabidiol, hemp products, hemp extraction, hemp oil
October 31, 2018 4-41-103(4)

R68. Agriculture and Food, Plant Industry.
R68-26. Industrial Hemp Product Registration and Labeling.
R68-26-1. Authority and Purpose.

1) Pursuant to Section 4-41-103(4) and 4-41-403(1), this rule establishes the requirements for labeling and registration of products made from and containing industrial hemp.

R68-26-2. Definitions.

1) "CBD" means cannabidiol.

2) "Certificate of Analysis" means a certificate from a third-party laboratory describing the results of the laboratory's testing of a sample.

3) "Department" means the Utah Department of Agriculture and Food

4) "Industrial Hemp" means any part of a cannabis plant, whether growing or not, with a concentration of less than 0.3% tetrahydrocannabinol by weight.

5) "Industrial hemp product" means products derived from, or made by processing industrial hemp plants or plant parts.

6) "Label" means the display of all written, printed, or graphic matter upon the immediate container or statement accompanying an industrial hemp product.

7) "Manufacturer" means a person who makes any industrial hemp products.

8) "Person" means an individual, partnership, association, firm, trust, limited liability company, or corporation or any employees of such.

9) "THC" means total composite tetrahydrocannabinol, including delta -9- tetrahydrocannabinol and tetrahydrocannabinolic acid.

10) "Third- party laboratory" means a laboratory which has no direct interest in a grower or processor of industrial hemp or industrial hemp products that is capable of performing mandated testing utilizing validated methods.

R68-26-3. Product Registration.

1) All industrial hemp products distributed or available for distribution in Utah shall be officially registered annually with the department.

2) Application for registration shall be made to the department on form provided by the department including the following information:

a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicants;

b) the name of the product;

c) the type and use of the product; and

d) a complete copy of the label which will appear on the product.

3) If the industrial hemp product being registered contains CBD, the application shall include a certificate of analysis from a third-party laboratory for the product in compliance with R68-26-4.

4) A registration fee per product, as set forth in the fee schedule approved by the legislature, shall be paid to the department with the submission of the application.

5) The department may deny registration for incomplete applications.

6) The department may exempt an industrial hemp product that is determined to be adequately regulated by a federal agency.

7) A new registration is required for any of the following:

a) changes in the industrial hemp product ingredients;

b) changes to the directions for use; and

c) a change of name for the product.

8) Other changes shall not require a new registration but the registrant shall submit copies of all label changes to the department as soon as they are effective.

9) The person registering the industrial hemp product is responsible for the accuracy and completeness of all information submitted.

10) A registration is renewable for up to a one year period with an annual renewal fee per product which shall be paid on or before June 30th of each year.

11) An industrial hemp product that has been discontinued shall continue to be registered in the state until the product is no longer available for distribution.

12) A late fee shall be assessed for a renewal of an industrial hemp product registration submitted after June 30th and shall be paid before the registration renewal is issued.

R68-26-4. Certificate of Analysis.

1) The certificate of analysis for industrial hemp products containing CBD shall include the following test results:

a) the cannabinoid profile by percentage of dry weight;

b) solvents;

c) pesticides;

d) microbials; and

e) heavy metals.

2) The certificate of analysis shall include the following information:

a) the batch identification number;

b) the date received;

c) the date of completion; and

d) the method of analysis for each test conducted.

R68-26-5. Label Requirements.

1) Industrial hemp products containing CBD produced for human consumption shall be labeled in accordance with 21 CFR 101.1, 21 CFR 101.2, 21 CFR 101.3, 21 CFR 101.4, 21 CFR 101.5, 21 CFR 101.9(j)(13), 21 CFR 101.9(j)(17), 21 CFR 101.15, and 21 CFR 101.36.

2) Industrial hemp products produced for absorption by humans shall be labeled in accordance with 21 CFR 701, Cosmetic Labeling and 21 CFR 740, Cosmetic Product Warning Statements.

3) In addition to the requirements of R68-26-5(1) and (2), an industrial hemp product containing CBD shall have on the label a scannable bar code, QR code, or web address linked to a document containing the following information:

a) the batch identification number;

b) the product name;

c) the batch date;

d) an expiration date;

e) the batch size;

f) the total quantity produced; and

g) a downloadable link for a certificate of analysis for the batch identified.

4) Industrial hemp products shall not contain medical claims on the label.

5) Industrial hemp products which do not contain CBD intended for human consumption shall be labeled in accordance with 21 CFR 101, Food Labeling.

6) Industrial hemp products which do not contain CBD intended for human absorption shall be labeled in accordance with 21 CFR 701, Cosmetic Labeling and 21 CFR 740, Cosmetic Product Warnings Statements.

7) Industrial hemp products meant for animal consumption shall be labeled and comply with all applicable federal laws and regulations and all other applicable state laws and regulations.

8) Industrial hemp seed products intended for cultivation shall be labeled in accordance with Utah Seed Act.

9) All industrial hemp products shall comply with the federal Food Drug and Cosmetic Act, 21 U.S.C. Chapter 9 and other applicable federal laws and regulations and all applicable state laws and regulations relating to the labeling of food, cosmetics, and fiber.

R68-26-6. Inspection and Testing.

1) The department shall conduct randomized inspection of industrial hemp products distributed or available for distribution in the state for compliance with this rule.

2) The department shall periodically sample, analyze, and test industrial hemp products distributed within the state for compliance with registration and labeling requirements and the certificate of analysis, if applicable.

3) The department may conduct inspection of industrial hemp products distributed or available for distribution for any reason the department deems necessary.

4) The sample taken by the department shall be the official sample.

R68-26-7. Retailer Responsibilities.

1) A retailer shall:

a) ensure that any industrial hemp product is labeled correctly; and

b) ensure that all industrial hemp products sold are properly registered with the department.

2) Retailers shall provide the identity of the manufacturer of industrial hemp products sold upon request of the department.

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

R68-26-8. Violation.

1) Each improperly labeled industrial hemp product shall be a separate violation of this rule.

2) Industrial hemp products not meeting the label requirements shall be deemed to be misbranded.

3) Industrial hemp products shall be considered falsely advertised if it does not meet the labeling requirements of this rule.

4) It is a violation to distribute or market and Industrial hemp products that is not registered with the department.

5) It is a violation to distribute or market an industrial hemp product that contains greater than 0.3% THC.

6) It is a violation to distribute or market an industrial hemp product containing CBD which is not in a medical dosage form.

KEY: CBD labeling, CBD products, hemp product registration

October 31, 2018 **4-41-403(1)**
4-41-402(2)
4-41-103(4)

R151. Commerce, Administration.
R151-4. Department of Commerce Administrative Procedures Act Rule.
R151-4-101. Title and Organization.

This rule (R151-4) is:

(1) known as the "Department of Commerce Administrative Procedures Act Rule;" and

(2) organized into the following Parts:

(a) Part 1, General Provisions (R151-4-101 through R151-4-114);

(b) Part 2, Pleadings (R151-4-201 through R151-4-205);

(c) Part 3, Motions (R151-4-301 through R151-4-305);

(d) Part 4, Filing and Service (R151-4-401 through R151-4-402;

(e) Part 5, Discovery - Formal Proceedings (R151-4-501 through R151-4-516);

(f) Part 6, Depositions - Formal Proceedings (R151-4-601 through R151-4-611);

(g) Part 7, Hearings (R151-4-701 through R151-4-712);

(h) Part 8, Orders (R151-4-801 through R151-4-803); and

(i) Part 9, Agency Review and Judicial Review (R151-4-901 through R151-4-907).

R151-4-102. Definitions.

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

(1) "Agency head" means the executive director of the department or the director of a division.

(2) "Applicant" means a person who submits an application.

(3) "Application" means a request for:

(a) licensure;

(b) certification;

(c) registration;

(d) permit; or

(e) other right or authority granted by the department.

(4) "Department" means:

(a) the Utah Department of Commerce; or

(b) a division of the department.

(5) "Division" means a division of the department.

(6) "Electronic" means a:

(a) facsimile transmission; or

(b) PDF file attached to an email.

(7) "Intervenor" means a person permitted to intervene in an adjudicative proceeding before the department.

(8) "Motion" means a request for any action or relief in an adjudicative proceeding.

(9) "Party in interest:"

(a) includes:

(i) a party;

(ii) a relative of a party; or

(iii) an individual with a financial interest in the outcome of the proceeding; and

(b) does not include:

(i) a party's counsel; or

(ii) an employee of a party's counsel.

(10) "Petition" means the charging document setting forth:

(a) statement of jurisdiction;

(b) statement of one or more allegations;

(c) statement of legal authority; and

(d) request for relief.

(11) "Pleadings" include the following along with any response:

(a) notice of agency action or request for agency action;

(b) the petition, motions, briefs or other documents filed by the parties to an adjudicative proceeding;

(c) a request for agency review or agency reconsideration;

(d) motions, briefs or other documents filed by the parties on agency review; and

(e) a response submitted to a pleading.

R151-4-103. Authority.

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

R151-4-104. Supplementing Provisions.

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

R151-4-105. Purpose and Scope.

(1) This rule (R151-4) is intended to secure the just, speedy, and economical determination of all issues presented in adjudicative proceedings before the department.

(2) In the event of a conflict between this rule and a statute, the statute governs.

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

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

R151-4-107. Computation of Time.

(1) Periods of time in department proceedings shall:

(a) exclude the first day of the act, event, or default from which the time begins to run; and

(b) include the last day unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) When a period of time is less than seven days, Saturdays, Sundays, and legal holidays are excluded.

(3)(a)(i) When a period of time runs after the service of a document by mail, three days shall be added to the end of the prescribed period.

(ii) Except as provided in R151-4-107(1)(b), these three days include Saturdays, Sundays, and legal holidays.

(b) No additional time is provided if service is accomplished by electronic means.

(4) Subsection (3) does not apply to a request for agency review filing made pursuant to Subsection R151-4-901(1).

R151-4-108. Timeliness of Administrative Proceedings.

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

(1) the notice of agency action is issued; or

(2) the initial decision with respect to a request for agency action is issued.

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

(1) When ruling on a motion or request for extension of time or continuance of a hearing, the presiding officer shall consider:

(a) whether there is good cause for granting the extension or continuance;

(b) the number of extensions or continuances the requesting party has already received;

(c) whether the extension or continuance will work a significant hardship upon the other party;

(d) whether the extension or continuance will be prejudicial to the health, safety or welfare of the public; and

(e) whether the other party objects to the extension or continuance.

(2)(a) Except as provided in R151-4-109(2)(b), an

extension of a time period or a continuance of a hearing may not result in the hearing being concluded more than 240 calendar days after the day on which:

(i) the notice of agency action was issued; or

(ii) the initial decision with respect to a request for agency action was issued.

(b) Notwithstanding R151-4-109(2)(a), an extension of a time period or a continuance may exceed the time restriction in R151-4-109(2)(a) only if:

(i)(A) a party provides an affidavit or certificate signed by a licensed physician verifying that an illness of the party, the party's counsel, or a necessary witness precludes the presence of the party, the party's counsel, or a necessary witness at the hearing;

(B) counsel for a party withdraws shortly before the final hearing, unless the presiding officer finds the withdrawal was for the purpose of delaying the hearing, in which case the hearing will go forward with or without counsel;

(C) a parallel criminal proceeding or investigation exists based on facts at issue in the administrative proceeding, in which case the continuance must address the expiration of the continuance upon the conclusion of the criminal proceeding; or

(D) the board or commission designated to act as the fact-finder at hearing is unavailable to meet on a date that:

(I) allows the parties a reasonable period of time for discovery, motion practice, or hearing preparation; and

(II) falls within the 240-day deadline for resolution; and

(ii) the presiding officer finds that injustice would result from failing to grant the extension or continuance.

(c)(i) If the presiding officer considers that extenuating circumstances not contemplated in R151-4-109(2)(b) justify a continuance beyond the 240-day deadline, the presiding officer shall file a written request for continuance with the Executive Director.

(ii) A party may not directly petition the Executive Director for a continuance.

(iii) The Executive Director's decision on the presiding officer's request for continuance shall be issued on an interlocutory basis, not subject to a request for reconsideration or judicial review until after a final order on the merits is issued.

(d) The failure to conclude a hearing within the required time period is not a basis for dismissal.

(3) The presiding officer may not grant an extension of time or continuance that is not authorized by statute or rule.

(4) The factors in Subsection (1) do not apply to a request for agency review made pursuant to Subsection R151-4-901(1)(a). A request for an extension to file a request for agency review is governed by Subsection R151-4-901(1)(c).

R151-4-110. Representation of Parties.

(1) A party may:

(a) be represented by counsel who is an active member of a state bar if counsel submits a written notice of appearance;

(b) represent oneself individually; or

(c) if not an individual, represent itself through an officer or employee.

(2) Counsel licensed by the bar of a state other than Utah shall submit a certificate of good standing from the relevant state bar.

R151-4-111. Review of Emergency Orders.

Unless otherwise provided by statute or rule:

(1)(a) A division shall schedule a hearing to determine whether an emergency order should be affirmed, set aside, or modified based on the standards in Section 63G-4-502 if:

(i) the division has previously:

(A) commenced an emergency adjudicative proceeding in the matter; and

(B) issued an order in accordance with Section 63G-4-502 that results in a continued impairment of the affected party's rights or legal interests; and

(ii) the affected party timely submits a written request for a hearing.

(b) A hearing under this rule (R151-4-111) shall be conducted in conformity with Section 63G-4-206.

(2)(a) Upon request for a hearing under this rule, the Division shall conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of a written request unless the Division and the party requesting the hearing agree in writing to conduct the hearing at a later date.

(b) The Division has the burden of proof to establish, by a preponderance of the evidence, that the requirements of Section 63G-4-502 have been met.

(3)(a) Except as otherwise provided by statute, the division director or designee shall select an individual or body of individuals to act as presiding officer at the hearing.

(b) An individual who directly participated in issuing the emergency order may not act as the presiding officer.

(4)(a) Within 15 calendar days after the day on which the hearing to consider the emergency order concludes, the presiding officer shall issue an order in accordance with Section 63G-4-208.

(b) The order of the presiding officer is subject to agency review.

R151-4-112. Declaratory Orders.

(1)(a) A petition for the issuance of a declaratory order under Section 63G-4-503 shall be filed with the agency head who has primary jurisdiction to enforce or implement the statute, rule, or order for which a declaratory order is sought.

(b) The petition shall:

(i) set forth:

(A) the question to be answered;

(B) the facts and circumstances related to the question;

(C) the statute, rule, or order to be applied to the question; and

(D) whether oral argument is sought in conjunction with the petition; and

(ii) comply with Part 2, Pleadings.

(2)(a) If the agency head issues a declaratory order without setting the matter for an adjudicative proceeding, the order shall be based on:

(i) a review of the petition;

(ii) oral argument, if any;

(iii) laws and rules applicable to the petition;

(iv) applicable records maintained by the department; and

(v) other relevant information reasonably available to the department.

(b) If the agency head sets the matter for an adjudicative proceeding, the department shall issue a notice of adjudicative proceeding under Subsection 63G-4-201(2)(a).

(3) The department may not issue a declaratory order in any of the following classes of circumstances:

(a) questions involving circumstances set forth in Subsection 63G-4-503(3)(a)(ii) or (3)(b);

(b) questions that are not within the jurisdiction of the department;

(c) questions that have been addressed by the department in an order, rule, or policy;

(d) questions that can be addressed by informal advice;

(e) questions that are addressed by statute;

(f) questions that would be more properly addressed by statute or rule;

(g) questions that arise out of pending or anticipated litigation in a civil, criminal, or administrative forum; or

(h) questions that are irrelevant, insignificant, meaningless, or spurious.

(4) The recipient of a declaratory order may request

agency review.

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

The record of an adjudicative proceeding includes:

(1) the pleadings and exhibits filed by the parties;

(2) the recording of a hearing;

(3) a transcript of a hearing; and

(4) orders or other documents issued:

(a) by a presiding officer; or

(b) on agency review or reconsideration.

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

(1) Any provision of R151-4 that is specific to a formal adjudicative proceeding is not mandatory for an informal adjudicative proceeding.

(2) By rule or order a division may apply a provision applicable to a formal adjudicative proceeding to an informal adjudicative proceeding, except that a provision relating to discovery, including depositions, may not be applied to an informal adjudicative proceeding.

R151-4-201. Docket Number and Title.

(1) The department shall assign a docket number to each notice of agency action and, where appropriate, to each request for agency action.

(2) At a minimum the docket number shall consist of:

(a) a letter code identifying where the matter originated, as follows:

(i) CORP-Corporations;

(ii) CP-Consumer Protection;

(iii) DOPL-Occupational and Professional Licensing, including additional designations that division may implement for diversion, lien recovery fund, or other programs;

(iv) NAFA-New Automobile Franchise Act;

(v) PVFA-Powersport Vehicle Franchise Act;

(vi) RE-Real Estate;

(vii) AP-Real Estate Appraisers;

(viii) MG-Mortgage; and

(ix) SD-Securities;

(b) a numerical code indicating the calendar year the matter arises; and

(c) another number indicating chronological position among notices of agency action or requests for agency action filed during the year.

(3) The department shall give each adjudicative proceeding a title in substantially the following form:

TABLE I

BEFORE THE (DIVISION) OF THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH	
In the Matter of (the application, petition or license of John Doe)	(Notice of Agency Action) (Request for Agency Action) No. AA-2000-001

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

Pleadings shall:

(1) be double-spaced, typewritten, and presented on standard 8 1/2 x 11 inch white paper; and

(2) contain:

(a) a clear and concise statement of the allegations or facts relied upon as the basis for the pleading; and

(b) an appropriate request for relief when relief is sought.

R151-4-203. Signing of Pleadings.

(1) Pleadings shall be signed by the party or the party's representative and shall show the signer's address.

(2) The signature is a certification that:

(a) the signer has read the pleading; and

(b) to the best of the signer's knowledge and belief, there is good ground to support the pleading.

R151-4-204. Amendments to Pleadings.

(1)(a) A party may amend a pleading once as a matter of course at any time before a responsive pleading is served.

(b) A party that does not qualify to amend a pleading under (1)(a) may amend a pleading only by leave of the presiding officer or by written consent of the adverse party.

(2) A party shall respond to an amended pleading within the later of:

(a) the time remaining for response to the original pleading; or

(b) ten days after service of the amended pleading.

(3) Defects in a pleading that do not affect substantial rights of a party need not be amended and shall be disregarded.

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

(1) A respondent in a formal adjudicative proceeding shall file a response to the notice of agency action.

(2)(a) A respondent in an informal adjudicative proceeding may file a response to a notice of agency action.

(b) The presiding officer may, by a written order, require a respondent in an informal adjudicative proceeding to submit a response.

(3) Unless a different date is established by law or rule the following shall be filed within 30 days after the mailing date of the notice:

(a) a response to a notice of agency action; or

(b) a notice of receipt of request for agency action.

R151-4-301. General Provisions.

(1) A party may file a motion that is relevant and timely.

(2) All motions shall be filed in writing unless the necessity for a motion arises at a hearing and could not have been anticipated prior to the hearing.

(3) Subsection 63G-4-102(4)(b) may not be construed to prohibit a presiding officer from granting a timely motion to dismiss for

(a) failure to prosecute;

(b) failure to comply with this rule (R151-4), except where this rule expressly provides that a matter is not a basis for dismissal;

(c) failure to establish a claim upon which relief may be granted; or

(d) other good cause basis.

R151-4-302. Motion to Dismiss.

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

(2) In a case that is under agency review:

(a) A motion to dismiss may be brought for:

(i) failure to comply with a jurisdictional deadline;

(ii) failure to file a hearing transcript; or

(iii) failure to file a required memorandum.

(b) A motion to dismiss may not be brought on an allegation or argument as to:

(i) the sufficiency of a pleading or a memorandum in support thereof;

(ii) the sufficiency of the evidence; or

(iii) any other issue that requires substantive analysis.

R151-4-303. Memoranda and Affidavits.

(1) The presiding officer shall permit and may require memoranda and affidavits in support of, or in response to, a motion.

(2) Unless otherwise governed by a scheduling order issued by the presiding officer:

(a) memoranda or affidavits in support of a motion shall be filed concurrently with the motion;

(b) memoranda or affidavits in response to a motion shall be filed no later than 10 days after service of the motion; and

(c) a final reply shall be filed no later than five days after service of the response.

R151-4-304. Oral Argument.

(1) The presiding officer may permit or require oral argument on a motion.

(2) Oral argument on a motion shall be scheduled to take place no more than 10 days after the last day on which the party:

(a) who did not make the motion could have filed a response if that party does not file a response; or

(b) the party who made the motion:

(i) replies to the opposing party's response to the motion; or

(ii) could have replied to the opposing party's response to the motion.

R151-4-305. Ruling on a Motion.

(1) The presiding officer shall verbally rule on a motion at the conclusion of oral argument whenever possible.

(2) When a presiding officer verbally rules on a motion, the presiding officer shall issue a written ruling within 30 calendar days after the day on which the presiding officer makes the verbal ruling.

(3) If the presiding officer does not verbally rule on a motion at the conclusion of oral argument, the presiding officer shall issue a written ruling on the motion no more than 30 calendar days after:

(a) oral argument; or

(b) if there is no oral argument, the final submission on the motion as outlined in R151-4-304(2).

(4) The failure of the presiding officer to comply with the requirements of R151-4-305:

(a) is not a basis for dismissal of the matter; and

(b) may not be considered an automatic denial or grant of the motion.

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

(1)(a) A motion to recuse or disqualify a Board or Commission member must be filed no later than 14 days prior to the scheduled hearing before the Board or Commission and may include affidavits supporting the basis for the motion. Service of such motion to the opposing party shall be by electronic mail, facsimile or overnight mail.

(b) A response to a motion to recuse or disqualify a Board or Commission member is permitted but not mandatory. Any response shall be filed no later than seven days before the scheduled hearing. Service of a response to the opposing party shall be by electronic mail, facsimile or overnight mail.

(c) No reply is permitted.

(2)(a) The decision on a motion to recuse or disqualify a Board or Commission member shall be made by the Board or Commission member the motion seeks to recuse or disqualify. A written decision is not necessary.

(b) At the beginning of the scheduled hearing, the Board or Commission member shall state on the record his or her decision. The Board or Commission member may choose to notify the presiding officer of his or her decision prior to the hearing, and the presiding officer shall then state the decision on the record.

(c) The Board or Commission member may ask the advice of the other members at the beginning of a scheduled hearing, but the Board or Commission member shall not be bound by any such advice.

(d) The Division, presiding officer, or filing party may not subject the Board or Commission member to questioning or examination on the motion.

(e) The Division or presiding officer may not reverse a recusal or disqualification decision made by a Board or Commission member.

(f) Like all interlocutory matters, a decision on a motion to recuse or disqualify a Board or Commission member is not subject to an interlocutory appeal or agency review.

(3) This rule does not apply to any adjudicative proceedings under the New Automobile Franchise Act, Utah Code Ann. Sections 13-14-101 et seq., or the Powersport Vehicle Franchise Act, Utah Code Ann. Sections 13-35-101 et seq.

(4) A Board or Commission member may recuse him or herself at any time regardless of whether a party has filed a motion to recuse or disqualify the Board or Commission member.

R151-4-401. Filing.

(1)(a) Pleadings shall be filed with the department or division in which the adjudicative proceeding is being conducted, which maintains the official file.

(b) The filing of discovery documents is governed by R151-4-512.

(2)(a) A filing may be accomplished by:

(i) hand delivery of a paper copy, pursuant to Subsection (2)(b)(i);

(ii) first class or certified mail, postage pre-paid, of a paper copy, pursuant to Subsection (2)(b)(i);

(iii) fax, pursuant to Subsection (2)(b)(ii); or

(iv) attachment to electronic mail, pursuant to Subsection (2)(b)(iii).

(b)(i) A filing by hand delivery or first class or certified mail is complete when it is received and date stamped by the department or division, as applicable.

(ii) A filing by fax or electronic mail is complete upon transmission, if:

(A) compliant with Subsection (1);

(B) completed and received during the department's operating hours, 8 a.m. to 5 p.m. Mountain Time (Standard or Daylight Savings, as applicable), on days other than Saturdays, Sundays, or state or federal holidays;

(C) the recipient receives all pages of the document transmitted; and,

(D) the party filing the document:

(I) also mails the document to the department or division the same day, as evidenced by a postmark; or

(II) prior to any applicable filing deadline, is expressly excused by the presiding officer from mailing the document.

(c) The burden is on the party filing the document to ensure that a filing is properly completed.

R151-4-402. Service.

(1)(a) Pleadings filed by the parties shall be concurrently served on all parties and any administrative law judge who is assigned in the case. Documents issued by the presiding officer shall be concurrently served on all parties.

(b) The party who files a pleading is responsible for service of the pleading.

(c) The presiding officer who issues a document is responsible for service of the document.

(2)(a) Service may be made:

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

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

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

(3)(a) Service may be accomplished by hand delivery of a paper copy, by mail of a paper copy to the last known address

of the intended recipient, or by attachment to electronic mail.

(b) Service by hand delivery is complete upon delivery to:

(i) the person who is required to be served;

(ii) any individual who is employed by, and physically present at, the business office of the person who is required to be served; or

(iii) a mailbox or dropbox that is:

(A) assigned to the person who is required to be served; and

(B) physically located at the person's place of business.

(c) Service by mail is complete upon mailing, as evidenced by a postmark.

(d) Service by attachment to electronic mail is complete on transmission if transmission is completed during normal business hours, 8 a.m. to 5 p.m. on days other than Saturdays, Sundays, and state and federal holidays, at the place receiving the service; otherwise, service is complete on the next business day.

(4) There shall appear on all documents required to be served a certificate of service in substantially the following form:

TABLE II

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

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

R151-4-501. Applicability.

(1) This part (R151-4-501 to -516) applies only to formal adjudicative proceedings.

(2) Discovery is prohibited in informal adjudicative proceedings.

R151-4-502. Scope of Discovery.

(1) Parties may obtain discovery regarding a matter that:

(a) is not privileged;

(b) is relevant to the subject matter involved in the proceeding; and

(c) relates to a claim or defense:

(i)(A) of the party seeking discovery; or

(B) of another party;

(ii) that is set forth in a pleading; and

(iii) that is brought pursuant to a statement of fact, information, or belief.

(2)(a) Subject to R151-4-502(3) and R151-4-504, a party may obtain discovery of documents and tangible things otherwise discoverable under R151-4-502(1) and prepared in anticipation of litigation or for hearing by or for another party or by or for that party's representative, including the party's attorney, consultant, insurer or other agent, only on a showing that the party seeking discovery:

(i) has substantial need of the materials in the preparation of the case; and

(ii) is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(b) In ordering discovery of materials described in R151-4-502(2)(a), the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney of a party.

(3) Discovery of facts known and opinions held by experts, otherwise discoverable under R151-4-502(1) and acquired or developed in anticipation of litigation or for hearing, may be obtained only through the disclosures required by R151-4-504.

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

(1) In the prehearing order the presiding officer may require each party to disclose in writing:

(a)(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting the party's claims or defenses; and

(ii) identification of the topic(s) addressed in the information maintained by each individual; and

(b)(i) a copy of all discoverable documents, data compilations, and tangible things that:

(A) are in the party's possession, custody, or control; and

(B) support the party's claims or defenses; or

(ii)(A) a description, by category and location, of the tangible things identified in R151-4-503(1)(b)(i); and

(B) reasonable access.

(2)(a) The order may not require disclosure of expert testimony, which is governed by R151-4-504.

(b) The order shall not require the disclosure of information regarding persons or things intended to be used solely for impeachment.

(3)(a) Each party shall make the disclosures required by R151-4-503(1) within 14 days after the prehearing order is issued.

(b) A party joined after the prehearing conference shall make these disclosures within 30 days after being served.

(c) A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because:

(i) the party has not fully completed the investigation of the case;

(ii) the party challenges the sufficiency of another party's disclosures; or

(iii) another party has not made disclosures.

(4) Disclosures required under R151-4-503 shall be made in writing, signed, and served.

R151-4-504. Disclosures Otherwise Required.

(1)(a) A party shall:

(i) disclose in writing the name, address and telephone number of any person who might be called as an expert witness at the hearing; and

(ii) provide a written report signed by the expert that contains a complete statement of all opinions the expert will offer at the hearing and the basis and reasons for them. Such an expert may not testify in a party's case-in-chief concerning any matter not fairly disclosed in the report. The party offering the expert shall pay the costs for the report.

(b) Unless otherwise stipulated in writing by the parties or ordered in writing by the presiding officer, the disclosures required by R151-4-504(1) shall be made:

(i) within 30 days after the deadline for completion of discovery; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under R151-4-504(1)(a), within 60 days after the disclosure made by the other party.

(c) If either party fails to file its disclosure within the time frames in R151-4-504(1), the presiding officer:

(i) shall exclude the expert testimony from the proceeding; and

(ii) may not continue the hearing to allow additional time for the disclosures.

(2)(a) In addition to the disclosures required by R151-4-504(1), a party shall disclose information regarding evidence the party may present at hearing other than solely for impeachment purposes pursuant to the pretrial disclosures provisions of Rule 26 of the Utah Rules of Civil Procedure.

(b)(i) The disclosures required by R151-4-504(2) shall be made at least 45 days before the hearing.

(ii) Within 14 days after service of the disclosures a party may serve and file an objection to the:

(A) use of a deposition designated by another party; and

(B) admissibility of materials identified under R151-4-504(2)(a).

(iii) An objection not timely made is waived.

R151-4-505. Other Discovery Methods.

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

(1) depositions upon oral examination;

(2) production of documents or things;

(3) permission to enter upon land or other property for inspection and other purposes; and

(4) physical and mental examinations.

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

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

(1) the discovery sought is unreasonably cumulative, duplicative, or is obtainable from some other source that is:

(a) more convenient;

(b) less burdensome; or

(c) less expensive;

(2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(3) the discovery is unduly burdensome or expensive, taking into account:

(a) the needs of the case;

(b) the amount in controversy;

(c) limitations on the parties' resources; and

(d) the importance of the issues at stake in the litigation.

R151-4-507. Protective Orders.

(1) Upon motion by a party or by the person from whom discovery is sought the presiding officer may make an order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) that the discovery not be had;

(b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(d) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(e) that discovery be conducted with no one present except persons designated by the presiding officer;

(f) that a deposition after being sealed be opened only by order of the presiding officer;

(g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or

(h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

(2) If the motion for a protective order is denied in whole or in part, the presiding officer may order that a party or person provide or permit discovery.

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

(1) Parties are encouraged to initiate appropriate discovery procedures in advance of the prehearing conference so that discovery disputes can be addressed at that conference to the extent possible.

(2)(a) All discovery, except for prehearing disclosures governed by R151-4-504, shall be completed within 120 calendar days after the day on which:

(i) the notice of agency action was issued; or

(ii) the initial decision with respect to a request for agency action was issued.

(b) Factors the presiding officer shall consider in determining whether to shorten this time period include:

(i) whether a party's interests will be prejudiced if the time period is not shortened;

(ii) whether the relative simplicity or nonexistence of factual issues justifies a shortening of discovery time; and

(iii) whether the health, safety or welfare of the public will be prejudiced if the time period is not shortened.

(c) Factors the presiding officer shall consider in determining whether a party has demonstrated good cause to extend this time period include, in addition to those set forth in R151-4-109:

(i) whether the complexity of the case warrants additional discovery time; and

(ii) whether that party has made reasonable and prudent use of the discovery time that has already been available to the party since the proceeding commenced.

(d) Notwithstanding R151-4-508(2)(c), the presiding officer may not extend discovery in a way that prevents the hearing from taking place within the time frames established in R151-4-108.

(3)(a) Unless the presiding officer orders otherwise for the convenience of parties and witnesses, and except as otherwise provided by this rule (R151-4), discovery methods may be used in any sequence.

(b) The fact that a party is conducting discovery shall not operate to delay another party's discovery.

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

(1) A party who has made a disclosure or responded to a request for discovery with a response that was complete when made shall supplement the disclosure or amend the response to include subsequent information if:

(a) ordered by the presiding officer; or

(b) a circumstance described in R151-4-509(2) or (3) exists.

(2)(a) A party shall supplement disclosures if:

(i) the party learns that in some material respect the information disclosed is incomplete or incorrect; and

(ii) the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(b) With respect to testimony of an expert from whom a report is required under R151-4-504:

(i) the duty extends to information contained in the report; and

(ii) additions or other changes to this information shall be disclosed by the time the party's disclosures under R151-4-504 are due.

(3) A party shall amend a prior response to a request for production:

(a) within a reasonable time after the party learns that the response is in some material respect incomplete or incorrect; and

(b) if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

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

(1) Each notice of agency action or initial decision with

respect to a request for agency action:

(a) shall contain the time, date, and location of a prehearing conference, which shall be at least 45 calendar days but not more than 60 calendar days after the date of the notice of agency action or initial decision with respect to a request for agency action;

(b) shall contain a clear notice that failure to respond within 30 calendar days may result in:

(i) cancellation of the prehearing conference; and

(ii) a default order; and

(c) may contain the date, consistent with R151-4-108, of the scheduled hearing.

(2)(a) The prehearing conference may be in person or telephonic.

(b) All parties, or their counsel, shall participate in the conference.

(c) The conference shall include discussion and scheduling of discovery, prehearing motions, and other necessary matters.

(3) During the prehearing conference, the presiding officer shall issue a verbal order, and shall issue a written order to the same effect within 2 business days after the conference is concluded, which shall address each of the following:

(a) if necessary, scheduling an additional prehearing conference;

(b) setting a deadline for the filing of all prehearing motions and cross-motions, including motions for summary judgment, which deadline shall allow for all motions to be submitted and ruled on prior to the hearing date;

(c) modifying, if appropriate, a deadline for disclosures;

(d) resolving discovery issues;

(e) establishing a schedule for briefing, discovery needs, expert witness reports, witness and exhibit lists, objections, and other necessary or appropriate prehearing matters;

(f) if not already scheduled, scheduling a hearing date in compliance with R151-4-108; and

(g) dealing with other necessary matters.

(4) A party joined after the prehearing conference is bound by the order issued as a result of that conference unless the order is modified in writing pursuant to a stipulation or motion.

(5)(a) Notwithstanding any other rule, the presiding officer shall schedule all prehearing matters consistent with R151-4-108.

(b) The presiding officer may:

(i) adjust time frames as necessary to accommodate R151-4-108; and

(ii) schedule appropriate prehearing matters to occur concurrently.

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

(1)(a) Every disclosure shall:

(i) be signed by:

(A) at least one attorney of record; or

(B) the party if not represented; and

(ii) include the mailing address of the signer.

(b) The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it was made.

(2)(a) Every request for discovery or response or objection to discovery shall:

(i) be signed by:

(A) at least one attorney of record; or

(B) the party if not represented; and

(ii) include the mailing address of the signer.

(b) The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is:

(i) consistent with this rule (R151-4) and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(ii) not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, and the importance of the issues at stake in the proceeding.

(3)(a) If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection.

(b) A party is not obligated to take an action with respect to a request, response, or objection until it is signed.

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

(1) Unless otherwise ordered by the presiding officer:

(a) a party may not file a request for or response to discovery, but shall file only the original certificate of service stating that the request or response has been served on the other parties and the date of service;

(b) a party may not file any of the disclosures required by the prehearing order or any of the expert witness disclosures required by R151-4-504, but shall file only the original certificate of service stating that the disclosures have been served on the other parties and the date of service;

(c) except as may be required by Rule 30 of the Utah Rules of Civil Procedure, depositions shall not be filed; and

(d) a party shall file the disclosures required by R151-4-504.

(2) A party filing a motion for a protective order or a motion for an order compelling discovery shall attach to the motion a copy of the request or response at issue.

R151-4-513. Subpoenas.

(1) Each subpoena:

(a) shall be issued and signed by the presiding officer;

(b) shall state the title of the action;

(c) shall command each person to whom it is directed to attend and give testimony at a hearing or deposition at a time and place specified;

(d) may command the person to whom it is directed to produce designated books, papers, or tangible things, and in the case of a subpoena for a deposition, may permit inspection and copying of the items; and

(e) shall limit its designation of books, papers, or tangible things to matters properly within the scope of discoverable information.

(2) A subpoenaed individual shall receive the fee for attendance and mileage reimbursement required by law.

(3)(a) A subpoena commanding a person to appear at a hearing or a deposition in Utah may be served at any place in Utah.

(b) A person who resides in Utah may be required to appear at a deposition:

(i) in the county where the person resides, is employed, or transacts business in person; or

(ii) at any reasonable location as the presiding officer may order.

(c) A person who does not reside in this state may be required to appear at a deposition:

(i) in the county in Utah where the person is served with a subpoena; or

(ii) at any reasonable location as the presiding officer may order.

(4) A subpoena shall be served in accordance with the requirements of the jurisdiction in which service is made.

(5) Upon a motion made promptly to quash or modify a

subpoena, but no later than the time specified in the subpoena for compliance, the presiding officer may:

(a) quash or modify the subpoena, if it is shown to be unreasonable and oppressive; or

(b) conditionally deny the motion with the denial conditioned on the payment of the reasonable cost of producing the requested materials by the person on whose behalf the subpoena is issued.

(6)(a) In the case of a subpoena requiring the production of books, papers, or other tangible things at a deposition, the person to whom the subpoena is directed may, within 10 days after service or on or before the time specified in the subpoena for compliance if the time is less than 10 days after service, serve on the attorney designated in the subpoena a written objection to production, inspection, or copying of any of the designated materials.

(b) If this objection is made, the party serving the subpoena is not entitled to production, inspection, or copying of the materials except pursuant to a further order of the presiding officer who issued the subpoena.

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

(1) Upon approval by the presiding officer, a party may serve on another party a request:

(a) to produce and permit the party making the request to:

(i) inspect and copy a data compilation from which information can be obtained and translated into a reasonably usable form; or

(ii) inspect and copy, test, or sample a document or tangible thing that:

(A) constitutes or contains matters within the scope of R151-4-502(1); and

(B) are in the possession, custody or control of the party upon whom the request is served; or

(b) to permit, within the scope of R151-4-502(1), entry on designated land, property, object, or operation in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling.

(2)(a) Before permitting a party to serve a request for production of documents, the presiding officer must first find that the requesting party has demonstrated the records have not already been provided.

(b) After approval by the presiding officer, the request may be served on a party.

(c) The request shall:

(i) set forth the items to be inspected either by individual item or by category;

(ii) describe each item and category with particularity; and

(iii) specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d)(i) The party upon whom the request is served shall serve a written response within 20 days after service of the request unless the presiding officer allows a shorter or longer time in a written order.

(ii) The response shall state, with respect to each specific item or category:

(A) that inspection and related activities will be permitted as requested; or

(B) an objection.

(iii) The party submitting the request may move for an order under R151-4-516 with respect to any:

(A) objection;

(B) failure to respond to any part of the request; or

(C) failure to permit inspection as requested.

(e) A party who produces documents for inspection shall:

(i) produce them as they are kept in the usual course of business; or

(ii) organize and label them to correspond with the categories in the request.

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

(1)(a) When the mental or physical condition, including the blood group, of a party or of a person in the custody or under the legal control of a party is in controversy, the presiding officer may order the party or person to:

(i) submit to a physical or mental examination by a physician; or

(ii) produce for examination the person in the party's custody or legal control.

(b) The order:

(i) may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties; and

(ii) shall specify:

(A) the time, place, manner, conditions, and scope of the examination; and

(B) the person or persons by whom it is to be made.

(2)(a)(i) If requested by the party against whom an order is made under this rule or the person examined, the party causing the examination to be made shall deliver to the requester a copy of a detailed written report of the examining physician including findings, diagnoses, conclusions, test results, and reports of any earlier examination of the same condition.

(ii)(A) After delivery, the party causing the examination is entitled, on request, to receive from the party against whom the order is made a like report of an examination, previously or thereafter made, of the same condition unless, in the case of an examination of a person not a party, the party shows that the party is unable to obtain it.

(B) The presiding officer on motion may order a party to deliver a report, and if a physician fails or refuses to make a report, the presiding officer may exclude the physician's testimony at the hearing.

(b) By requesting and obtaining an examination report or by taking the deposition of the examiner, the party examined waives any privilege regarding the testimony of every other person who has examined or may thereafter examine the party for the same mental or physical condition.

(c) R151-4-515(2):

(i) applies to examination made by agreement of the parties unless the agreement expressly provides otherwise; and

(ii) does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician under any other rule.

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

(1)(a) The discovering party may move for an order compelling discovery if:

(i) a party fails to make disclosures required by a prehearing order;

(ii) a party fails to make the disclosures required by R151-4-504;

(iii) a deponent fails to answer a question;

(iv) a corporation or other entity named as a deponent fails to designate an individual to testify pursuant to Rule 30 of the Utah Rules of Civil Procedure; or

(v) a party, in response to a request for inspection under R151-4-514, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested.

(b) When taking a deposition, the proponent of the question may complete or adjourn the examination before applying for an order.

(c) If the presiding officer denies the motion in whole or in part, the presiding officer may make a protective order that otherwise would be authorized by R151-4-507.

(d) An evasive or incomplete answer is treated as a failure

to answer.

(2)(a) If a party or other person fails to comply with an order compelling discovery:

(i) the department may seek civil enforcement in the district court under Section 63G-4-501; or

(ii) the presiding officer may, for good cause, issue an order:

(A) that the related matters and facts shall be taken to be established;

(B) refusing to allow the disobedient party to support or oppose designated claims or defenses; or

(C) prohibiting the disobedient party from introducing designated matters in evidence;

(D) striking out pleadings or portions of pleadings;

(E) dismissing the proceeding or a portion of the proceeding; or

(F) rendering a judgment by default against the disobedient party.

R151-4-601. Applicability - Scope.

(1)(a) This part (R151-4-601 to -611) applies only to formal adjudicative proceedings.

(b) Discovery is prohibited in informal adjudicative proceedings.

(2)(a) Only as provided in this part and with a written order of the presiding officer, a party may take the testimony by deposition upon oral examination of certain persons, including parties, who have knowledge of facts relevant to the claims or defenses of a party in the proceeding.

(b) The attendance of witnesses may be compelled by subpoena.

(c) A party may not depose an expert witness.

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

(1) Before a party may request leave to take a person's deposition, the party must first make diligent efforts to obtain discovery from that person by means of an informal interview.

(2) A party may not be granted leave to take a deposition unless the party, upon motion, demonstrates to the satisfaction of the presiding officer that the person has knowledge of facts relevant to the claims or defenses of a party in the proceeding and:

(a) has refused a reasonable request by the moving party for an informal interview;

(b) after having notice of at least two reasonable requests by that party for an informal interview, has failed to respond to those requests;

(c) has refused to answer reasonable questions propounded to him by that party in an informal interview; or

(d) will be unavailable to testify at the hearing.

(3) In deciding whether to grant the motion, the presiding officer shall consider the probative value the testimony is likely to have in the proceeding.

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

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

(1)(a) A party permitted to take a deposition shall give notice pursuant to the notice requirements of Rule 30 of the Utah Rules of Civil Procedure.

(2)(a) The parties may stipulate in writing or, upon motion, the presiding officer may order in writing that the testimony at a deposition be recorded by means other than stenographic means.

(b) The stipulation or order:

(i) shall designate the person before whom the deposition shall be taken;

(ii) shall designate the manner of recording, preserving and filing the deposition; and

(iii) may include other provisions to assure the recorded testimony will be accurate and trustworthy.

(c) A party may arrange to have a transcript made at the party's own expense.

(d) A deposition recorded by means other than stenographic means shall set forth in writing:

(i) any objections;

(ii) any changes made by the witness;

(iii) the signature of the witness identifying the deposition as the witness's own or the statement of the court reporter required if the witness does not sign; and

(iv) any certification required by Rule 30 of the Utah Rules of Civil Procedure.

(3) The notice to a party deponent may be accompanied by a request in compliance with R151-4-514 for the production of documents and tangible things at the deposition.

(4) Rule 30(b)(6) of the Utah Rules of Civil Procedure shall apply where a deponent is:

(a) a public or private corporation;

(b) a partnership;

(c) an association; or

(d) a government agency.

(5) The parties may stipulate in writing or, upon motion, the presiding officer may order a deposition be taken by telephone.

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

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

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

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

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

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

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

(1) The transcript or recording of a deposition shall be certified and delivered pursuant to Rule 30 of the Utah Rules of Civil Procedure.

(2) Exhibits shall be marked for identification, inspected, copied, and delivered pursuant to Rule 30 of the Utah Rules of Civil Procedure.

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

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

R151-4-609. Use of Depositions.

(1) Pursuant to the other provisions of R151-4-609, a part of a deposition, if admissible under the rules of evidence applied as though the witness were present and testifying, may be used against a party who:

(a) was present or represented at the taking of the deposition; or

(b) had reasonable notice of the deposition.

(2) A party may use a deposition:

(a) to contradict or impeach the testimony of the deponent as a witness; or

(b) for another purpose permitted by the Utah Rules of Evidence.

(3) An adverse party may use a deposition for any purpose.

(4) A party may use the deposition of a witness, whether or not a party, for any purpose if the presiding officer finds that:

(a) the witness is dead;

(b) the witness is more than 100 miles from the hearing, unless it appears the absence of the witness was procured by the party offering the deposition;

(c) the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(d) the party offering the deposition has been unable to procure the attendance of the witness by subpoena.

(5) If part of a deposition is offered in evidence by a party, an adverse party may require introduction of any other part which ought, in fairness, to be considered with the part introduced.

(6) A deposition lawfully taken and filed in a court or another agency within Utah may be used as if originally taken in the pending proceeding.

(7) A deposition previously taken may otherwise be used as permitted by the Utah Rules of Evidence.

R151-4-610. Objections to Admissibility.

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

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

(1) An error or irregularity in the notice for taking a deposition is waived unless a party promptly serves a written objection on the party giving the notice.

(2) Objection to taking a deposition because of disqualification of the court reporter before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) An objection to the competency of a witness or to the competency, relevancy, or materiality of testimony is not waived by failure to make it before or during the taking of the deposition, unless the basis of the objection is one that could have been obviated or removed if presented at that time.

(4) An error or irregularity occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and an error that might be obviated, removed, or cured if promptly presented, is waived unless an objection is made at the taking of the deposition.

(5) An error or irregularity in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with is waived unless a motion to suppress is made with reasonable promptness after the defect is, or with due diligence should have been, discovered.

R151-4-701. Hearings Required or Permitted.

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

(1) required by statute or rule and not waived by the parties; or

(2) permitted by statute or rule and timely requested.

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

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

(1) the time period for filing a response to a notice of agency action if a response is required or permitted;

(2) twenty days following the issuance of a notice of agency action if a response is not required or permitted; or

(3) the filing of the request for agency action.

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

(1) A hearing in an adjudicative proceeding is open to the public unless closed by:

(a) the presiding officer conducting the hearing, pursuant to Title 63G, Chapter 4, the Administrative Procedures Act; or

(b) a presiding officer who is a public body, pursuant to Title 52, Chapter 4, the Open and Public Meetings Act.

(2)(a) The deliberative process of an adjudicative proceeding is a quasi-judicial function exempt from the Open and Public Meetings Act.

(b) Deliberations are closed to the public.

R151-4-704. Bifurcation of Hearing.

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

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

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

(1) opening statement of the party with the burden of proof;

(2) opening statement of the opposing party, unless the party reserves the opening statement until the presentation of its case-in-chief;

(3) case-in-chief of the party with the burden of proof and cross examination of witnesses by opposing party;

(4) case-in-chief of the opposing party and cross examination of witnesses by the party with the burden of proof;

(5) if the presiding officer finds it to be necessary, rebuttal evidence by the party which has the burden of proof;

(6) if the presiding officer finds it to be necessary, rebuttal evidence by the opposing party;

(7) closing argument by the party with the burden of proof;

(8) closing argument by the opposing party; and

(9) final argument by the party with the burden of proof.

R151-4-706. Testimony Under Oath.

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

R151-4-707. Electronic Testimony.

(1) As used in this section (R151-4-707), electronic testimony means testimony by contemporaneous transmission from a different location including by telephone, or by other audio or video conferencing technology.

(2) For good cause and with appropriate safeguards, the presiding officer may permit electronic testimony in hearings in administrative proceedings.

(3) With appropriate safeguards, electronic testimony is permissible in an informal proceeding on the request of a party.

R151-4-708. Standard of Proof.

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

R151-4-709. Burden of Proof.

Unless otherwise provided by statute:

(1) the department has the burden of proof in a proceeding initiated by a notice of agency action; and

(2) the party who seeks action from the department has the

burden of proof in a proceeding initiated by a request for agency action.

R151-4-710. Default Orders.

(1) The presiding officer may enter a default order under Section 63G-4-209, with or without a motion from a party.

(2) If a basis exists for a default order, the order may enter without notice to the defaulting party or a hearing.

(3) A default order is not required to be accompanied by a separate order.

R151-4-711. Record of Hearing.

(1) The presiding officer shall make a record of all prehearing conferences and hearings.

(2)(a) The presiding officer shall make the record of a hearing in a formal proceeding by means of:

(i) a certified court reporter licensed under Title 58, Chapter 74, Certified Court Reporters Licensing Act; or

(ii) a digital audio or video recording in a commonly used file format.

(b) The presiding officer shall make record of a hearing in an informal proceeding by:

(i) a method required for a formal proceeding; or

(ii) minutes or an order prepared or adopted by the presiding officer.

(3) A hearing in an adjudicative proceeding shall be recorded at the expense of the department.

(4)(a) If a party is required by R151-4-902 to obtain a transcript of a hearing for agency review, the party must ensure that the record is transcribed:

(i) in a formal adjudicative proceeding, by a certified court reporter; or

(ii) in an informal adjudicative proceeding, by:

(A) a certified court reporter; or

(B) a person who is not a party in interest.

(b) Where a transcript is prepared by someone other than a certified court reporter, a party shall file an affidavit of the transcriber stating under penalty of perjury that the transcript is a correct and accurate transcription of the hearing record.

(c) Pages and lines in a transcript shall be numbered for referencing purposes.

(d) The party requesting the transcript shall bear the cost of the transcription.

(5) The original transcript of a record of a hearing shall be filed with the presiding officer.

R151-4-712. Fees.

(1)(a) Witnesses appearing on the demand or at the request of a party may receive payment from that party of:

(i) $18.50 for each day in attendance; and

(ii) if traveling more than 50 miles to attend and return from the hearing, 25 cents per mile for each mile actually and necessarily traveled.

(b) A witness subpoenaed by a party other than the department may:

(i) demand one day's witness fee and mileage in advance; and

(ii) be excused from appearance unless the fee is provided.

(2) Interpreters and translators may receive compensation for their services.

(3) An officer or employee of the United States, the State of Utah, or a county, incorporated city, or town within the State of Utah, may not receive a witness fee unless the officer or employee is required to testify at a time other than during normal working hours.

(4) A witness may not receive fees in more than one adjudicative proceeding on the same day.

R151-4-801. Requirements and Timeliness.

(1) For default orders and orders issued subsequent to a default order, the requirements of Subsections 63G-4-203(1)(i)(iii) and (iv) and 63G-4-208(1)(e),(f) and (g) are satisfied if the order includes a notice of the right to seek to set aside the order as provided in Subsection 63G-4-209(3).

(2) Except as provided in Sections 63G-4-502 and R151-4-111, the presiding officer shall issue an order within 45 calendar days after the day on which the hearing concludes.

(3) If the presiding officer permits the filing of post-hearing documents, that filing shall be scheduled in a way that allows the presiding officer to issue an order within 45 calendar days after the day on which the hearing concludes.

(4) The failure of the presiding officer to comply with the requirements of this section (R151-4-801):

(a) is not a basis for dismissal of the matter; and

(b) may not be considered an automatic denial or grant of a motion.

R151-4-802. Effective Date.

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

R151-4-803. Clerical Mistakes.

(1) The department may correct clerical mistakes in orders or other parts of the record and errors arising from oversight or omission on:

(a) its own initiative; or

(b) the motion of a party.

(2) Mistakes described in this section (R151-4-803) may be corrected:

(a) at any time prior to the docketing of a petition for judicial review; or

(b) as governed by Rule 11(h) of the Utah Rules of Appellate Procedure.

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

(1)(a) Except as otherwise provided in Subsection 63G-4-209(3)(c), an aggrieved party may obtain agency review of a final order by filing a request with the executive director within 30 calendar days after the issuance of the order.

(b) This 30-day deadline is jurisdictional. The three-day mailing rule in Section 151-4-107(3) does not apply and does not extend the jurisdictional deadline.

(c) Pursuant to Subsection 63G-4-102(9), the Executive Director may extend the deadline only for good cause shown. For purposes of this section R151-4-901, good cause to justify an extension means special circumstances beyond the control of the person requesting agency review that prevents a timely filing of the request.

(2)(a) Agency review is not available for an order or decision entered by:

(i) the Utah Motor Vehicle Franchise Advisory Board; or

(ii) the Utah Powersport Vehicle Franchise Advisory Board.

(b) Agency review is not available for an order or decision entered by the Division of Occupational and Professional Licensing for:

(i) Prelitigation proceedings under Title 78B, Chapter 3, the Utah Health Care Malpractice Act;

(ii) a request for modification of a disciplinary order; or

(iii) a request under Section 58-1-404(4) for entry into the Diversion Program.

(c) Agency review is not available for an order or decision entered by the Division of Corporations and Commercial Code for:

(i) refusal to file a document under the Utah Revised Business Corporations Act pursuant to Section 16-10a-126;

(ii) revocation of a foreign corporation's authority to

transact business pursuant to Section 16-10a-1532;

(iii) refusal to file a document under the Utah Revised Limited Liability Company Act pursuant to Section 48-3a-209; or

(iv) denial of reinstatement under the Uniform Limited Cooperative Association Act pursuant to Section 16-16-1213.

(d)(i) A party may request agency reconsideration pursuant to Section 63G-4-302 for an order or decision exempt from agency review under R151-4-901(2)(a), (2)(b)(ii), and (2)(c).

(ii) Pursuant to Subsections 58-1-404(4)(d) and 78B-3-416(1)(c), agency reconsideration is not available for an order or decision exempt from agency review under R151-4-901(2)(b)(i) and (2)(b)(iii).

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

(1) A request for agency review shall:

(a) comply with Subsection 63G-4-301(1)(b) and this section (R151-4-902); and

(b) include a copy of the order that is the subject of the request.

(2) A party requesting agency review shall set forth any factual or legal basis in support of that request, including adequate supporting arguments and citation to:

(a) appropriate legal authority; and

(b) the relevant portions of the record.

(3)(a) If a party challenges a finding of fact, the party must demonstrate, based on the entire record, that the finding is not supported by substantial evidence.

(b) A party challenging a finding of fact bears the burden to:

(i) marshal or gather all the evidence in support of the finding; and

(ii) show that despite that evidence, the finding is not supported by substantial evidence.

(c) The failure to marshal the evidence permits the executive director to accept a division's findings of fact as conclusive.

(d) A party challenging a legal conclusion must support the argument with citation to:

(i) relevant authority; and

(ii) the portions of the record relevant to the issue.

(4)(a) If the grounds for agency review include a challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall order and cause a transcript of the record relevant to the finding or conclusion to be prepared.

(b) When a transcript is required, the party seeking review shall:

(i) certify that the transcript has been ordered;

(ii) notify the department when the transcript will be available; and

(iii) file the transcript with the executive director in accordance with the time frame stated in the certification regarding transcript.

(c) The party seeking agency review bears the cost of the transcript.

(5) Grounds for agency review that include any legal argument must be supported by specific citations to the transcript of the proceeding, indicating when the argument was raised and preserved in the proceeding. Examples of legal argument include but are not limited to:

(a) an objection to a ruling of the presiding officer;

(b) an argument regarding one or more procedures attendant to the proceeding; or

(c) an argument as to the legal validity, including the Constitutionality, of a statute or rule.

(6)(a) A party seeking agency review shall, in the manner described in R151-4-401 and -402, file and serve on all parties copies of correspondence, pleadings, and other submissions.

(b) If an attorney enters an appearance on behalf of a party, service shall be made on the attorney instead of the party.

(7) Failure to comply with this section (R151-4-902) may result in dismissal of the request for agency review.

R151-4-903. Stay Pending Agency Review.

(1) With a timely filing of a request for agency review of an order, the party seeking review may file a motion for a stay of the order pending the completion of agency review.

(b) If a motion to stay is not timely filed and subsequently granted, the order subject to review shall remain in effect according to its terms.

(2)(a) The division that issued the order subject to review may oppose a motion for a stay in writing within ten days from the date the stay is requested.

(b) Failure to oppose a timely request for a stay shall result in an order granting the stay unless the department determines that a stay would not be in the best interest of the public.

(c) If a division opposes a motion for a stay, the department may permit a final response by the party requesting the stay.

(d) The department may enter an interim order granting a stay pending a decision on the motion for a stay.

(3)(a) In determining whether to grant a request for a stay, the department shall review the division's findings of fact, conclusions of law and order to determine whether granting a stay would, or might reasonably be expected to, pose a significant threat to the public health, safety and welfare.

(b) The department may issue:

(i) an order granting the motion for a stay;

(ii) a conditional stay imposing terms, conditions or restrictions on a party pending agency review;

(iii) a partial stay; or

(iv) an order denying the motion for a stay.

R151-4-904. Agency Review - Memoranda.

(1)(a) The department may order or permit the parties to file memoranda to assist in conducting agency review.

(b) Memoranda shall comply with:

(i) this rule (R151-4); and

(ii) a scheduling order entered by the department.

(2)(a) If a transcript is not necessary to conduct agency review, a memorandum supporting a request for agency review shall be concurrently filed with the request.

(b) If a transcript is necessary to conduct agency review, a supporting memorandum shall be filed no later than 15 days after the filing of the transcript with the department.

(3)(a) A response to a request for agency review and a memorandum supporting that response shall be filed no later than 30 days after the service of the memoranda supporting the request.

(b) A final reply memorandum shall be filed no later than 10 days after the service of a response to the request for agency review.

(4) If agency review involves more than two parties the department shall conduct a telephonic scheduling conference to address briefing deadlines.

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

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

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

(1) The type of relief available on agency review shall be the same as the type of relief available on judicial review under

Subsection 63G-4-404(1)(b).

(2) The order on review constitutes final agency action for purposes of Subsection 63G-4-401(1).

R151-4-907. Stay Pending Judicial Review.

(1) A party seeking judicial review of an order may file with the executive director a motion for a stay of the order pending judicial review. The motion for a stay shall be filed with the executive director on the same date that a timely petition for judicial review is filed with the court.

(2) Unless otherwise provided by statute, a motion for a stay of an order pending judicial review shall include:

(a) a statement of the reasons for the relief requested;

(b) a statement of the facts relied upon;

(c) affidavits or other sworn statements if the facts are subject to dispute;

(d) relevant portions of the record of the adjudicative proceeding and agency review;

(e) a memorandum of law identifying the issues to be presented on appeal and supporting the aggrieved party's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, remand for a new hearing, or relief from the order entered;

(f) clear and convincing evidence that if the requested stay is not granted, the aggrieved party will suffer irreparable injury;

(g) clear and convincing evidence that if the requested stay is granted, it will not substantially harm other parties to the proceeding; and

(h) clear and convincing evidence that if the requested stay is granted, the aggrieved party will not pose a significant danger to public health, safety and welfare.

(3)(a) The division that issued the order subject to review may oppose a motion for a stay in writing within ten days from the date that the motion is filed.

(b) Failure to oppose a timely motion under this Section shall result in an order granting the stay unless the executive director determines that a stay would not be in the public interest.

(c) If a division opposes a motion for a stay, the executive director may permit a final response by the party filing the motion.

(4) The executive director may grant a motion for a stay of an order pending judicial review if all of the criteria in R151-4-907 are met.

KEY: administrative procedures, adjudicative proceedings, government hearings
October 11, 2018 13-1-6
Notice of Continuation March 15, 2016 63G-4-102(6)

R152. Commerce, Consumer Protection.
R152-21. Credit Services Organizations Act Rule.
R152-21-1. Purpose.

The purpose of this rule is to clarify the legal mandates and prohibitions of Section 13-21-3.

R152-21-2. Definitions.

The definitions set forth in Section 13-21-2, as well as the following supplementary definitions, shall be used in construing the meaning of this rule.

(1) "Challenge" means any act performed by a credit services organization for the purpose of facilitating the disputation, by any person, of an entry appearing on the buyer's credit report.

(2) "Credit report" means any document prepared by a credit reporting agency showing the credit-worthiness, credit standing, or credit capacity of the buyer.

(3) "Inaccurate information" means data affected by typographical errors and other similar inadvertent technical faults which create a reasonable doubt about the reliability of such data.

(4) "Material error" means false or misleading information that could reasonably affect a decision to extend or deny credit to the buyer. "Accurate" information contains no material errors.

(5) "Material omission" means missing information that could reasonably affect a decision to extend or deny credit to the buyer. "Complete" information contains no material omissions.

(6) "Outdated information" means information that should not appear on the buyer's credit report because of its age. How long a given entry may remain on a credit report is determined by applicable state and federal law. Information which is not outdated is "timely."

(7) "Unverifiable information" means an entry on a credit report lacking sufficient supporting evidence to convince a reasonable person that it is proper. Information which is not unverifiable is "verifiable".

R152-21-3. Factual Basis for Credit Report Challenges.

(1) A credit services organization shall not challenge an entry made on the buyer's credit report without first having a factual basis for believing that the entry contains a material error or omission, or outdated, inaccurate, or unverifiable information.

(2) A credit services organization has a factual basis for challenging an entry on the buyer's credit report only when it:

(a) has received a written statement from the buyer identifying any entry on his credit report that he believes contains a material error or omission, or outdated, inaccurate, or unverifiable information;

(b) has conducted an investigation to determine if the information in the buyer's written statement is correct; and

(c) has concluded in good faith, based upon the results of its investigation, that the buyer's credit report contains one or more material errors or omissions, or outdated, inaccurate, or unverifiable information.

(3) In connection with any investigation undertaken pursuant to this rule, a credit services organization shall:

(a) contact the person who provided the information in question to the credit reporting agency and give him a reasonable opportunity to demonstrate the accuracy, completeness, timeliness, and verifiability of such information;

(b) memorialize, in writing and in detail, the results of the investigation; and

(c) retain the investigative report for not less two years after it is completed.

R152-21-4. Fraudulent Practices.

It shall be a violation of Section 13-21-3 for a credit services organization to do any of the following:

(1) to state or imply that it can permanently remove from a buyer's credit report an accurate, complete, timely, and verifiable entry;

(2) to challenge an entry on a buyer's credit report without a factual basis for believing the entry contains a material error or omission, or outdated, inaccurate, or unverifiable information; or

(3) to challenge an entry on a credit report for the purpose of temporarily denying accurate, complete, timely, and verifiable information to any person about the credit-worthiness, credit standing, or credit capacity of the buyer.

KEY: credit services, consumer, protection
1994 13-2-5
Notice of Continuation October 16, 2018

R156. Commerce, Occupational and Professional Licensing.
R156-42a. Occupational Therapy Practice Act Rule.
R156-42a-101. Title.

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

R156-42a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 42a, as used in Title 58, Chapters 1 and 42a, or this rule:

(1) "Manual therapy", as used in Subsection 58-42a-102(6)(b)(vii)(L), means the use of skilled hand movements to manipulate tissues of the body for a therapeutic purpose.

(2) "Physical agent modalities", as used in Subsection 58-42a-102(6)(b)(vii)(L), means specialized treatment procedures including: superficial thermal agents, deep thermal agents, electrotherapeutic agents, and mechanical devices.

(3) "Qualified continuing professional education", as used in Subsection 58-42a-303.5(1), means continuing education that meets the standards set forth in Subsection R156-42a-304.

(4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 42a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-42a-502.

(5) "Wound care", as used in Subsection 58-42a-102(6)(b)(vii)(L), means:

(a) prevention of interruptions in skin and tissue integrity; and

(b) care and management of interruptions in skin and tissue integrity.

R156-42a-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 42a.

R156-42a-104. Organization - Relationship to Rule 156-1.

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

R156-42a-302. Qualifications for Licensure - Examination Requirements.

The examination requirements for licensure, in accordance with Section 58-42a-302, are established as follows:

(1) An applicant for licensure as an occupational therapist shall pass the Occupational Therapist Registered (OTR) certification examination from the National Board for Certification in Occupational Therapy (NBCOT), or a predecessor organization.

(2) An applicant for licensure as an occupational therapy assistant shall pass the Certified Occupational Therapy Assistant (COTA) certification examination from the National Board for Certification in Occupational Therapy (NBCOT), or a predecessor organization.

R156-42a-303. Expiration, Renewal, and Reinstatement of License.

In accordance with Section 58-1-308:

(1) The renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 42a is established in R156-1-308a.

(2) Renewal and reinstatement procedures shall be in accordance with Sections R156-1-308a through R156-1-308l except as provided in Subsection (3).

(3) An applicant whose licensure was active and in good standing at the time of expiration may apply for reinstatement between two years and five years after the date of expiration, in accordance with the following practice re-entry requirements:

(a) Each applicant shall:

(i) submit an application demonstrating compliance with all requirements and conditions of license renewal;

(ii) pay all license renewal and reinstatement fees for the current renewal period;

(iii) submit evidence of completion of continuing education for each preceding renewal period in which the license was expired; and

(b) If the applicant has been out of practice three or more years, the applicant shall also:

(i) meet with the Board for evaluation of the applicant's qualifications for licensure; and

(ii) comply with additional licensure requirements or conditions considered necessary by the Division and Board to protect the public and ensure that the applicant is currently competent to engage in the profession.

R156-42a-304. Continuing Education.

(1) Continuing education required by Subsection 58-42a-302.5(1) shall consist of 24 hours of qualified continuing professional education in each preceding two-year period of licensure or prior to reinstatement of licensure. Each hour of continuing professional education may include a 10-minute break.

(2) If a renewal period is shortened or extended to effect a change of renewal cycle, the continuing professional education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(3) The required number of contact hours of continuing professional education for an individual who first becomes licensed during the two-year renewal cycle shall be decreased by a pro-rata amount.

(4) The standards for qualified continuing professional education include:

(a) an identifiable clear statement of purposed and defined objective for the educational program directly related to the practice of occupational therapy;

(b) relevance to the licensee's professional practice;

(c) presentation in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the continuing education;

(d) preparation and presentation by individuals who are qualified by education, training, and experience;

(e) completion of a minimum of two hours related to legal and ethical principles of practice; and

(f) verification from the continuing education provider to licensee of the completed continuing education.

(5) Supervision of one Level II occupational therapy student may account for two hours of continuing education, up to a maximum of eight hours of continuing education during each renewal cycle.

(6) Records of qualified continuing education completion shall be maintained by the licensee and reported to the Division when requested.

R156-42a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) delegating supervision, or occupational therapy services, care or responsibilities not authorized under Title 58, Chapter 42a or this rule;

(2) engaging in or attempting to engage in the use of physical agent modalities, wound care, or manual therapy when not competent to do so by education, training, or experience;

(3) failing to provide general supervision as set forth in Title 58, Chapter 42a and this rule;

(4) failing to cosign COTA discharge documentation within 30 days pursuant to R156-42a-601; and

(5) violating any provision of the American Occupational Therapy Association Code of Ethics, last amended 2015, which is hereby adopted and incorporated by reference.

R156-42a-601. Practice Standards.

(1) A certified occupational therapist assistant (COTA), after consultation with the supervising occupational therapist (OT), may discharge an individual from on-going service only if there is no evaluation component associated with the discharge from service. The supervising OT shall co-sign the appropriate documentation within 30 days.

(2) An occupational therapist shall complete formal specialized wound care training or certification, including didactic and clinical components, if engaging in the care and management of interruptions in skin and tissue integrity.

(3) Occupational therapy treatment shall be performed by an occupational therapist or certified occupational therapist assistant who is able to demonstrate and document evidence of theoretical background, technical skill, and competence in the therapies performed.

KEY: licensing, occupational therapy
August 23, 2018 58-1-106(1)(a)
Notice of Continuation October 9, 2018 58-1-202(1)(a)
58-42a-101

R156. Commerce, Occupational and Professional Licensing.
R156-47b. Massage Therapy Practice Act Rule.
R156-47b-101. Title.

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

R156-47b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 47b, as used in Title 58, Chapters 1 and 47b, or this rule:

(1) "Accrediting agency" means an organization, association or commission nationally recognized by the United States Department of Education as a reliable authority in assessing the quality of education or training provided by the school or institution.

(2) "Body wrap" means a body treatment that:

(a) may include one or more therapeutic preparations;

(b) is not for cosmetic purposes; and

(c) maintains modesty by draping the body fully or partially.

(3) "Clinic" means performing the techniques and skills learned as a student under the curriculum of a registered school or an accredited school on the public, while in a supervised student setting.

(4) "Direct supervision" as used in Subsection 58-47b-302(3)(e) means that the apprentice supervisor, acting within the scope of the supervising licensee's license, is in the facility where massage is being performed and directs the work of an apprentice pursuant to this chapter under Subsection R156-1-102a(4)(a) while the apprentice is engaged in performing massage.

(5) "Distance learning" means the acquisition of knowledge and skills through information and instruction encompassing all technologies and other forms of learning at a distance, outside a school of massage meeting the standards in Section R156-47b-302 including internet, audio/visual recordings, mail or other correspondence.

(6) "FSMTB" means the Federation of State Massage Therapy Boards.

(7) "Hands on instruction" means direct experience with or application of the education or training in either a school of massage therapy or apprenticeship.

(8) "Industry organization", as used in Subsection 58-47b-304(1)(m), means any of the following organizations:

(a) American FootZonology Practitioners Association (AFZPA);

(b) American Reflexology Certification Board (ARCB);

(c) Butterfly Expressions, LLC;

(d) Foot Zone Center LLC;

(e) Reflexology Association of America (RAA);

(f) Society of Ortho-Bionomy International; or

(g) Utah Foot Zone Association.

(9) "Lymphatic massage" means a method using light pressure applied by the hands to the skin in specific maneuvers to promote drainage of the lymphatic fluid from the tissue.

(10) "Manipulation", as used in Subsection 58-47b-102(6)(b), means contact with movement, involving touching the clothed or unclothed body.

(11) "Massage client services" means practicing the techniques and skills learned as an apprentice on the public in training under direct supervision.

(12) "NCBTMB" means the National Certification Board for Therapeutic Massage and Bodywork.

(13) "Recognized school" means a school located in a state other than Utah, whose students, upon graduation, are recognized as having completed the educational requirements for licensure in that jurisdiction.

(14) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 47b, is further defined, in accordance with Subsection 58-1-203(1)(e) in Section R156-47b-502.

R156-47b-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 47b.

R156-47b-104. Organization - Relationship to Rule R156-1.

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

R156-47b-202. Massage Therapy Education Peer Committee.

(1) There is created under Subsection 58-1-203(1)(f), the Massage Therapy Education Peer Committee.

(a) The Education Peer Committee shall:

(i) advise the Utah Board of Massage Therapy regarding massage therapy educational issues;

(ii) recommend to the Board standards for massage school curricula, apprenticeship curricula, and animal massage training; and

(iii) periodically review the current curriculum requirements.

(b) The composition of this committee shall be:

(i) two individuals who are instructors in massage therapy;

(ii) two individuals, one who represents a professional massage therapy association, and one who represents the Utah Committee of Bodywork Schools; and

(iii) one individual from the Utah State Office of Education.

R156-47b-302. Qualifications for Licensure as a Massage Therapist - Massage School Curriculum Standards.

In accordance with Subsection 58-47b-302(2)(e)(i)(A), an applicant must graduate from a school of massage with a curriculum, which at the time of graduation, meets the standards set forth in this section.

(1) Curricula shall:

(a) be registered with the Utah Department of Commerce, Division of Consumer Protection; or

(b) be registered with an accrediting agency recognized by the United States Department of Education.

(2) Curricula shall be a minimum of 600 hours and shall include the following:

(a) anatomy, physiology and kinesiology - 125 hours;

(b) pathology - 40 hours;

(c) massage theory, massage techniques including the five basic Swedish massage strokes, and hands on instruction - 285 hours;

(d) professional standards, ethics and business practices - 35 hours;

(e) sanitation and universal precautions including CPR and first aid - 15 hours;

(f) clinic - 100 hours; and

(g) other related massage subjects as approved by the Division in collaboration with the Board.

(3) The Division, in collaboration with the Board, may consider supplemental coursework of an applicant who has completed the minimum 600 curricula hours, but has incidental deficiencies in one or more of the categories specified in R156-47b-302(2)(a) through (f).

R156-47b-302a. Qualifications for Licensure - Equivalent Education and Training.

(1) In accordance with Subsection 58-47b-302(2)(e)(i)(B), an applicant who completes equivalent education and training must provide documentation of:

(a)(i) graduation from a licensed or recognized school outside the state of Utah with a minimum of 500 hours;

(ii) completion of the examination requirements; and

(iii) practice as a licensed massage therapist for a

minimum of three years; or

(b)(i) foreign education and training approval by:

(A) Josef Silny and Associates, Inc.;

(B) International Education Consultants; or

(C) Educational Credential Evaluators, Inc.; and

(ii) practice as a licensed massage therapist for a minimum of three years; or

(c)(i) completion of an apprenticeship program outside the state of Utah, deemed substantially equivalent as determined by the Division, in collaboration with the Board of Massage Therapy;

(ii) completion of the examination requirements; and

(iii) practice as a licensed massage therapist for a minimum of three years.

(2) Hours of supervised training while licensed as a massage therapy apprentice trained in accordance with Subsection R156-47b-302c(5) may not be used to satisfy any of the required minimum of 600 hours of school instruction specified in Section R156-47b-302(2).

(3) Hours of instruction or training obtained while enrolled in a school of massage having a curriculum meeting the standards in accordance with Section R156-47b-302(2) may not be used to satisfy the required minimum of 1,000 hours of supervised apprenticeship training specified in Subsection R156-47b-302c(5).

R156-47b-302b. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-47b-302(2)(f) and 58-47b-302(3)(f), the examination requirements for licensure are defined, clarified, or established as follows:

(1) Applicants for licensure as a massage therapist shall pass the Federation of State Massage Therapy Boards (FSMTB) Massage and Bodywork Licensing Examination (MBLEx).

(2) Predecessor exams shall be accepted if the exam was passed during the time the exam was accepted by the Division.

R156-47b-302c. Apprenticeship Standards for a Supervisor.

In accordance with Subsection 58-47b-302(2)(e)(ii), an apprentice supervisor shall:

(1) not begin an apprenticeship program until:

(a) the apprentice is licensed; and

(b) the supervisor is approved by the Division;

(2) not begin a new apprenticeship program until:

(a) the apprentice being supervised passes the FSMTB MBLEx and becomes licensed as a massage therapist, unless otherwise approved by the Division in collaboration with the Board; and

(b) the supervisor complies with subsection (1);

(3) if an apprentice being supervised fails the FSMTB MBLEx three times:

(a) together with the apprentice being supervised, meet with the Board at the next appropriate Board meeting;

(b) explain to the Board why the apprentice is not able to pass the examination;

(c) provide to the Board a plan of study in the appropriate subject matter to assist the apprentice in passing the examination; and

(d) upon successful completion of the review as provided in Subsection (3)(c), the apprentice shall again be eligible to take the FSMTB MBLEx;

(4) supervise not more than two apprentices at one time, unless otherwise approved by the Division in collaboration with the Board;

(5) train the massage apprentice in the areas of:

(a) anatomy, physiology and kinesiology - 125 hours;

(b) pathology - 40 hours;

(c) massage theory - 50 hours;

(d) massage techniques including the five basic Swedish massage strokes - 120 hours;

(e) massage client service - 300 hours;

(f) hands on instruction - 310 hours;

(g) professional standards, ethics and business practices - 40 hours; and

(h) sanitation and universal precautions including CPR and first aid - 15 hours;

(6) submit a curriculum content outline with the apprentice application, including a list of the resource materials to be used;

(7) display a conspicuous sign near the work station of the apprentice stating "Apprentice in Training";

(8) keep a daily record which shall include:

(a) the number of hours of instruction and training completed;

(b) the number of hours of client services performed; and

(c) the number of hours of training completed;

(9) make available to the Division upon request, the apprentice's training records;

(10) verify the completion of the apprenticeship program on forms available from the Division;

(11) notify the Division within ten working days if the apprenticeship program is terminated;

(12) must not have been disciplined for any unprofessional or unlawful conduct within five years of the start of any apprenticeship program; and

(13) ensure that the massage client services required in Subsection (5)(d) only be performed on the public; all other hands on instruction or practice must be performed by the apprentice on an apprentice or supervisor.

R156-47b-302d. Good Moral Character - Disqualifying Convictions.

(1) When reviewing an application to determine the good moral character of an applicant as set forth in Subsection 58-47b-302(2)(c) and whether the applicant has been involved in unprofessional conduct as set forth in Subsections 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

(a) a criminal conviction for a sex offense as defined in Title 76, Chapter 5, Part 4 and Chapter 5a, and Title 76, Chapter 10, Parts 12 and 13, may disqualify an applicant from becoming licensed; or

(b) a criminal conviction for the following crimes may disqualify an applicant for becoming licensed:

(i) crimes against a person as defined in Title 76, Chapter 5, Parts 1, 2 and 3;

(ii) crimes against property as defined in Title 76, Chapter 6, Parts 1 through 6;

(iii) any offense involving controlled dangerous substances; or

(iv) conspiracy to commit or any attempt to commit any of the above offenses.

(2) An applicant who has a criminal conviction for a felony crime of violence may be considered ineligible for licensure for a period of seven years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(3) An applicant who has a criminal conviction for a felony involving a controlled substance may be considered ineligible for licensure for a period of five years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(4) An applicant who has a criminal conviction for any misdemeanor crime of violence or the use of a controlled substance may be considered ineligible for licensure for a period of three years from the termination of parole, probation, judicial proceeding or date of incident, whichever is later.

(5) Each application for licensure or renewal of licensure shall be considered in accordance with the requirements of

Section R156-1-302.

R156-47b-302e. Standards for an Apprentice.

In accordance with Subsection 58-47b-302(2)(e)(ii), an apprentice shall:

(1) not begin an apprenticeship program until:

(a) the apprentice is licensed; and

(b) the supervisor is approved by the Division;

(2) obtain training from an approved apprentice supervisor in the areas of:

(a) anatomy, physiology and kinesiology - 125 hours;

(b) pathology - 40 hours;

(c) massage theory - 50 hours;

(d) massage techniques including the five basic Swedish massage strokes - 120 hours;

(e) massage client service - 300 hours;

(f) hands on instruction - 310 hours;

(g) professional standards, ethics and business practices - 40 hours; and

(h) sanitation and universal precautions including CPR and first aid - 15 hours;

(3) follow the approved curriculum content outline:

(a) submitted with the apprentice application including the list of the resource materials to be used; or

(b) previously submitted by the approved supervisor meeting current requirements including the list of the resource materials to be used;

(4) display a conspicuous sign near the work station of the apprentice stating "Apprentice in Training";

(5) keep a daily record which shall include:

(a) the number of hours of instruction and training completed;

(b) the number of hours of client services performed; and

(c) the number of hours of training completed;

(6) make available to the Division, upon request, the training records;

(7) verify the completion of the apprenticeship program on forms available from the Division;

(8) notify the Division within ten working days if the apprenticeship program is terminated; and

(9) perform the massage client services required in Subsection (2)(d) only on the public under direct supervision; all other hands on instruction or practice must be performed by the apprentice on an apprentice or supervisor.

R156-47b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 47b is established by rule in Section R156-1-308a.

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

R156-47b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) engaging in any lewd, indecent, obscene or unlawful behavior while acting as a massage therapist;

(2) as an apprentice supervisor, failing to provide direct supervision to a massage apprentice;

(3) practicing as a massage apprentice without direct supervision in accordance with Subsection 58-47b-102(4);

(4) as an apprentice supervisor, failing to provide and document adequate instruction or training as applicable;

(5) as an apprentice supervisor, advising, directing or instructing an apprentice in any instruction or behavior that is inconsistent, contrary or contradictory to established professional or ethical standards of the profession;

(6) failing to notify a client of any health condition the licensee may have that could present a hazard to the client;

(7) failure to use appropriate draping procedures to protect the client's personal privacy; and

(8) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Utah Chapter of the American Massage Therapy Association "Utah Code of Ethics and Standards of Practice", September 17, 2005 edition, which is hereby incorporated by reference.

R156-47b-503. Administrative Penalties - Unlawful Conduct.

In accordance with Subsection 58-1-501(1)(a) and (c), unless otherwise ordered by the presiding officer, the fine schedule in Section R156-1-502 shall apply to citations issued under Title 58, Chapter 47b.

R156-47b-601. Standards for Animal Massage Training.

In accordance with Subsection 58-28-307(12)(c), a massage therapist practicing animal massage shall have received 60 hours of training in the following areas:

(1) quadruped anatomy;

(2) the theory of quadruped massage; and

(3) supervised quadruped massage experience.

KEY: licensing, massage therapy, massage therapist, massage apprentice

October 11, 2018 58-1-106(1)(a)
Notice of Continuation April 4, 2017 58-1-202(1)(a)
58-47b-101

R156. Commerce, Occupational and Professional Licensing.
R156-67. Utah Medical Practice Act Rule.
R156-67-101. Title.

This rule shall be known as the "Utah Medical Practice Act Rule".

R156-67-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 67, as used in Title 58, Chapters 1 and 67 or this rule:

(1) "ACCME" means the Accreditation Council for Continuing Medical Education.

(2) "Alternate medical practices", as used in Section R156-67-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety, or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(3) "AMA" means the American Medical Association.

(4) "Collaborative practice arrangement contract" means a written, signed contract between a collaborating physician licensed and in good standing under Section 58-67-302, and an associate physician holding a restricted license in accordance with Section 58-67-302.8, that:

(a) includes the terms and conditions required by Section 58-67-807 and Section R156-67-807; and

(b) is approved by the Division in accordance with Section 58-67-807 and Section R156-67-807.

(5) "FLEX" means the Federation of State Medical Boards Licensing Examination.

(6) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(7) "FSMB" means the Federation of State Medical Boards.

(8) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(9) "LMCC" means the Licentiate of the Medical Council of Canada.

(10) "NBME" means the National Board of Medical Examiners.

(11) "Supervision form" means the form provided by the Division to document completion of the "continuously present" or "on-site" supervision required by Subsection 58-67-807(1)(d) for an associate physician practicing in a medically underserved area.

(12) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 67 is further defined in accordance with Subsection 58-1-203(1)(e), in Section R156-67-502.

(13) "USMLE" means the United States Medical Licensing Examination.

R156-67-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 67.

R156-67-104. Organization - Relationship to Rule R156-1.

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

R156-67-302a. Qualifications for Licensure - Practitioner Data Banks.

In accordance with Subsections 58-67-302(1)(a)(i) and 58-1-401(2), applicants applying for licensure under Subsections 58-67-302(1) and (2) shall include the following:

(1) Federation Credentials Verification Service (FCVS) report;

(2) American Medical Association Profile;

(3) Federation of State Medical Boards Disciplinary Inquiry report; and

(4) National Practitioner Data Bank Report of Action.

R156-67-302d. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-67-302(1)(f), the required licensing examination sequence is as follows:

(a) the FLEX components I and II on which the applicant shall have achieved a score of not less than 75 on each component part;

(b) the NBME examination parts I, II, and III on which the applicant shall achieve a passing score of not less than 75 on each part;

(c) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;

(d) the LMCC examination, Parts 1 and 2;

(e) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;

(f) the FLEX component 1 and the USMLE step 3; or

(g) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(h) In accordance with Subsection 58-67-302.5(1)(g), all applicants who are foreign medical graduates shall pass the FMGEMS unless they pass the USMLE steps 1 and 2.

(i) Candidates who fail any combination of the USMLE, FLEX and NBME three times must provide a narrative regarding the failure and may be requested to meet with the Board and Division.

(2) In accordance with Subsections 58-67-302(1)(g) and (2)(e), an applicant may be required to take the SPEX examination if the applicant:

(a) has not practiced in the past five years;

(b) has had disciplinary action within the past five years; or

(c) has had a substance abuse disorder or physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

R156-67-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 67 is established by rule in Section R156-1-308a.

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

R156-67-304. Qualified Continuing Professional Education.

(1) In accordance with Subsection 58-67-304(1), the qualified continuing professional education requirements shall consist of 40 hours during each two-year licensure cycle, as follows:

(a) A minimum of 34 of the required hours shall be in category 1 offerings as established by the ACCME.

(b) A maximum of six hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Up to 15% of the required hours may come from providing volunteer health care services within the scope of the licensee's license at a qualified location, in accordance with Section 58-13-3 concerning charity health care. One hour of continuing education credit may be earned for every four documented hours of volunteer services.

(d) Participation in a residency program approved by the AOA or the ACCME shall meet the continuing education requirement in a pro-rata amount equal to any part of the two-year period.

(2) Continuing education under this section shall:

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

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

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50-minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

R156-67-306. Exemptions from Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as a physician and surgeon include the following:

(1) any physician exempted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent an approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test;

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health;

(3) non-licensed public safety individuals not having emergency medical technician (EMT) certification who are designated by appropriate city, county, or state officials as responders may be issued and allowed to carry the Mark I automatic injector antidote kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the designated responders must successfully complete a course on the use of auto-injectors. The kits may be issued to the responder only by his employing agency and procured through the Utah Department of Health; and

(4) in accordance with Section 58-67-305, a medical assistant, while working under the indirect supervision of a licensed physician and surgeon, may not additionally engage in:

(a) diagnosing; or

(b) establishing a treatment plan.

R156-67-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician and surgeon from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and

treatment of that patient if the results are interpreted by a physician and surgeon qualified under this subsection and a timely written report is prepared by the interpreting physician and surgeon in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 67, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor;

(11) failing of a licensee under Title 58, Chapter 67, without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) failing to keep the division informed of a current address and telephone number;

(14) engaging in alternate medical practice except as provided in Section R156-67-603;

(15) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference; and

(16) failing to timely submit an annual written report to the division indicating that the physician has reviewed at least annually the dispensing practices of those authorized by the physician to dispense an opiate antagonist pursuant to Section R156-67-604.

R156-67-503. Administrative Penalties.

(1) In accordance with Subsection 58-67-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-67-501(1):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-67-501(1)(c)(i) or (ii):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-67-501(1)(d):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-67-502:

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(e) administering sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, without first obtaining the required consent from the patient in writing, in violation of Subsection 58-67-402.5(1):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(f) failing to report any adverse event under Section 26-1-40, with respect to the administering of sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, in violation of Subsection 58-67-502.5(2):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(g) during a procedure for which sedation or anesthesia will be administered intravenously to a patient in an outpatient setting that is not an emergency department, failing to have access to an advanced cardiac life support crash cart with equipment that is regularly maintained according to guidelines established by the American Heart Association, in violation of Subsection 58-67-502.5(3):

First Offense: $5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(h) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-67-502(1):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(i) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-67-502(2):

First Offense:$5,000-$10,000

Second Offense:$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(j) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-67-502(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(k) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-67-502(4):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the

second offense

(l) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-67-502(5):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(m) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act in violation of Subsection R156-67-502(6):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(n) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-67-502(7):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(o) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-67-502(8):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(p) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-67-502(9):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(q) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-67-502(10):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(r) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-67-502(11):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(s) failing to keep the division informed of a current address and telephone number in violation of Subsection R156-67-502(13):

First Offense: $100-$500

Second Offense: $500-$3,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(t) engaging in alternate medical practice except as provided in Section R156-67-603 in violation of Subsection R156-67-502(14):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(u) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-67-502(15):

First Offense: $100-$5,000

Second Offense: $500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(v) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-67-602:

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(w) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(x) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):

First Offense: $500-$5,000

Second Offense: $1,500-10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(y) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(z) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(aa) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection

58-1-501(2)(d):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(bb) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession in violation of Subsection 58-1-501(2)(e):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(cc) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(dd) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(ee) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(ff) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(i):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(gg) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(hh) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(ii) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule in violation of Subsection 58-1-501(2)(l):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(jj) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):
First Offense: $5,000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(kk) violating a provision of Section 58-1-501.5 in violation of Subsection 58-1-501(2)(n):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(ll) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct in violation of Subsection R156-1-501(1):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(mm) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company in violation of Subsection R156-1-501(2):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(nn) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd" in the commercial use of the name of the limited partnership in violation of Subsection R156-1-501(3):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(oo) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation in violation of Subsection R156-1-501(4):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(pp) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing in violation of Subsection R156-1-501(5):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(qq) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", May 2004, established by the Federation of State Medical Boards in violation of Subsection R156-1-501(6):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(rr) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):

First Offense: $5000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ss) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(tt) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(2):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(uu) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(vv) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(ww) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(xx) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law in violation of Subsection R156-37-502(6):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(yy) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records in violation of Subsection R156-37-502(7):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(zz) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

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

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

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

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

R156-67-602. Medical Records.

In accordance with Subsection 58-67-803(1), medical records shall be maintained to be consistent with the following:

(1) all applicable laws, regulations, and rules; and

(2) the "AMA Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference.

R156-67-603. Alternate Medical Practice.

(1) A licensed physician and surgeon may engage in alternate medical practices as defined in Subsection R156-67-102(2) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed physician and surgeon:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

R156-67-604. Required Reporting of Annual Review of Physician of Dispensing Practices of Those Authorized to Dispense an Opiate Antagonist.

(1) In accordance with Subsection 26-55-105(2)(c), a physician who issues a standing prescription drug order authorizing the dispensing of an opiate antagonist shall annually submit a written report to the division indicating that he has

reviewed at least annually the dispensing practices of those authorized by the physician to dispense the opiate antagonist.

(2) The report described above shall be submitted no later than January 31 of each calendar year and shall continue as long as the standing order remains in effect. Null reporting is not required.

(3) A physician shall be considered to have satisfactorily reviewed the dispensing practices of those authorized by the physician to dispense the opiate antagonist by reviewing the report of the licensee dispensing the opiate antagonist specified in Subsection R156-17b-625(1).

R156-67-807. Collaborative Practice Arrangement Contract - Duties and Responsibilities of Collaborating Physician and Associate Physician.

In accordance with Section 58-67-807, the Division's approval of a collaborative practice arrangement, and the educational methods and programs required of an associate physician throughout the duration of a collaborative practice arrangement, are established as follows:

(1) Collaborative practice arrangement contract.

(a) Before beginning a collaborative practice arrangement, the prospective collaborating physician and associate physician shall sign a written collaborative practice arrangement contract, which the associate physician shall submit to the Division for approval.

(b) A collaborative practice arrangement contract shall include at least the following:

(i) all of the terms and conditions required by Section 58-67-807, including:

(A) a description of how the health care services to be rendered by the associate physician under the collaborative practice arrangement will be consistent with the associate physician's skill, training, and competence;

(B) a description of the medically underserved population or medically underserved area within the state where the associate physician will provide primary care services;

(C) if the associate physician will practice in a medically underserved area, a plan for documenting completion of the "continuously present" or"on-site" supervision required by Subsection 58-67-807(1)(d), using the Division-provided supervision forms;

(D) if the associate physician will prescribe Schedule III through V controlled substances, documentation of the associate physician's mid-level practitioner Federal Drug Administration (DEA) registration; and

(E) a provision requiring the associate physician to notify the Division in writing within 10 days of any modifications to the collaborative practice arrangement contract, and providing that any changes shall become effective only upon receipt of written notice from the Division approving the changes;

(ii) in accordance with Subsection 58-67-807(4), a plan establishing educational methods and programs that the associate physician shall complete throughout the duration of the collaborative practice arrangement contract, which:

(A) will facilitate the advancement of the associate physician's medical knowledge and abilities; and

(iii) remedies in the event of breach of contract by either the collaborating physician or associate physician, including procedures for contract termination and written notification to the Division.

(c) Before an associate physician may render any health care services under a collaborative practice arrangement, the parties must have obtained the Division's written approval of the collaborative practice arrangement contract.

(d) In evaluating a collaborative practice arrangement contract, the Division shall consider whether it sufficiently complies with all of the terms and conditions required by Section 58-67-807 and this section to adequately protect the public health, safety, and welfare.

(2) Collaborating physician duties and responsibilities.

A collaborating physician overseeing an associate physician shall have the following duties and responsibilities:

(a) ensure that the collaborating physician and associate physician:

(i) are both appropriately licensed; and

(ii) are practicing pursuant to a Division-approved collaborative practice arrangement contract in accordance with Subsection (1);

(b) ensure that during the term of the collaborative practice arrangement contract the collaborating physician does not enter into a collaborative practice arrangement with more than three full-time equivalent associate physicians as required by Subsection 58-67-807(3)(b);

(c) maintain a relationship with the associate physician in which the collaborating physician is independent from control by the associate physician, and in which the ability of the collaborating physician to supervise and direct the health care services rendered by the associate physician is not compromised;

(d) be available to the associate physician for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total of the profession and the requirements suggested by the total circumstances, including consideration of the associate physician's level of skill, training, and competence and other factors known to the associate physician and collaborating physician;

(e) ensure periodic review of the charts documenting the associate physician's delivery of health care services, in compliance with Subsection 58-67-807(1)(b)(xii);

(f) monitor the associate physician's performance for compliance with the laws, rules, standards, and ethics of the profession, and report violations to the Division; and

(g) upon request, submit appropriate documentation to the Division with respect to practice hours completed by the associate physician evidencing the "continuously present" or "on-site" supervision required by Subsection 58-67-807(1)(d).

(3) Associate physician duties and responsibilities.

An associate physician shall have the following duties and responsibilities:

(a) prior to beginning a collaborative practice arrangement and rendering any health care services, enter into a Division-approved collaborative practice arrangement contract with a collaborating physician in accordance with Subsection (1);

(b) maintain required licensure and any DEA registration;

(c) be professionally responsible for the acts and practices of the associate physician; and

(d) comply with all applicable laws, rules, standards, and ethics of the profession.

(4)(a) A collaborating physician shall submit to the Division a written explanation outlining the collaborating physician's concerns if the collaborating physician:

(i) terminates a collaborative practice arrangement contract for cause;

(ii) does not support continuance of a license for an associate physician to practice; or

(iii) has other concerns regarding the associate physician that the collaborating physician believes requires input from the Division and Board.

(b) Upon receipt of written concerns from a collaborating physician with respect to an associate physician, the Division shall:

(i) provide the associate physician an opportunity to respond in writing to the Division regarding the collaborating physician's concerns;

(ii) review the written statements from the collaborating physician and associate physician with the Board; and

(iii) in consultation with the Board, take any appropriate licensure action.

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58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-68. Utah Osteopathic Medical Practice Act Rule.
R156-68-101. Title.

This rule shall be known as the "Utah Osteopathic Medical Practice Act Rule."

R156-68-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 68, as used in Title 58, Chapters 1 and 68 or this rule:

(1) "AAPS" means American Association of Physician Specialists.

(2) "ABMS" means American Board of Medical Specialties.

(3) "ACCME" means Accreditation Council for Continuing Medical Education.

(4) "Alternate medical practices" as used in Section R156-68-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(5) "AMA" means the American Medical Association.

(6) "AOA" means American Osteopathic Association.

(7) "Collaborative practice arrangement contract" means a written, signed contract between a collaborating physician licensed and in good standing under Section 58-68-302, and an associate physician holding a restricted license in accordance with Section 58-68-302.5, that:

(a) includes the terms and conditions required by Section 58-68-807 and Section R156-68-807; and

(b) is approved by the Division in accordance with Section 58-68-807 and Section R156-68-807.

(8) "COMLEX" means the Comprehensive Osteopathic Medical Licensing Examination.

(9) "FLEX" means the Federation of State Medical Boards Licensure Examination.

(10) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(11) "FSMB" means the Federation of State Medical Boards.

(12) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(13) "LMCC" means the Licentiate of the Medical Council of Canada.

(14) "NBME" means the National Board of Medical Examiners.

(15) "NBOME" means the National Board of Osteopathic Medical Examiners.

(16) "NPDB" means the National Practitioner Data Bank.

(17) "Supervision form" means the form provided by the Division to document completion of the "continuously present" or "on-site" supervision required by Subsection 58-68-807(1)(d) for an associate physician practicing in a medically underserved area.

(18) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 68, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-68-502.

(19) "USMLE" means the United States Medical Licensing Examination.

R156-68-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 68.

R156-68-104. Organization - Relationship to Rule R156-1.

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

R156-68-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-68-301(1)(a)(i), submissions by the applicant of information maintained by practitioner data banks shall include the following:

(1) American Osteopathic Association Profile or American Medical Association Profile;

(2) Federation of State Medical Boards Disciplinary Inquiry form;

(3) Federation Credentials Verification (FCVS) report; and

(4) National Practitioner Data Bank Report of Action.

R156-68-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-68-302(1)(g), the required licensing examination sequence is the following:

(a) the NBOME parts I, II and III;

(b) the NBOME parts I, II and the NBOME COMPLEX Level III;

(c) the NBOME part I and the NBOME COMLEX Level II and III;

(d) the NBOME COMLEX Level I, II and III;

(e) the FLEX components I and II on which the applicant shall achieve a score of not less than 75 on each component;

(f) the NBME examination parts I, II and III on which the applicant shall achieve a score of not less than 75 on each part;

(g) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;

(h) the LMCC examination, Parts 1 and 2;

(i) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;

(j) the FLEX component 1 and the USMLE step 3; or

(k) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(l) A candidate who fails any combination of the USMLE, FLEX, NBME and NBOME three times shall provide a narrative regarding the failure and may be requested to meet with the Board and Division.

(2) In accordance with Subsections 58-68-302(1)(g), (2)(c) and (3)(d), an applicant may be required to take the SPEX examination if the applicant:

(a) has not practiced in the past five years;

(b) has had disciplinary action within the past five years; or

(c) has had a substance use disorder, physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

(4) In accordance with Subsection 58-68-302(2)(c), the medical specialty certification shall be current certification in an AOA, ABMS, or AAPS member specialty board.

R156-68-302c. Qualifications for Licensure - Requirements for Admission to the Examinations.

(1) Admission to the NBOME examination shall be in accordance with policies and procedures of the NBOME. The division and the board have no responsibility for or ability to facilitate an individual's admission to the NBOME examination.

(2) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME. The division and the board have no responsibility for or ability to facilitate an individual's admission to steps 1 and 2 of the USMLE.

(3) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsection 58-68-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component I, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years; and

(d) have not failed a combination of USMLE step 3, FLEX component II and NBME part III, three times.

R156-68-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 68, is established by rule in Section R156-1-308a.

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

R156-68-304. Qualified Continuing Professional Education.

(1) In accordance with Subsection 58-68-304(1), the qualified continuing professional education requirements shall consist of 40 hours during each two-year licensure cycle as follows:

(a) A minimum of 34 of the required hours shall be in category 1 offerings as established by the AOA or ACCME.

(b) A maximum of 6 hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Up to 15% of the required hours may come from providing volunteer health care services within the scope of the licensee's license at a qualified location, in accordance with Section 58-13-3 concerning charity health care. One hour of continuing education credit may be earned for every four documented hours of volunteer services.

(d) Participation in a residency program approved by the AOA or the ACCME shall meet the continuing education requirement in a pro-rata amount equal to any part of the two-year period.

(2) Continuing education under this section shall:

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

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

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50-minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

R156-68-306. Exemptions From Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as an osteopathic physician include the following:

(1) any physician exempted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of osteopathic medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test;

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health.

(3) non-licensed public officials not having emergency medical technician (EMT) certification who are designated by appropriate county officials as first responders may be issued and allowed to carry the Mark I automatic antidote injector kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the certified first responders would successfully complete the Army/FEMA course on the "Use of Auto-Injectors by Civilian Emergency Medical Personnel". The kits would be issued to the responder only by his employing government agency and procured through the Utah Division of Comprehensive Emergency Management. No other individuals, whether licensed or not, shall prescribe or issue these antidote kits; and

(4) In accordance with Section 58-68-305, a medical assistant, while working under the indirect supervision of a licensed osteopathic physician and surgeon, may not additionally engage in:

(a) diagnosing; or

(b) establishing a treatment plan.

R156-68-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) the prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing, or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly, prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(14) unless permitted by law and when it is prescribed, dispensed, or administered

according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations, or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by osteopathic physicians licensed under the Utah Osteopathic Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon or osteopathic physician who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Osteopathic Board of Radiology or the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician qualified under this subsection and a timely written report is prepared by the interpreting physician in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 68, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as an osteopathic physician;

(11) failing of a licensee under Title 58, Chapter 68, without just cause to comply with the terms of any written agreement in which the licensee's education or training as an osteopathic physician is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17a-620;

(13) engaging in alternative medical practice except as provided in Section R156-68-603;

(14) violation of any provision of the American Medical Association's (AMA) "Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference; and

(15) failing to timely submit an annual written report to the division indicating that the osteopathic physician has reviewed at least annually the dispensing practices of those authorized by the osteopathic physician to dispense an opiate antagonist, pursuant to Section R156-68-604.

R156-68-503. Administrative Penalties.

(1) In accordance with Subsection 58-68-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-68-501(1):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-68-501(1)(c)(i) or (ii):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-68-501(1)(d):

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-68-502:

First Offense: $1,000-$5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(e) administering sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, without first obtaining the required consent from the patient in writing, in violation of Subsection 58-68-502.5(1):

First Offense: $500-$5,000

Second Offense: $1,500 - $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense.

(f) failing to report any adverse event under Section 26-1-40, with respect to the administering of sedation or anesthesia intravenously to a patient in an outpatient setting that is not an emergency department, in violation of Subsection 58-68-502.5(2):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense.

(g) during a procedure for which sedation or anesthesia will be administered intravenously to a patient in an outpatient setting that is not an emergency department, failing to have access to an advanced cardiac life support crash cart with equipment that is regularly maintained according to guidelines established by the American Heart Association, in violation of Subsection 58-68-502.5(3):

First Offense: $5,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(h) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-68-502(1):

First Offense: $5,000-$10,000

Second Offense: $10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(i) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-68-502(2):

First Offense:$5,000-$10,000

Second Offense:$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(j) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-68-502(3):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(k) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-68-502(4):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(l) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-68-502(5):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(m) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Utah Osteopathic Medical Practice Act in violation of Subsection R156-68-502(6):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(n) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed osteopathic physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-68-502(7):

First Offense: $1,000-$5,000

Second Offense: $5,000-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(o) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-68-502(8):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(p) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-68-502(9):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(q) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-68-502(10):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(r) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-68-502(11):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(s) failing to keep the division informed of a current address and telephone number in violation of Subsection 58-1-501(2)(a) and Section 58-1-301.7:

First Offense: $100-$500

Second Offense: $500-$3,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(t) engaging in alternate medical practice except as provided in Section R156-68-603 in violation of Subsection R156-68-502(13):

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(u) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-68-502(14):

First Offense: $100-$5,000

Second Offense: $500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(v) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-68-602:

First Offense: $500-$5,000

Second Offense: $1,500-$10,000

Ongoing Offense(s): $2,000 per day but not less than the second offense

(w) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):

First Offense: $5,000-$10,000

Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(x) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):
First Offense: $500-$5,000
Second Offense: $1,500-10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(y) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(z) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(aa) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection 58-1-501(2)(d):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(bb) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession in violation of Subsection 58-1-501(2)(e):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(cc) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(dd) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(ee) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(ff) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(i):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(gg) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(hh) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(ii) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule in violation of Subsection 58-1-501(2)(l):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(jj) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):
First Offense: $5,000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(kk) violating a provision of Section 58-1-501.5 in violation of Subsection 58-1-501(2)(n):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

(ll) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct in violation of Subsection R156-1-501(1):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense

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

name of the limited liability company in violation of Subsection R156-1-501(2):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(nn) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd" in the commercial use of the name of the limited partnership in violation of Subsection R156-1-501(3):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(oo) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation in violation of Subsection R156-1-501(4):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(pp) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing in violation of Subsection R156-1-501(5):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(qq) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", May 2004, established by the Federation of State Medical Boards in violation of Subsection R156-1-501(6):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(rr) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):
First Offense: $5000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(ss) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(tt) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(2):
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(uu) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(vv) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(ww) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):
First Offense: $1,000-$5,000
Second Offense: $5,000-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(xx) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law in violation of Subsection R156-37-502(6):
First Offense: $5,000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(yy) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records in violation of Subsection R156-37-502(7):
First Offense: $5,000-$10,000
Second Offense: $10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(zz) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:
First Offense: $500-$5,000
Second Offense: $1,500-$10,000
Ongoing Offense(s): $2,000 per day but not less than the second offense
(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.
(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.
(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.
(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-68-602. Medical Records.
In accordance with Subsection 58-68-803(1), medical records shall be maintained to be consistent with the following:
(1) all applicable laws, regulations, and rules; and
(2) the AMA "Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference.

R156-68-603. Alternate Medical Practice.
(1) A licensed osteopathic physician may engage in alternate medical practices as defined in Subsection R156-68-102(4) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed osteopathic physician:
(a) possesses current generally accepted written

documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

R156-68-604. Required Reporting of Annual Review by Osteopathic Physicians of Dispensing Practices of Those Authorized to Dispense an Opiate Antagonist.

(1) In accordance with Subsection 26-55-105(2)(c), an osteopathic physician who issues a standing prescription drug order authorizing the dispensing of an opiate antagonist shall annually submit a written report to the division indicating that he has reviewed at least annually the dispensing practices of those authorized by the osteopathic physician to dispense the opiate antagonist.

(2) The report described above shall be submitted no later than January 31 of each calendar year and shall continue as long as the standing order remains in effect. Null reporting is not required.

(3) An osteopathic physician shall be considered to have satisfactorily reviewed the dispensing practices of those authorized by the osteopathic physician to dispense the opiate antagonist by reviewing the report of the licensee dispensing the opiate antagonist specified in Subsection R156-17b-625(1).

R156-68-807. Collaborative Practice Arrangement Contract - Duties and Responsibilities of Collaborating Physician and Associate Physician.

In accordance with Section 58-68-807, the Division's approval of a collaborative practice arrangement, and the educational methods and programs required of an associate physician throughout the duration of a collaborative practice arrangement, are established as follows:

(1) Collaborative practice arrangement contract.

(a) Before beginning a collaborative practice arrangement, the prospective collaborating physician and associate physician shall sign a written collaborative practice arrangement contract, which the associate physician shall submit to the Division for approval.

(b) A collaborative practice arrangement contract shall include at least the following:

(i) all of the terms and conditions required by Section 58-68-807, including:

(A) a description of how the health care services to be rendered by the associate physician under the collaborative practice arrangement will be consistent with the associate physician's skill, training, and competence;

(B) a description of the medically underserved population or medically underserved area within the state where the associate physician will provide primary care services;

(C) if the associate physician will practice in a medically underserved area, a plan for documenting completion of the "continuously present" or"on-site" supervision required by Subsection 58-68-807(1)(d), using the Division-provided supervision forms;

(D) if the associate physician will prescribe Schedule III through V controlled substances, documentation of the associate physician's mid-level practitioner Federal Drug Administration (DEA) registration; and

(E) a provision requiring the associate physician to notify the Division in writing within 10 days of any modifications to the collaborative practice arrangement contract, and providing that any changes shall become effective only upon receipt of written notice from the Division approving the changes;

(ii) in accordance with Subsection 58-68-807(4), a plan establishing educational methods and programs that the associate physician shall complete throughout the duration of the collaborative practice arrangement contract, which:

(A) will facilitate the advancement of the associate physician's medical knowledge and abilities; and

(iii) remedies in the event of breach of contract by either the collaborating physician or associate physician, including procedures for contract termination and written notification to the Division.

(c) Before an associate physician may render any health care services under a collaborative practice arrangement, the parties must have obtained the Division's written approval of the collaborative practice arrangement contract.

(d) In evaluating a collaborative practice arrangement contract, the Division shall consider whether it sufficiently complies with all of the terms and conditions required by Section 58-68-807 and this section to adequately protect the public health, safety, and welfare.

(2) Collaborating physician duties and responsibilities.

A collaborating physician overseeing an associate physician shall have the following duties and responsibilities:

(a) ensure that the collaborating physician and associate physician:

(i) are both appropriately licensed; and

(ii) are practicing pursuant to a Division-approved collaborative practice arrangement contract in accordance with Subsection (1);

(b) ensure that during the term of the collaborative practice arrangement contract the collaborating physician does not enter into a collaborative practice arrangement with more than three full-time equivalent associate physicians as required by Subsection 58-68-807(3)(b);

(c) maintain a relationship with the associate physician in which the collaborating physician is independent from control by the associate physician, and in which the ability of the collaborating physician to supervise and direct the health care services rendered by the associate physician is not compromised;

(d) be available to the associate physician for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total of the profession and the requirements suggested by the total circumstances, including consideration of the associate physician's level of skill, training, and competence and other factors known to the associate physician and collaborating

physician;

(e) ensure periodic review of the charts documenting the associate physician's delivery of health care services, in compliance with Subsection 58-68-807(1)(b)(xii);

(f) monitor the associate physician's performance for compliance with the laws, rules, standards, and ethics of the profession, and report violations to the Division; and

(g) upon request, submit appropriate documentation to the Division with respect to practice hours completed by the associate physician evidencing the "continuously present" or "on-site" supervision required by Subsection 58-68-807(1)(d).

(3) Associate physician duties and responsibilities.

An associate physician shall have the following duties and responsibilities:

(a) prior to beginning a collaborative practice arrangement and rendering any health care services, enter into a Division-approved collaborative practice arrangement contract with a collaborating physician in accordance with Subsection (1);

(b) maintain required licensure and any DEA registration;

(c) be professionally responsible for the acts and practices of the associate physician; and

(d) comply with all applicable laws, rules, standards, and ethics of the profession.

(4)(a) A collaborating physician shall submit to the Division a written explanation outlining the collaborating physician's concerns if the collaborating physician:

(i) terminates a collaborative practice arrangement contract for cause;

(ii) does not support continuance of a license for an associate physician to practice; or

(iii) has other concerns regarding the associate physician that the collaborating physician believes requires input from the Division and Board.

(b) Upon receipt of written concerns from a collaborating physician with respect to an associate physician, the Division shall:

(i) provide the associate physician an opportunity to respond in writing to the Division regarding the collaborating physician's concerns;

(ii) review the written statements from the collaborating physician and associate physician with the Board; and

(iii) in consultation with the Board, take any appropriate licensure action.

KEY: osteopaths, licensing, osteopathic physician

October 9, 2018	**58-1-106(1)(a)**
Notice of Continuation January 8, 2018	**58-1-202(1)(a)**
	58-68-101

R277. Education, Administration.
R277-400. School Facility Emergency and Safety.
R277-400-1. 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; and

(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.

(2) The purpose of this rule is to:

(a) establish general criteria for emergency preparedness and emergency response plans; and

(b) direct LEAs to

(i) develop prevention, intervention, and response measures; and

(ii) prepare staff and students to respond promptly and appropriately to school emergencies.

R277-400-2. Definitions.

1 "Emergency" means a natural or man-made disaster, accident, act of war, or other circumstance that could reasonably endanger the safety of school children or disrupt the operation of the school.

2 "Emergency Preparedness Plan" means policies and procedures developed to promote the safety and welfare of students, protect school property, or regulate the operation of schools during an emergency occurring within an LEA or a school.

(3) "Emergency Response Plan" means a plan developed by an LEA or school to prepare and protect students and staff in the event of school violence emergencies.

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

(5) "Plan" means an LEA's or school's emergency preparedness and emergency response plan.

R277-400-3. Establishing LEA Emergency Preparedness and Emergency Response Plans.

(1) By July 1 of each year, each LEA shall certify to the Superintendent that the LEA emergency preparedness and emergency response plan has been:

(a) practiced at the school level; and

(b) presented to and reviewed by its teachers, administrators, students and their parents, local law enforcement, and public safety representatives consistent with Subsection 53G-4-402(18).

(2) As a part of an LEA's annual application for state or federal Safe and Drug Free School funds, the LEA shall reference its Emergency Response plan.

(3)(a) LEA plans shall be designed to meet individual school needs and features.

(b) An LEA may direct schools within the LEA to develop and implement individual plans.

(4)(a) An LEA shall appoint a committee to prepare plans or modify existing plans to satisfy this Rule R277-400.

(b) The committee shall consist of appropriate school and community representatives, which may include:

(i) school and LEA administrators;

(ii) teachers;

(iii) parents;

(iv) community and municipal governmental officers; and

(v) fire and law enforcement personnel.

(c) The committee shall include governmental agencies and bodies vested with responsibility for directing and coordinating emergency services on local and state levels.

(5) An LEA shall review plans required this rule at least once every three years.

(6) The Superintendent shall develop Emergency Response Plan models under Subsection 53G-4-402(18)(c).

R277-400-4. Notice and Preparation.

(1) Each school shall file a copy of plans required by this Rule R277-400 with the LEA superintendent or charter school director.

(2) At the beginning of each school year, an LEA or school shall send or provide online a written notice to parents and staff of sections of LEA and school plans, which are applicable to that school.

(3)(a) A school shall designate an Emergency Preparedness/Emergency Response week prior to April 30 of each school year.

(b) An LEA shall offer appropriate activities, such as community, student, and teacher awareness, or training, including those outlined in Sections R277-400-7 and 8, during the week.

(4) A school's emergency response plan shall include procedures to notify students, to the extent practicable, who are off campus at the time of a school violence emergency consistent with Subsection 53G-4-402(18)(b)(v).

R277-400-5. Plan Content--Educational Services and Student Supervision and Building Access.

(1) An LEA's plan shall contain measures that assure that school children receive reasonably adequate educational services and supervision during school hours during an emergency and for education services in an extended emergency situation.

(2) An LEA plan shall include evacuation procedures that assure reasonable care and supervision of children until responsibility has been affirmatively assumed by another responsible party.

(a) An LEA or school shall not release children younger than ninth grade age at other than regularly scheduled release times unless a parent or other responsible person has been notified and assumed responsibility for the children.

(b) An LEA or school may release an older student without such notification if a school official determines that the student is reasonably responsible and notification is not practicable.

(3)(a) An LEA plan, as determined by the LEA board, shall address access to public school buildings by:

(i) students;

(ii) community members;

(iii) lessees;

(iv) invitees; and

(v) others.

(b) An LEA access plan:

(i) may include restricted access for some individuals;

(ii) shall address building access during identified time periods; and

(iii) shall address possession and use of school keys by designated administrators and employees.

(4) An LEA's or school's plan shall identify resources and materials available for emergency training for LEA employees.

R277-400-6. Emergency Preparedness Training for School Occupants.

(1) An LEA's or school's emergency preparedness and emergency response plan shall contain measures which assure that school children receive emergency preparedness training.

(2) LEAs shall provide school children with training appropriate to their ages in rescue techniques, first aid, safety measures appropriate for specific emergencies, and other emergency skills.

(3) During each school year, elementary schools shall conduct emergency drills at least once each month during school time.

(4) LEAs shall alternate one of the following practices or drills with required fire drills:
(a) shelter in place;
(b) earthquake;
(c) lock down or lock out for violence;
(d) bomb threat;
(e) civil disturbance;
(f) flood;
(g) hazardous materials spill;
(h) utility failure;
(i) wind or other types of severe weather;
(j) parent and student reunification;
(k) shelter and mass care for natural and technological hazards; or
(l) an emergency drill appropriate for the particular school location.

(5)(a) Fire drills shall include the complete evacuation of all persons from the school building or the portion of the building used for educational purposes.

(b) An LEA or school may make an exception for the staff member responsible for notifying the local fire emergency contact and handling emergency communications.

(6) All schools shall have one fire drill in the first 10 days of the regular school year.

(7) Elementary schools (grades K-6) shall have at least one fire drill every other month throughout the school year.

(8) In accordance with Section 15A-5-202.5, a secondary school (grades 7-12) shall have:

(a) at least one fire drill every two months throughout the school year; and

(b) one fire drill in the first 10 days of after the beginning of classes.

(9) When required by the local fire chief,(an) LEA shall notify the local fire department prior to each fire drill.

(10) When a fire alarm system is provided, an LEA shall initiate by activation of the fire alarm system.

(11) Schools that include both elementary and secondary grades in the school shall comply, at a minimum, with the elementary emergency drill requirements.

(12) In cooperation with the LEA's local law enforcement agency, an LEA shall:

(a) establish a parent and student reunification plan for each school within the LEA;

(b) as part of the LEA's registration and enrollment process, annually provide parents a summary of parental expectations and notification procedures related to the LEA's parent and student reunification plan; and

(c) require each school within the LEA to publish the information described in Subsection (12)(b) on the school's website.

R277-400-7. Emergency Response Review and Coordination.

(1) An LEA shall provide an annual training for LEA and school building staff on employees' roles, responsibilities and priorities in the emergency response plan.

(2) An LEA shall require schools to conduct at least one annual drill for school emergencies in addition to drills required under Section R277-400-6, which shall be held no later than October 1 annually.

(3) An LEA shall require schools to review existing security measures and procedures within their schools and make adjustments as needs demonstrate and funds are available.

(4) An LEA shall develop standards and protections to the extent practicable for participants and attendees at school-related activities, with special attention to those off school property.

(5) An LEA or school shall coordinate with local law enforcement and other public safety representatives in appropriate drills for school safety emergencies.

R277-400-8. Prevention and Intervention.

(1) An LEA shall provide schools, as part of their regular curriculum, comprehensive violence prevention and intervention strategies, such as resource lessons and materials on anger management, conflict resolution, and respect for diversity and other cultures.

(2) As part of a violence prevention and intervention strategy, a school may provide age-appropriate instruction on firearm safety including appropriate steps to take if a student sees a firearm or facsimile in school.

(3) An LEA shall also develop, to the extent resources permit, student assistance programs, such as care teams, school intervention programs, and interagency case management teams.

(4) In developing student assistance programs, an LEA should coordinate with and seek support from other state agencies and the Superintendent.

R277-400-9. Cooperation With Governmental Entities.

(1) As appropriate, an LEA may enter into cooperative agreements with other governmental entities to assure proper coordination and support during emergencies.

(2)(a) An LEA shall cooperate with other governmental entities, as reasonably feasible, to provide emergency relief services.

(b) An LEA's or school's plans required by this rule shall contain procedures for assessing and providing school facilities, equipment, and personnel to meet public emergency needs.

(3) A plan developed under this rule shall delineate communication channels and lines of authority within the LEA, city, county, and state.

(a) The superintendent, is the chief officer for emergencies involving more than one LEA, or for state or federal assistance; and

(b) A local governing board, through its superintendent or director, is the chief officer for LEA emergencies.

R277-400-10. Fiscal Accountability.

(1) An LEA or school plan required under this rule shall address procedures for recording LEA funds expected for emergencies, for assessing and repairing damage, and for seeking reimbursement for emergency expenditures.

R277-400-11. School Carbon Monoxide Detection.

(1) A new educational facility shall have a carbon monoxide detection system installed consistent with International Fire Code (IFC), Chapter 9, Sections 908.7.2.1 through 908.7.2.6.

(2) An existing educational facility shall have a carbon monoxide detection system installed consistent with International Fire Code (IFC), Chapter 11, Section 1103.9.

(3) Where required, an LEA shall provide a carbon monoxide detection system where a fuel-burning appliance, a fuel-burning fireplace, or a fuel-burning forced air furnace is present consistent with IFC 908.7.2.1.

(4) An LEA shall install each carbon monoxide detection system consistent with NFPA 720 and the manufacturer's instructions, and listed systems as complying with UL 2034 and UL 2075.

(5) An LEA shall install each carbon monoxide detection system in the locations specified in NFPA 720.

(6) A combination carbon monoxide/smoke detector is an acceptable alternative to a carbon monoxide detection system if the combination carbon monoxide/smoke detector is listed consistent with UL 2075 and UL 268.

(7)(a) Each carbon monoxide detection system shall receive primary power from the building wiring if the wiring is served from a commercial source.

(b) If primary power is interrupted, a battery shall provide each carbon monoxide detection system with power.

(c) The wiring for a carbon monoxide detection system shall be permanent and without a disconnecting switch other than that required for over-current protection.

(8) An LEA shall maintain all carbon monoxide detection systems consistent with IFC 908.7.2.5 and NFPA 720.

(9) Performance-based alternative design of carbon monoxide detection systems is acceptable consistent with NFPA 720, Section 6.5.4.5.

(10) An LEA shall monitor carbon monoxide detection systems remotely consistent with NFPA 720.

(11) An LEA shall replace a carbon monoxide detection system that becomes inoperable or begins to produce end-of-life signals.

KEY: carbon monoxide detectors, emergency preparedness, disasters, safety education
October 16, 2018 **Art X Sec 3**
Notice of Continuation February 13, 2014 **53E-3-401(4)**
53G-4-402(1)(b)

R277. Education, Administration.
R277-419. Pupil Accounting.
R277-419-1. 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-3-501(1)(e), which directs the Board to establish rules and standards regarding:

(i) cost-effectiveness;

(ii) school budget formats; and

(iii) financial, statistical, and student accounting requirements;

(d) Subsection 53E-3-602(2), which requires a local school board's auditing standards to include financial accounting and student accounting;

(e) Subsection 53E-3-301(3)(d), which requires the Superintendent to present to the Governor and the Legislature data on the funds allocated to LEAs; and

(f) Section 53G-4-404, which requires annual financial reports from all school districts.

(2) The purpose of this rule is to specify pupil accounting procedures used in apportioning and distributing state funds for education.

R277-419-2. Definitions.

(1) "Aggregate Membership" means the sum of all days in membership during a school year for eligible students enrolled in a public school.

(2) "Approved CTE course" means a course approved by the Board within the Career and Technical Education (CTE) Pathways in the eight areas of study.

(3) "Blended learning program" means a program under the direction of an LEA:

(a) where a student learns at least in part:

(i) at a supervised brick and motar location away from a student's home; and

(ii) through an online delivery; and

(b) that may include some element of student control over time, place, or path, or pace.

(4) "Brick and mortar school" means a traditional school or traditional school building.

(5) "Competency based learning program" means an education program that requires a student to acquire a competency and includes a classroom structure and operation that aid and facilitate the acquisition of specified competencies on an individual basis wherein a student is allowed to master and demonstrate competencies as fast as the student is able.

(6) "Continuing enrollment measurement" means a methodology used to establish a student's continuing membership or enrollment status for purposes of generating membership days.

(7) "Data Clearinghouse" means the electronic data collection system used by the Superintendent to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

(8) "Distance learning program" means a program, under the direction of an LEA, in which students receive educational services in a location other than a brick and mortar school, and may include educational services delivered over the internet.

(9) "Early graduation student" means a student who has an early graduation student education plan as described in Rule R277-703.

(10) "Eligible student" means a student who satisfies the criteria for enrollment in an LEA, set forth in Section R277-419-5.

(11) "Enrollment verification data" includes:

(a) a student's birth certificate or other verification of age;

(b) verification of immunization or exemption from immunization form;

(c) proof of Utah public school residency;

(d) family income verification; or

(e) special education program information, including:

(i) an individualized education program;

(ii) a Section 504 accommodation plan; or

(iii) an English learner plan.

(12) "Face-to-face learning program" means a program within an LEA that consists of eligible, enrolled public school students who physically attend school in a brick and mortar school.

(13)(a) "Home school" means the formal instruction of children in their homes instead of in an LEA.

(b) The differences between a home school student and an online student include:

(i) an online student may receive instruction at home, but the student is enrolled in a public school that follows state Core Standards;

(ii) an online student is:

(A) subject to laws and rules governing state and federal mandated tests; and

(B) included in accountability measures;

(iii) an online student receives instruction under the direction of a highly qualified, licensed teacher who is subject to the licensure requirements of R277-502 and fingerprint and background checks consistent with R277-516 and R277-520;

(iv) instruction delivered in a home school course is not eligible to be claimed in membership of an LEA and does not qualify for funding under the Minimum School Program in Title 53F, Chapter 2, Minimum School Program Act.

(14) "Home school course" means instruction:

(a) delivered in a home school environment where the curriculum and instruction methods, evaluation of student progress or mastery, and reporting, are provided or administered by the parent, guardian, custodian, or other group of individuals; and

(b) not supervised or directed by an LEA.

(15)(a) "Influenza pandemic" or "pandemic" means a global outbreak of serious illness in people.

(b) "Influenza pandemic" or "pandemic" may be caused by a strain of influenza that most people have no natural immunity to and that is easily spread from person to person.

(16) "ISI-1" means a student who receives 1 to 59 minutes of YIC related services during a typical school day.

(17) "ISI-2" means a student who receives 60 to 179 minutes of YIC related services during a typical school day.

(18)(a) "Membership" means a public school student is on the current roll of a public school class or public school as of a given date.

(b) A student is a member of a class or school from the date of entrance at the school and is placed on the current roll until official removal from the class or school due to the student having left the school.

(c) Removal from the roll does not mean that an LEA should delete the student's record, only that the student should no longer be counted in membership.

(19) "Minimum School Program" means the same as that term is defined in Section 53F-2-102.

(20) "Nontraditional Program" means a program within an LEA that consists of eligible, enrolled public school students where the student receives instruction through a:

(a) distance learning program;

(b) online learning program;

(c) blended learning program; or

(d) competency based learning program.

(21) "Online learning program" means a program:
(a) that is under the direction of an LEA; and
(b) in which students receive educational services primarily over the internet.
(22) "Private school" means an educational institution that:
(a) is not an LEA;
(b) is owned or operated by a private person, firm, association, organization, or corporation; and
(c) is not subject to governance by the Board consistent with the Utah Constitution.
(23) "Program" means a course of instruction within a school that is designed to accomplish a predetermined curricular objective or set of objectives.
(24) "Resource" means a student who receives 1 to 179 minutes of special education services during a typical school day consistent with the student's IEP provided for under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.
(25) "Qualifying school age" means:
(a) a person who is at least five years old and no more than 18 years old on or before September 1;
(b) with respect to special education, a person who is at least three years old and no more than 21 years old on or before July 1;
(c) with respect to YIC, a person who is at least five years old and no more than 21 years old on or before September 1.
(26) "Retained senior" means a student beyond the general compulsory school age who is authorized at the discretion of an LEA to remain in enrollment as a high school senior in the year(s) after the student's cohort has graduated due to:
(a) sickness;
(b) hospitalization;
(c) pending court investigation or action; or
(d) other extenuating circumstances beyond the control of the student.
(27) "S1" means the record maintained by the Superintendent containing individual student demographic and school membership data in a Data Clearinghouse file.
(28) "S2" means the record maintained by the Superintendent containing individual student data related to participation in a special education program in a Data Clearinghouse file.
(29) "S3" means the record maintained by the Superintendent containing individual student data related to participation in a YIC program in a Data Clearinghouse file.
(30) "School" means an educational entity governed by an LEA that:
(a) is supported with public funds;
(b) includes enrolled or prospectively enrolled full-time students;
(c) employs licensed educators as instructors that provide instruction consistent with Section R277-502;
(d) has one or more assigned administrators;
(e) is accredited consistent with Section R277-410-3; and
(f) administers required statewide assessments to the school's students.
(31) "School day" means a minimum of two hours per day per session in kindergarten and a minimum of four hours per day in grades one through twelve, subject to the requirements described in Section R277-419-4.
(32) "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.
(33) "School of enrollment" means:
(a) a student's school of record; and
(b) the school that maintains the student's cumulative file, enrollment information, and transcript for purposes of high school graduation.
(34) "School year" means the 12 month period from July 1 through June 30.
(35) "Self-contained" means a public school student with an IEP or YIC, who receives 180 minutes or more of special education or YIC related services during a typical school day.
(36) "Self-Contained Resource Attendance Management (SCRAM)" means a record that tracks the aggregate membership of public school special education students for state funding purposes.
(37) "SSID" means Statewide Student Identifier.
(38) "Unexcused absence" means an absence charged to a student when:
(a) the student was not physically present at school at any of the times attendance checks were made in accordance with Subsection R277-419-6(3); and
(b) the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53G-6-201.
(39) "Year end upload" means the Data Clearinghouse file due annually by July 15 from LEAs to the Superintendent for the prior school year.
(40) "Youth in custody (YIC)" means a person under the age of 21 who is:
(a) in the custody of the Department of Human Services;
(b) in the custody of an equivalent agency of a Native American tribe recognized by the United States Bureau of Indian Affairs and whose custodial parent or legal guardian resides within the state; or
(c) being held in a juvenile detention facility.

R277-419-3. Schools and Programs.
(1)(a) The Superintendent shall provide a list to each school detailing the required accountability reports and other state-mandated reports for the school type and grade range.
(b) All schools shall submit a Clearinghouse report to the Superintendent.
(c) All schools shall employ at least one licensed educator and one administrator.
(2)(a) A student who is enrolled in a program is considered a member of a public school.
(b) The Superintendent may not require programs to receive separate accountability and other state-mandated reports.
(c) A student reported under an LEA's program shall be included in the LEA's WPU and student enrollment calculations of the LEA's school of enrollment.
(d) A course taught at a program shall be credited to the appropriate school of enrollment.
(3) A private school or program may not be required to submit data to the Superintendent.
(4) A private school or program may not receive annual accountability reports.

R277-419-4. Minimum School Days.
(1)(a) Except as provided in Subsection (1)(b) and Subsection 53F-2-102(7), an LEA shall conduct school for at least 990 instructional hours over a minimum of 180 school days each school year.
(b) an LEA may seek an exception to the number of school days described in Subsection (1)(a):
(i) except as provided in Subsection (1)(b)(ii), for a whole school or LEA as described in R277-121;
(ii) for a school closure due to snow, inclement weather, or other emergency as described in R277-419-12; or
(iii) for an individual student as described in Section R277-419-11.
(2)(a) An LEA may offer the required school days and hours described in Subsection (1)(a) at any time during the school year, consistent with the law.
(b) All school day calculations shall exclude lunch periods and pass time between classes but may include recess periods

that include organization or instruction from school staff.

(c) Each school day that satisfies the minimum hourly instruction time described in Subsection R277-419-2(31), shall count as a school day, regardless of the number or length of class periods or whether or not particular classes meet.

(3)(a) An LEA shall plan for emergency, activity, and weather-related exigency time in its annual calendaring.

(b) If school is closed for any reason, the school shall make up the instructional time missed under the emergency or activity time as part of the minimum required time to qualify for full Minimum School Program funding.

(4) Minimum standards apply to all public schools in all settings unless Utah law or this rule provides for a specific exception.

(5) An LEA's governing board shall provide adequate contingency school days and hours in the LEA's yearly calendar to avoid the necessity of requesting a waiver except in the most extreme circumstances.

(6)(a) In addition to the allowance to use up to 32 instructional hours or four school days for professional learning described in Subsection 53F-2-102(7), to provide planning and professional development time for staff, an LEA may hold school longer some days of the week and shorter other days so long as minimum school day requirements, as provided for in this R277-419-4 and Subsection R277-419-2(32), are satisfied.

(b) A school may conduct parent-teacher and student Plan for College and Career Readiness conferences during the school day.

(c) Parent-teacher and college and career readiness conferences may only be held for a total of the equivalent of three full school days or a maximum of 16.5 hours for the school year.

(d) Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.

(e) An LEA may designate no more than a total of 12 instructional days at the beginning of the school year, at the end of the school year, or both for the assessment of students entering or completing kindergarten.

(f) If instruction days are designated for kindergarten assessment:

(i) an LEA shall designate the days in an open meeting;

(ii) an LEA shall provide adequate notice and explanation to kindergarten parents well in advance of the assessment period;

(iii) qualified school employees shall conduct the assessment consistent with Section 53F-4-205; and

(iv) assessment time per student shall be adequate to justify the forfeited instruction time.

(g) The final decision and approval regarding planning time, parent-teacher and SEP conferences rests with an LEA, consistent with Utah law and Board administrative rules.

(h) Total instructional time and school calendars shall be approved by an LEA in an open meeting.

R277-419-5. Student Membership Eligibility and Continuing Enrollment Measurements.

(1) A student may enroll in two or more LEAs at the discretion of the LEAs.

(2) A kindergarten student may only enroll in one LEA at a time.

(3) In order to generate membership for funding through the Minimum School Program for any clock hour of instruction on any school day, an LEA shall ensure that a student being counted by the LEA in membership:

(a) has not previously earned a basic high school diploma or certificate of completion;

(b) has not been enrolled in a YIC program with a YIC time code other than ISI-1 or ISI-2;

(c) does not have unexcused absences, which are determined using one of the continuing enrollment measurements described in Subsection (4);

(d) is a resident of Utah as defined under Section 53G-6-302;

(e) is of qualifying school age or is a retained senior;

(f)(i) is expected to attend a regular learning facility operated or recognized by an LEA on each regularly scheduled school day, if enrolled in a face-to-face learning program;

(ii) has direct instructional contact with a licensed educator provided by an LEA at:

(A) an LEA-sponsored center for tutorial assistance; or

(B) the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to:

(I) injury;

(II) illness;

(III) surgery;

(IV) suspension;

(V) pregnancy;

(VI) pending court investigation or action; or

(VII) an LEA determination that home instruction is necessary;

(iii) is enrolled in an approved CTE course(s) on the campus of another state funded institution where such a course is:

(A) not offered at the student's school of membership;

(B) being used to meet Board-approved CTE graduation requirements under Subsection R277-700-6(14); and

(C) a course consistent with the student's SEOP/Plan for College and Career Readiness; or

(iv) is enrolled in a nontraditional program under the direction of an LEA that:

(A) is consistent with the student's SEOP/Plan for College and Career Readiness;

(B) has been approved by the student's counselor; and

(C) includes regular instruction or facilitation by a designated employee of an LEA.

(4) An LEA shall use one of the following continuing enrollment measures:

(a) For a student primarily enrolled in a face-to-face learning program, the LEA may not count a student as an eligible student if the eligible student has unexcused absences during all of the prior ten consecutive school days.

(b) For a student enrolled in a nontraditional program, an LEA shall:

(i) adopt a written policy that designates a continuing enrollment measurement to document the continuing membership or enrollment status for each student enrolled in the nontraditional program consistent with Subsection (3)(c);

(ii) document each student's continued enrollment status in compliance with the continuing enrollment policy at least once every ten consecutive school days; and

(iii) appropriately adjust and update student membership records in the student information system for students that did not meet the continuing enrollment measurement, consistent with Subsection (3)(c).

(5) The continuing enrollment measurement described in Subsection (4)(b) may include some or all of the following components, in addition to other components, as determined by an LEA:

(a) a minimum student login or teacher contact requirement;

(b) required periodic contact with a licensed educator;

(c) a minimum hourly requirement, per day or week, when students are engaged in course work; or

(d) required timelines for a student to provide or demonstrate completed assignments, coursework or progress

toward academic goals.

(6) For a student enrolled in both face-to-face and nontraditional programs, an LEA shall measure a student's continuing enrollment status using the methodology for the program in which the student earns the majority of their membership days.

(7)(a) An LEA desiring to generate membership for student enrollment in courses outlined in Subsection (3)(f)(iii), or to seek a waiver from a requirement(s) in Subsection (3)(f)(iii), shall submit an application for course approval by April 1 of the year prior to which the membership will be counted.

(b) An LEA shall be notified within 30 days of the application deadline if courses have been approved.

R277-419-6. Student Membership Calculations.

(1)(a) Except as provided in Subsection (1)(b) or (1)(c), a student enrolled in only one LEA during a school year is eligible for no more than 180 days of regular membership per school year.

(b) An early graduation student may be counted for more than 180 days of regular membership in accordance with the student's early graduation student education plan.

(c) A student transferring within an LEA to or from a year-round school is eligible for no more than 205 days of regular membership per school year.

(2)(a) Except as provided in Subsection (2)(b), (2)(c), or (2)(d), a student enrolled in two or more LEAs during a school year is eligible for no more than 180 days of regular membership per school year.

(b) A student transferring to or from an LEA with a schedule approved under Subsection R277-419-4(1)(b) is eligible for no more than 220 days of regular membership per school year.

(c) A student transferring to or from an LEA where the student attended or will attend a year-round school is eligible for no more than 205 days of regular membership per school year.

(d) If the exceptions in Subsections (2)(b) and (2)(c) do not apply but a student transfers from one LEA to another at least one time during the school year, the student is eligible for regular membership in an amount not to exceed the sum of:

(i) 170 days; plus

(ii) 10 days multiplied by the number of LEAs the student attended during the school year.

(3) If a student is enrolled in two or more LEAs during a school year and the aggregate regular membership generated for the student between all LEAs exceeds the amount allowed under Subsection (2), the Superintendent shall apportion the days of regular membership allowed between the LEAs.

(4) If a student was enrolled for only part of the school day or only part of the school year, an LEA shall prorate the student's membership according to the number of hours, periods or credits for which the student actually was enrolled in relation to the number of hours, periods or credits for which a full-time student normally would have been enrolled. For example:

(a) If the student was enrolled for 4 periods each day in a 7 period school day for all 180 school days, the student's aggregate membership would be 4/7 of 180 days or 103 days.

(b) If the student was enrolled for 7 periods each day in a 7 period school day for 103 school days, the student's membership would also be 103 days.

(5) For students in grades 2 through 12, an LEA shall calculate the days in membership using a method equivalent to the following: total clock hours of instruction for which the student was enrolled during the school year divided by 990 hours and then multiplied by 180 days and finally rounded up to the nearest whole day. For example, if a student was enrolled for only 900 hours during the school year, the student's aggregate membership would be (900/990)*180, and the LEA would report 164 days.

(6) For students in grade 1, an LEA shall adjust the first term of the formula to use 810 hours as the denominator.

(7) For students in kindergarten, an LEA shall adjust the first term of the formula to use 450 hours as the denominator.

(8) The sum of regular plus self-contained special education and self-contained YIC membership days may not exceed 180 days.

(9) The sum of regular and resource special education membership days may not exceed 360 days.

(10) The sum of regular, ISI-1 and ISI-2 YIC membership days may not exceed 360 days.

(11) An LEA may also count a student in membership for the equivalent in hours of up to:

(a) one period each school day, if the student has been:

(i) released by the school, upon a parent or guardian's request, during the school day for religious instruction or individual learning activity consistent with the student's SEOP/Plan for College and Career Readiness; or

(ii) participating in one or more extracurricular activities under Rule R277-438, but has otherwise been exempted from school attendance under Section 53G-6-204 for home schooling;

(b) two periods each school day per student for time spent in bus travel during the regular school day to and from another state-funded institution, if the student is enrolled in CTE instruction consistent with the student's SEOP/Plan for College and Career Readiness;

(c) all periods each school day, if the student is enrolled in:

(i) a concurrent enrollment program that satisfies all the criteria of Rule R277-713;

(ii) a private school without religious affiliation under a contract initiated by an LEA to provide special education services which directs that the instruction be paid by public funds if the contract with the private school is approved by an LEA board in an open meeting;

(iii) a foreign exchange student program under Subsection 53G-6-707(7); or

(iv) a school operated by an LEA under a Utah Schools for the Deaf and the Blind IEP provided that:

(A) the student may only be counted in S1 membership and may not have an S2 record; and

(B) the S2 record for the student is submitted by the Utah Schools for the Deaf and the Blind.

R277-419-7. Calculations for a First Year Charter School.

(1) For the first operational year of a charter school or a new satellite campus, the Superintendent shall determine the charter school's WPU funding based on October 1 counts.

(2) For the second operational year of a charter school or a new satellite campus, the Superintendent shall determine the charter school's WPU funding based on Section 53F-2-302.

R277-419-8. Reporting Requirements, LEA Records, and Audits.

(1) An LEA shall report aggregate membership for each student via the School Membership field in the S1 record and special education membership in the SCRAM Membership field in the S2 record and YIC membership in the S3 record of the Year End upload of the Data Clearinghouse file.

(2) In the Data Clearinghouse, aggregate membership is calculated in days of membership.

(3) To determine student membership, an LEA shall ensure that records of daily student attendance are maintained in each school which clearly and accurately show for each student the:

(a) entry date;

(b) exit date;

(c) exit or high school completion status;
(d) whether or not an absence was excused;
(e) disability status (resource or self-contained, if applicable); and
(f) YIC status (ISI-1, ISI-2 or self-contained, if applicable).
(4) An LEA shall ensure that:
(a) computerized or manually produced records for CTE programs are kept by teacher, class, and classification of instructional program (CIP) code; and
(b) the records described in Subsection (4)(a) clearly and accurately show for each student in a CTE class the:
(i) entry date;
(ii) exit date; and
(iii) excused or unexcused status of absence.
(5) An LEA shall ensure that each school within the LEA completes a minimum of one attendance check each school day.
(6) Due to school activities requiring schedule and program modification during the first days and last days of the school year:
(a) for the first five school days, an LEA may report aggregate days of membership equal to the number recorded for the second five-day period of the school year;
(b) for the last five-day period, an LEA may report aggregate days of membership equal to the number recorded for the immediately preceding five-day period; and
(c) schools shall continue instructional activities throughout required calendared instruction days.
(7) An LEA shall employ an independent auditor, under contract, to:
(a) annually audit student accounting records; and
(b) report the findings of the audit to:
(i) the LEA board; and
(ii) the Financial Operations Section of the Board.
(8) Reporting dates, forms, and procedures are found in the State of Utah Legal Compliance Audit Guide, provided to LEAs by the Superintendent in cooperation with the State Auditor's Office.
(9) The Superintendent:
(a) shall review each LEA's student membership and fall enrollment audits as they relate to the allocation of state funds in accordance with the policies and procedures established in Sections R277-484-7 and 8; and
(b) may periodically or for cause review LEA records and practices for compliance with the laws and this rule.

R277-419-9. High School Completion Status.
(1) An LEA shall account for the final status of all students who enter high school (grades 9-12) whether they graduate or leave high school for other reasons, using the following decision rules to indicate the high school completion or exit status of each student who leaves the Utah public education system:
(a) graduates are students who earn a basic high school diploma by satisfying one of the options consistent with Subsection R277-705-4(2) or out-of-school youths of school age who complete adult education secondary diploma requirements consistent with R277-733;
(b) completers are students who have not satisfied Utah's requirements for graduation but who:
(i) are in membership in twelfth grade on the last day of the school year; and
(ii)(A) meet any additional criteria established by an LEA consistent with its authority under Section R277-705-4;
(B) meet any criteria established for special education students under Utah State Board of Education Special Education Rules, Revised, June 2016, and available at: http://www.schools.utah.gov/sars/Laws.aspx and the Utah State Board of Education;
(C) meet any criteria established for special education students under Subsection R277-700-8(5); or
(D) pass a General Educational Development (GED) test with a designated score;
(c) continuing students are students who:
(i) transfer to higher education, without first obtaining a diploma;
(ii) transfer to the Utah Center for Assistive Technology without first obtaining a diploma; or
(iii) age out of special education;
(d) dropouts are students who:
(i) leave school with no legitimate reason for departure or absence;
(ii) withdraw due to a situation so serious that educational services cannot be continued even under the conditions of Subsection R277-419-5(3)(f)(ii);
(iii) are expelled and do not re-enroll in another public education institution; or
(iv) transfer to adult education;
(e) an LEA shall exclude a student from the cohort calculation if the student:
(i) transfers out of state, out of the country, to a private school, or to home schooling;
(ii) is a U.S. citizen who enrolls in another country as a foreign exchange student;
(iii) is a non-U.S. citizen who enrolls in a Utah public school as a foreign exchange student under Section 53G-6-707 in which case the student shall be identified by resident status (J for those with a J-1 visa, F for all others), not by an exit code;
(iv) dies; or
(v) beginning with the 2015-2016 school year, is attending an LEA that is not the student's school of enrollment.
(2)(a) An LEA shall report the high school completion status or exit code of each student to the Superintendent as specified in Data Clearinghouse documentation.
(b) High School completion status or exit codes for each student are due to the Superintendent by year end upload for processing and auditing.
(c) Except as provided in Subsection (2)(d), an LEA shall submit any further updates of completion status or exit codes by October 1 following the end of a student's graduating cohort pursuant to Section R277-484-3.
(d) An LEA with an alternative school year schedule where all of the students have an extended break in a season other than summer, shall submit the LEA's data by the next complete data submission update, following the LEA's extended break, as defined in Section R277-484-3.
(3)(a) The Superintendent shall report a graduation rate for each school, LEA, and the state.
(b) The Superintendent shall calculate the graduation rates in accordance with applicable federal law.
(c) The Superintendent shall include a student in a school's graduation rate if:
(i) the school was the last school the student attended before the student's expected graduation date; and
(ii) the student does not meet any exclusion rules as stated in Subsection (1)(e).
(d) The last school a student attended will be determined by the student's exit dates as reported to the Data Clearinghouse.
(e) A student's graduation status will be attributed to the school attended in their final cohort year.
(f) If a student attended two or more schools during the student's final cohort year, a tie-breaking logic to select the single school will be used in the following hierarchical order of sequence:
(i) school with an attached graduation status for the final cohort year;
(ii) school with the latest exit date;
(iii) school with the earliest entry date;
(iv) school with the highest total membership;

(v) school of choice;
(vi) school with highest attendance; or
(vii) school with highest cumulative GPA.
(g) The Superintendent shall report the four-year cohort rate on the annual state reports.

R277-419-10. Student Identification and Tracking.
(1)(a) Pursuant to Section 53E-4-308, an LEA shall:
(i) use the SSID system maintained by the Superintendent to assign every student enrolled in a program under the direction of the Board or in a program or a school that is supported by public school funding a unique student identifier; and
(ii) display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.
(b) The unique student identifier:
(i) shall be assigned to a student upon enrollment into a public school program or a public school-funded program;
(ii) may not be the student's social security number or contain any personally identifiable information about the student.
(2) An LEA shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.
(a) A school shall transcribe the names from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53G-6-603;
(b) The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and
(c) An LEA may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the Superintendent.
(3) The Superintendent and LEAs shall track students and maintain data using students' legal names.
(4) If there is a compelling need to protect a student by using an alias, an LEA should exercise discretion in recording the name of the student.
(5) An LEA is responsible to verify the accuracy and validity of enrollment verification data, prior to enrolling students in the LEA, and provide students and their parents with notification of enrollment in a public school.
(6) An LEA shall ensure enrollment verification data is collected, transmitted, and stored consistent with sound data policies, established by the LEA as required in Rule R277-487.

R277-419-11. Exceptions.
(1)(a) An LEA may, at its discretion, make an exception for school attendance for a public school student, in the length of the school day or year, for a student with compelling circumstances.
(b) The time an excepted student is required to attend school shall be established by the student's IEP or Plan for College and Career Readiness.
(2) A school using a modified 45-day/15-day year round schedule initiated prior to July 1, 1995 shall be considered to be in compliance with this rule if the school's schedule includes a minimum of 990 hours of instruction time in a minimum of 172 days.

R277-419-12. Snow, Inclement Weather, or Other Emergency School Closure Days.
(1) An LEA may seek a waiver directly from the Superintendent from the 180 day requirement described in Subsection R277-419-4(1) if:
(a) the LEA closes a school for one school day due to excessive snow, inclement weather, or an other emergency; and
(b) the school closure will result in the LEA not meeting the 180 day requirement described in Section R277-419-4.
(2) The Superintendent may grant up to one waiver, per school year, per school, for the school to close due to excessive snow, inclement weather, or other emergency without Board approval if the LEA has provided adequate contingency school days and hours into the LEA's calendar to avoid the necessity of requesting a waiver as required in Subsection R277-419-4(5).
(3) If the Superintendent denies an LEA's request described in Subsection (1), the LEA may appeal the Superintendent's decision by making the request of the full Board.
(4) If an LEA seeks a waiver for two or more school days due to excessive snow, inclement weather, or other emergency, the LEA shall seek the waiver pursuant to the procedures described in R277-121.
(5)(a) An LEA may request the Board to waive the school day and hour requirement pursuant to a directive from the Utah State Health Department or a local health department, that results in the closure of a school in the event of a pandemic or other public health emergency.
(b) A waiver described in this Subsection (5) may be for a designated time period, for a specific area, or for a specific LEA in the state, as determined by the health department directive.
(c) A waiver may allow an LEA to continue to receive state funds for pupil services and reimbursements.
(d) A waiver granted by the Board or Superintendent as described in this Subsection (5) shall direct an LEA to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.
(e) A waiver granted shall direct an LEA to comply with health department directives, but to continue to provide any services to students that are not inconsistent with the directive.
(f) The Board may encourage an LEA to provide electronic or distance learning services to affected students for the period of the pandemic or other public health emergency to the extent of personnel and funds available.

KEY: education finance, school enrollment, pupil accounting

October 16, 2018	**Art X Sec 3**
Notice of Continuation August 14, 2017	**53E-3-401(4)**
	53F-2-102(7)
	53E-3-501(1)(e)
	53E-3-602(2)
	53E-3-301(3)(d)
	53G-4-404

R277. Education, Administration.
R277-437. Student Enrollment Options.
R277-437-1. Definitions.

A. "Available school or program" means a school or program currently designated under the law and this rule by a district as open to nonresident students.

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

C. "District of residence" means a student's school district of residence under Section 53G-6-302.

D. "Nonresident student" means a student attending or seeking to attend a school other than the designated school of residence.

E. "Residual per student expenditure" means the expenditure based on the most recent State Superintendent's Annual Report according to the following formula:

(1) Take total expenditures before interfund transfer for:

(a) maintenance and operation;

(b) tort liability; and

(c) capital projects.

(2) Subtract from the sum of (1), above:

(a) resident district's taxes collected under the Minimum School Program;

(b) state revenue;

(c) federal revenue; and

(d) expenditures for site acquisition or new facility construction (new facility construction includes remodeling that increases building square footage or other major remodeling, if approved by the USOE Director of Finance).

(3) Divide the remainder of (1) and (2) above by the total student membership of the district as reported in the most recent State Superintendent's Annual Report.

F. "Safety emergency" means a situation in which:

(1) enrollment in a specific school is necessary to protect the health of the student as determined by a specific medical recommendation from a medical doctor; or

(2) enrollment in a specific school is necessary to protect the emotional or physical safety of a student, based on documentation/evidence provided by the student's previous school, the parent(s)/guardian(s), a clinical psychologist who is tracking the student, or cumulative information.

G. "School of residence" means the school which a student would normally attend in the student's district of residence.

H. "School into which the school's students feed" for purposes of this rule means school boundaries and feeder systems as determined by the local board of education which may change over time.

I. "Serious infraction of the law or school rules" means chronic misbehavior by a student which is likely, if it were to continue after the student was admitted, to endanger persons or property, cause serious disruptions in the school, or to place unreasonable burdens on school staff.

J. "USOE" means the Utah State Office of Education.

R277-437-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, by 53E-3-501(1)(b) which directs the Board to establish rules and minimum standards for access to programs and by 53G-6-405 which directs the Board to provide a formula by rule for resident students who attend school districts under Section 53G-6-401 et seq. This rule is consistent with federal laws and regulations, including the Individuals with Disabilities Act (IDEA), 20 U.S.C., Chapter 33, Section 1412 as amended by Public Law 102-119, and the Elementary and Secondary Education Act of 2001 (ESEA), P.L. 107-110.

B. The purpose of this rule is:

(1) to establish necessary definitions;

(2) to establish a formula for the residual per pupil expenditure for school districts to reimburse each other for full and part-time nonresident students;

(3) to summarize school, school district, and state responsibilities under Section 53G-6-401; and

(4) to provide a standard statewide open enrollment form required under Subsection 53G-6-402(4)(b)(ii).

R277-437-3. Local School Board and District Responsibilities.

A. A local board shall have policies describing procedures for students to follow in applying to attend schools other than their respective schools of residence. Local school boards shall designate which schools and programs will be available for open enrollment during the coming school year consistent with the definitions and timelines of Section 53G-6-401 et seq.

B. The school district shall adjust timelines for open enrollment applications if the district is developing a district-wide reconfiguration of its schools consistent with Subsection 53G-6-401(1).

C. A school district may establish longer or broader timelines for enrollment than required by law.

D. If construction, remodeling, or other circumstances beyond the control of the local board do not reasonably permit the local board to make sufficiently accurate enrollment projections for a given school to determine whether the school should be designated as available for open enrollment for the coming year, the local board shall designate delays and procedures consistent with Subsection 53G-6-402(4)(c).

E. As required under Subsection 53G-6-405(2), a resident district shall pay to a nonresident district one-half of the resident district's residual per student expenditure for each resident student properly registered in the nonresident district.

F. Each local board shall establish a procedure to consider appeals of any denial of initial or continued enrollment of a nonresident student under Subsection 53G-6-404(1).

G. A local board of education may deny enrollment of nonresident students for reasons identified in R277-437-1I.

H. This rule does not govern eligibility for students to participate in activities supervised by the Utah High School Activities Association (UHSAA) if students transfer under Section 53G-6-401.

R277-437-4. State Board of Education Responsibilities.

A. Capacity for special education classrooms shall:

(1) be consistent with Utah Special Education Caseload Guidelines; and

(2) depend on staffing and funding constraints of the receiving school district.

B. A model standard enrollment options application form shall be available on the USOE website.

R277-437-5. Transportation.

A school district may transport its students to schools in other districts under Subsection 53G-6-405(3)(b)(i).

KEY: public education, enrollment options

February 7, 2014	**Art X Sec 3**
Notice of Continuation October 5, 2018	**53E-3-401(1)(b)**
	53G-6-405
	53G-6-401 et seq.

R277. Education, Administration.
R277-500. Educator Licensing Renewal, Timelines, and Required Fingerprint Background Checks.
R277-500-1. 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 53E-6-201 which requires the Board to make rules requiring participation in professional learning activities in order for educators to retain Utah licensure, and Subsection 53E-3-401(4) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions and requirements for an educator to renew a Utah educator license. This rule requires verification of employment, development of a professional learning plan, and documentation of activities consistent with Title 53E, Chapter 6, Education Professional Licensure.

R277-500-2. Definitions.

A. "Acceptable alternative professional learning activity" means an activity that may not fall within a specific category under R277-500-5 but is consistent with this rule.

B. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC), or the Council for the Accreditation of Educator Preparation (CAEP).

C. "Accredited school," for purposes of this rule, means a public or private school that has met standards considered to be essential for the operation of a quality school program and has received formal approval by the Northwest Accreditation Commission.

D. "Active educator," for purposes of this rule, means an individual holding a valid license issued by the Board who is employed by a Utah public LEA, accredited private school, or USOE, or who was employed by a Utah public LEA or accredited private school in a role covered by the license for at least three years in the individual's renewal period.

E. "Active educator license" means a license that is currently valid for employment in a position requiring an educator license.

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

G. "College/university course" means a course taken through an institution approved under Section 53E-6-303.

H. "Course work successfully completed" for purposes of this rule means the student earns a grade C or better in approved university or university level course work or USOE professional learning credit.

I. "Documentation of professional learning activities" means:

(1) an original student transcript of university/college courses;

(2) an LEA or USOE-sponsored electronic record of professional learning activities;

(3) a summary, explanation, or copy of the product of a professional learning activity signed by the educator's supervisor or a licensed administrator ;

(4) a certificate of completion for an approved professional learning conference, workshop, institute, symposium, educational travel experience or staff development; or

(5) an agenda or conference program demonstrating sessions and duration of professional learning activities.

J. "Educational research" means conducting research on education issues or investigating education innovations.

K. "Inactive educator" means an individual:

(1) who holds a valid license issued by the Board;

(2) who is not currently employed by a Utah public LEA or accredited private school; and

(3) who was employed by a Utah public LEA or accredited private school in a role covered by the license for less than three years in the individual's renewal period.

L. "Inactive educator license" means a license issued by the Board, other than a suspended or revoked license, that is currently not valid due to the holder's failure to complete requirements for license renewal.

M. "LEA" or "local education agency" means a school district or a charter school.

N. "Level 1 license" means a Utah professional educator license issued:

(1) to an applicant upon completion of an approved preparation program or an alternative preparation program; or

(2) to an applicant that holds an educator license issued by another state or country that has also met all ancillary requirements established by law or rule.

O. "Level 2 license" means a Utah professional educator license issued to an applicant after the applicant meets the following:

(1) completion of all requirements for a Level 1 license;

(2) satisfaction of requirements under R277-522 for a teacher whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(3) completion of:

(a) at least three years of successful education experience in a Utah public LEA or accredited private school; or

(b)(i) one year of successful education experience in a Utah public LEA or accredited private school; and

(ii) at least three years of successful education experience in a public LEA or accredited private school outside of Utah; and

(4) completion of any additional requirements established by law or rule.

P. "Level 3 license" means a Utah professional educator license issued to an educator who:

(1) holds a current Utah Level 2 license; and

(2)(a) received National Board Certification;

(b) received a doctorate in education or in a field related to a content area in a unit of:

(i) the public education system; or

(ii) an accredited private school; or

(c) holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

Q. "License" means an authorization which permits the license holder to serve in a professional capacity in a public LEA or accredited private school.

R. "Licensed administrator" means:

(1) an individual holding an active educator license that is valid for employment in a public school administrative position; or

(2) an individual currently employed by a Utah charter school in an administrative position.

S. "License renewal points" means the points accumulated by a Utah license holder through activities approved under this rule for the purpose of satisfying requirements of Section 53E-6-201.

T. "National Board Certification" means the successful completion of the National Board for Professional Teaching Standards (NBTPS) process, a three-year process, that may include:

(1) national content-area assessment;

(2) an extensive portfolio; and

(3) assessment of video-taped classroom teaching experience.

U. "Professional growth plan" means a plan created and reviewed annually by an active educator and the educator's direct supervisor that details the professional goals of the educator based on the Utah Effective Teaching and Educational

Leadership Standards consistent with R277-520 and related to the educator's self-assessment and formal evaluation required under Section 53G-11-504.

V. "Professional learning" means engaging in activities that improve or enhance an educator's practice.

W. "Professional learning plan" means a document prepared by a Utah educator consistent with this rule.

X. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

Y. "University level course" means a course:

(1) that has the same academic rigor and requirements of a university or college course;

(2) taught by appropriately trained individuals; and

(3) designated as a university level course by the Superintendent.

Z. "UPPAC" means the Utah Professional Practices Advisory Commission under Title 53E, Chapter 6, Part 5, Utah Professional Practices Advisory Commission.

AA. "USOE" means the Utah State Office of Education.

BB. "USOE professional learning credit" means a course, approved by the Superintendent under R277-519-3, that educators may participate in to:

(1) renew a license;

(2) teach in another subject area; or

(3) teach at another grade level.

CC. "Verification of employment" means official documentation of employment as an educator listing the educator's assignment and years of service, signed by the supervising administrator.

R277-500-3. Educator License Renewal Requirements.

A. Professional Learning Plan for Active Educators

(1) An active educator, in collaboration with the active educator's supervisor, shall develop and maintain a professional learning plan as a subset of the active educator's professional growth plan.

(2) The professional learning plan shall outline the professional learning activities in which the educator will participate during the educator's current license renewal cycle;

(3) The professional learning plan shall be developed by taking into account:

(a) the educator's professional goals;

(b) curriculum relevant to the educator's current or anticipated assignment;

(c) goals and priorities of the LEA and school;

(d) available student data relevant to the educator's current or anticipated assignment;

(e) feedback from the educator's yearly evaluation required under Section 53G-11-504;

(f) the requirements under R277-522 if the educator is a Level 1 licensed educator.

(4) The professional learning plan for active educators shall include two hours of professional learning on youth suicide prevention consistent with Section 53G-9-704.

(5) The professional learning plan shall be reviewed and signed annually by the educator and supervisor and may be adjusted as appropriate.

(6) The educator is responsible for creation of the professional learning plan in collaboration with the designated supervisor.

(7) The educator is responsible for maintaining documentation associated with the plan and the annual review of the plan.

(8) The LEA may create tools or policies or both to assist educators in meeting this responsibility.

B. Professional Learning Plan for Inactive Educators

(1) All inactive educators intending to renew an educator license shall, in collaboration with a licensed administrator, develop and maintain a professional learning plan.

(2) The professional learning plan shall outline the professional learning activities in which the educator will participate during the educator's current license renewal cycle.

(3) The plan shall take into account:

(a) the educator's professional goals;

(b) current license areas of concentration and endorsements;

(c) current trends relevant to the educator's current license areas of concentration and endorsements;

(d) the Utah Core Standards relevant to the educator's current license areas of concentration and endorsements;

(4) The professional learning plan shall be reviewed and signed by the educator and a licensed administrator at the beginning of the license renewal cycle and again at the end of the license renewal cycle.

(5) The educator shall develop the professional learning plan and maintain documentation of the plan.

C. License Renewal Points

(1) To be valid for renewal, the professional learning plan shall document that the educator has earned the appropriate number of license renewal points as defined in R277-500-3.

(2) License holders may accrue license renewal points beginning with the date of each new license renewal.

(3) A Level 1 license holder shall earn at least 100 license renewal points in each three year period. A Level 1 license may only be renewed consistent with R277-504-3D.

(4) A Level 2 license holder shall earn at least 200 license renewal points in each 5 year period.

(5) A Level 3 license holder shall earn at least 200 license renewal points in each 7 year period.

D. Documentation

(1) Each Utah license holder shall be responsible for maintaining documentation supporting completion of the professional learning plan.

(2) It is the educator's responsibility to retain documentation of professional learning activities with appropriate signatures.

(3) All documentation relevant to the professional learning plan shall be retained by the educator for a minimum of two years from the designated renewal date.

E. Educator Ethics Review

(1) Completion of the USOE Educator Ethics Review shall be required for the renewal of a Utah educator license beginning January 1, 2011.

(2) No license may be renewed prior to the completion of the USOE Educator Ethics Review.

(3) The Ethics Review shall be completed within one calendar year prior to license renewal.

F. The Superintendent may renew an educator's license if:

(1) the educator's background check is complete; and

(2) the educator is currently enrolled in ongoing monitoring through registration with the systems described in Section 53G-11-404.

R277-500-4. Educator License Renewal Procedures.

A. An active educator license holder shall satisfy the final review and obtain the appropriate signatures regarding completion of the professional learning plan between January 1 and June 30 of the educator's assigned renewal year.

(1) A Level 2 or 3 educator license holder who has completed all additional requirements for renewal shall complete the online renewal provided by USOE between January 1 and June 30 of the educator's assigned renewal year.

(2) A Level 1 educator license holder who has completed all additional requirements for renewal shall submit the Professional Learning Plan Completion Form to the USOE between January 1 and June 30 of the educator's assigned renewal year. Forms that are not complete or do not bear original signatures shall not be processed.

(3) An educator's failure to complete the online process or submit the completion form consistent with deadlines in this rule shall result in beginning anew the administrative licensure process, including all attendant fees and criminal background checks.

B. An inactive educator license holder shall satisfy the final review and obtain the appropriate signatures regarding completion of the professional learning plan within one calendar year prior to the date on which the inactive educator license holder is directed/scheduled to renew the license.

(1) A Level 2 or 3 educator license holder who has completed all additional requirements for renewal shall complete the online renewal process provided by USOE between January 1 and June 30 of the educator's assigned renewal year.

(2) A Level 1 educator license holder who has completed all additional requirements for renewal shall submit the Professional Learning Plan Completion Form to the USOE between January 1 and June 30 of the educator's assigned renewal year. Forms that are not complete or do not bear original signatures shall not be processed.

(3) An educator's failure to complete the online process or submit the completion form consistent with deadlines shall result in beginning anew the licensure process, including all attendant fees and criminal background checks.

C.(1) An educator shall obtain the signature of the educator's direct administrative supervisor on the educator's renewal form.

(2) The educator's direct administrative supervisor described in R277-500-4C(1) shall be a licensed administrator.

(3) If an educator's supervisor is not a licensed administrator then the form shall be signed by the next highest administrative supervisor who is a licensed administrator.

(4) If the educator is the highest administrative authority in the LEA then the form shall be signed by the president or chairperson of the LEA's governing board.

D. An educator who is seeking a license renewal shall obtain the signature of a licensed administrator on the educator's license renewal form.

E.(1) The Superintendent shall charge a fee, set by the Superintendent, to an educator seeking renewal from an inactive status or requesting level changes.

(2) The Superintendent shall charge an educator with an active license renewal fee consistent with R277-502

F. The Superintendent shall audit a random sample of approximately ten percent of the annual online renewals.

G. An educator selected for an audit described in R277-500-4F:

(1) shall submit the Professional Learning Plan Completion Form with the appropriate signatures to the USOE in a timely manner.

(2) shall receive a warning letter and may be referred to UPPAC if documentation is not submitted as requested.

(3) shall be referred to UPPAC for possible license discipline if the documentation reveals fraudulent or unprofessional actions.

H. The Superintendent may review or audit renewal transactions including the professional learning plan, signatures, and documentation of professional learning activities.

R277-500-5. Categories of Acceptable Activities for License Renewal.

A(1) An educator may earn licensure renewal points based on the educator's employment in a position requiring a Utah educator license during the educator's license cycle.

(2) An educator may only count years of employment with satisfactory performance evaluations for license renewal points.

(3) A Level 1 license holder may earn 25 license renewal points per year of employment to a maximum of 50 points per license cycle.

(4) A Level 2 or 3 license holder may earn 35 license renewal points per year of employment to a maximum of 105 points per license cycle.

B(1) An educator shall complete a college or university course with a C or better, or a pass, to have the course apply to the educator's license.

(2) Each semester hour of university or college credit, as recorded on an official transcript, equals 18 license renewal points.

C(1) USOE professional learning credit:

(a) shall be approved as described in R277-519-3; and

(b) shall be successfully completed through attendance and through completion of required project(s).

(2) Each semester credit hour equals 15 license renewal points.

(3) An LEA may request approval of USOE professional learning credit by submitting a request to the Superintendent through the USOE-sponsored online professional learning tracking system.

(4) An LEA shall request approval from the Superintendent at least four weeks prior to the beginning date of the scheduled professional learning activity.

(5) The professional learning credit may be denied if the LEA does not seek approval from the Superintendent in advance.

D. An LEA-sponsored or approved professional learning activity:

(1) shall be approved by the LEA at least four weeks prior to the scheduled activity; and

(2) may include LEA or school based professional learning such as:

(a) participating in professional learning communities;

(b) development of LEA or school curriculum;

(c) planning and implementation of a school improvement plan;

(d) mentoring a Level 1 teacher;

(e) engaging in instructional coaching;

(f) conducting action research;

(g) studying student work with colleagues to inform instruction.

E. Each clock hour of scheduled professional learning activity time equals one license renewal point, not to exceed 25 points per activity per year.

F(1) Acceptable alternative professional learning activities for an educator include activities that enhance or improve education, yet may not fall into a specific category if the activities are approved by:

(a) the educator's supervisor;

(b) by a licensed administrator if the educator is an inactive educator; or

(c) the Superintendent, with prior written approval by the Superintendent.

(2) Each clock hour of participation equals one license renewal point, not to exceed 25 points per activity.

G. Conferences, workshops, institutes, symposia, or staff-development programs:

(1) Acceptable workshops and programs shall be approved by the educator's supervisor, by a licensed administrator if the educator is an inactive educator, or with prior written approval by the Superintendent.

(2) Each clock hour of participation equals one license renewal point, not to exceed 25 points per activity.

G. Content and pedagogy testing:

(1) Acceptable tests include those approved by the Board.

(2) Each Board-approved test score report submitted, with a passing score, equals 25 license renewal points.

(3) Each test must be related to the educator's current or potential license area(s) or endorsement(s).

(4) No more than two test score reports may be submitted in a license cycle.

H. Utah university sponsored cooperating teachers:

(1) An educator working as a cooperating teacher with one or more student teachers may earn license renewal points.

(2) Each clock hour spent supervising, collaborating with, and mentoring assigned student teachers equals one license renewal point not to exceed 25 points per license renewal cycle.

I. Service in a leadership role in a national, state-wide, or LEA-recognized professional education organization:

(1) Acceptable service shall be approved by the educator's supervisor or by a licensed administrator if the educator is an inactive educator.

(2) Each clock hour of participation equals one license renewal point, not to exceed 10 points per year.

J. Educational research and innovation that results in a final, demonstrable product:

(1) Acceptable activities shall be approved by the educator's supervisor or by a licensed administrator if the educator is an inactive educator.

(2) The research activity shall be consistent with school and LEA policy.

(3) Each clock hour of participation equals one license renewal point, not to exceed 35 points per activity.

K. Substituting in a Utah public LEA or accredited private school:

(1) shall be considered an acceptable professional learning activity only for inactive educators paid and authorized as substitutes.

(2) Two hours of documented substitute time equals one license renewal point, not to exceed 25 points per year or 50 points per license cycle.

(3) Verification of hours shall be documented on LEA or school letterhead, list dates of employment, and signed by the supervising administrator.

L. Paraprofessional or volunteer service in a Utah public LEA or accredited private school:

(1) shall be considered an acceptable professional learning activity only for inactive educators.

(2) Three hours of documented paraprofessional or volunteer service equals one license renewal point, not to exceed 25 points per year or 50 points per license cycle.

(3) Verification of hours shall be documented on LEA or school letterhead, list dates of service, and signed by the supervising administrator.

M. Credit for LEA lane change or other purposes is determined by the LEA and is awarded at the LEA's discretion. USOE professional learning credit should not be assumed to be credit for LEA purposes, such as salary or lane change credit.

R277-500-6. Board Directive to Educator License Holders for Fingerprint Background Check.

A(1) The Superintendent shall require a licensed educator or license applicant to submit to a fingerprint background check and ongoing monitoring by the Superintendent through registration with the systems described in Section 53G-11-404 as a condition of licensure in Utah.

(2) A licensed educator shall submit a new fingerprint background check for ongoing monitoring within one calendar year prior to the date of the educator's next license renewal after July 1, 2015.

(3) A license applicant shall submit a new fingerprint background check for ongoing monitoring by the Superintendent.

(a) If a license applicant submits a new fingerprint background check on or after July 1, 2015, the Superintendent shall require the license applicant to be enrolled in ongoing monitoring before the Superintendent may issue a new license to the license applicant.

(b) The Superintendent may issue a new license to a license applicant without enrolling the license applicant in ongoing monitoring if the license applicant's background check was cleared:

(i) less than three years prior to the issue date of the license; and

(ii) prior to July 1, 2015,

(4) The Superintendent shall discontinue monitoring an individual through the systems described in Section 53G-11-404:

(a) for a licensed educator, one year after the expiration of the most recently issued license; or

(b) for a license applicant, five years after the submission of the background check.

(5) If the fingerprint background check for a licensed educator or a license applicant is incomplete or under review by the Utah Professional Practices Advisory Commission (UPPAC), the individual's CACTUS file will direct the reviewer of the file to the Superintendent for further information.

B. The Superintendent may direct a Utah educator license holder to have a criminal fingerprint background check under Section 53E-6-401 for good cause shown.

C. If an educator license holder fails to comply with the directive in a reasonable time, following reasonable notice, and adequate due process, the educator license holder's license may be put into a pending status in the educator's CACTUS file subject to the educator license holder's compliance with the directive.

D. The Board or its designee may review an educator license holder's compliance with the directive prior to the final decision about the educator license holder's license status.

R277-500-7. Exceptions or Waivers to this Rule.

A. The Superintendent may make exceptions to the provisions of this rule for unique and compelling circumstances if the exception is granted consistent with the purposes of this rule and the authorizing statutes.

B. An educator may request an exception described in R277-500-7A.

C. An educator shall submit a request to the Superintendent for an exception described in R277-500-7C in writing at least 30 days prior to the license holder's renewal date.

D. The Superintendent shall approve or deny a request for an exception described in R277-500-7C in a timely manner.

E. A denial of a request described in R277-500-7D is not subject to administrative appeal.

KEY: educator license renewal, professional learning, fingerprint background check
August 26, 2015 53E-6-201
Notice of Continuation July 1, 2015 53E-3-401(4)

R277. Education, Administration.
R277-503. Licensing Routes.
R277-503-1. 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-3-501, which directs the Board to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student services; 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) provide minimum eligibility requirements for applicants for teacher licenses;

(b) provide explanation and criteria of various teacher licensing routes;

(c) provide criteria and procedures for licensed teachers to earn endorsements; and

(d) require all applicants for licenses to submit to a criminal background check.

R277-503-2. Definitions.

(1) "Alternative Routes to Licensure advisors" or "ARL advisors" means:

(a) a specialist designated by the Superintendent with specific professional development and educator licensing expertise; and

(b) a curriculum specialist designated by the Superintendent.

(2)(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-on experiences, and certified occupational skills, culminating in further education and meaningful employment.

(b) CTE areas of study include:

(i) agriculture;

(ii) business and marketing;

(iii) family and consumer sciences;

(iv) health science;

(v) information technology;

(vi) skilled and technical sciences; and

(vii) technology and engineering education.

(3) "Competency-based" means a teacher training approach structured for an individual to master and demonstrate content and teaching skills and knowledge at the individual's own pace and sometimes in alternative settings.

(4) "Core academic subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(5) "Council for Accreditation of Educator Preparation" or "CAEP" means the nationally-recognized organization that provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of k-12 teachers.

(6) "Endorsement" means a supplemental qualification to a teaching license that is based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program.

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

(8) "Letter of authorization" means a formal approval given to an individual, such as an out-of-state candidate or a first year ARL candidate who:

(a) is employed by an LEA in a position requiring a professional educator license;

(b) has not completed the requirements for an ARL license or a Level 1, 2, or 3 license; or

(c) has not completed necessary endorsement requirements.

(9) "Level 1 license" means a Utah professional educator license issued by the Board to an applicant who has met all ancillary requirements established by law or rule, and:

(a) completed an approved preparation program;

(b) completed an alternative preparation program;

(c) is approved pursuant to an agreement under the NASDTEC Interstate Contract; or

(d) completed the requirements of R277-511.

(10) "Level 2 license" means a Utah professional educator license issued by the Board after satisfaction of all requirements for a Level 1 license and:

(1) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;

(3) additional requirements established by law or rule.

(11) "Level 3 license" means a Utah professional educator license issued by the Board to an educator who holds a current Utah Level 2 license and has also received:

(a) National Board Certification;

(b) a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school; or

(i) holds a Speech-Language Pathology area of concentration; and

(ii) has obtained American Speech-Language Hearing Association (ASHA) certification.

(12) "National Association of State Directors of Teacher Education and Certification" or "NASDTEC" means the educator information clearinghouse that maintains an interstate reciprocity agreement and database for its members regarding educators whose licenses have been suspended or revoked.

(13) "National Council for Accreditation of Teacher Education" or "NCATE" means the nationally-recognized organization that accredits the education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.

(14) "Pedagogical knowledge" means practices and strategies of teaching, classroom management, preparation and planning that are in addition to an educator's content knowledge of an academic discipline.

(15) "Regional accreditation" means formal approval of a school that has met standards considered to be essential for the operation of a quality school program by the following organizations:

(a) Middle States Commission on Higher Education;

(b) New England Association of Schools and Colleges;

(c) North Central Association Commission on Accreditation and School Improvement;

(d) Northwest Accreditation Commission;

(e) Southern Association of Colleges and Schools; and

(f) Western Association of Schools and colleges: Senior College Commission.

(16) "Restricted endorsement" means a qualification

available only to teachers in necessarily existent small school settings based on content area knowledge obtained through a Board-approved program of study or demonstrated through passage of a Board-designated test.

(17) "State-approved Endorsement Plan" or "SAEP" means a plan in place developed between the Superintendent and a licensed educator to direct the completion of endorsement requirements by the educator.

(18) "Teacher Education Accreditation Council" or "TEAC" means the nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.

R277-503-3. Licensing Eligibility.

(1) For a license applicant following the traditional college or university license, the license applicant shall:

(a) complete a Board approved college or university teacher preparation program;

(b) be recommended for licensing; and

(c) satisfy all other requirements for educator licensing required by law; or

(2) For a license applicant following an alternative licensing route, the license applicant shall:

(a) have a bachelors degree or higher from an accredited higher education institution in an area related to the position the applicant is seeking;

(b) have skills, talents or abilities, as evaluated by the employing entity, making the applicant appropriate for a licensed teaching position and eligible to participate in an ARL program; and

(c) while participating in an alternative licensing program, be approved for employment under an ARL license.

(3) An ARL program may not exceed three school years.

(4) A license applicant seeking a Level 1 Utah educator license, or an area of concentration, or an endorsement in a core academic subject area shall submit passing scores on a Board-designated content test, where tests are available, prior to the issuance of a renewable license or endorsement.

(5) For each endorsement in a core academic area to be posted on the license, a teacher shall submit passing scores on a Board-designated content tests, where tests are available.

(6) A licensure candidate recommended for a Utah Level 1 license who does not submit a passing score on the test designated in Subsection (4) is not eligible for licensure until achieving a passing score.

(7) All educators licensed under this rule shall also:

(a) complete the background check required under Section 53A-6-401;

(b) satisfy the professional development requirements of R277-500; and

(c) be subject to all Utah licensing requirements and professional standards.

R277-503-4. Licensing Routes - Traditional and Alternative Routes.

(1) An applicant seeking a Utah educator license shall successfully complete the accredited program or legislatively-mandated program consistent with this rule.

(2) To be recognized by the Board, an institution of higher education teacher preparation program shall be:

(a) Nationally accredited by:

(i) CAEP;

(ii) NCATE; or

(iii) TEAC; and

(b) approved by the Board to recommend for licensure in the license area, or endorsements, or both in designated areas.

(3)(a) An applicant who meets the eligibility requirements in Section R277-503-3, and is assigned to teach exclusively in an online setting, is eligible to begin the ARL program.

(b) Upon completion of the ARL program, the applicant shall earn a license area of concentration that is restricted to providing instruction in an online setting.

R277-503-5. Alternative Routes to Licensure (ARL).

(1) To be eligible to begin the ARL program, an applicant for a school position requiring an elementary license area of concentration shall have a bachelors degree and at least 27 semester hours of applicable content courses distributed among elementary curriculum areas provided under R277-700-4.

(2) To be eligible to begin the ARL program, an applicant for a school position requiring a secondary license area of concentration shall hold at least a bachelors degree and:

(a) a degree major or major equivalent directly related to the assignment; or

(b) have completed all Board-designated content coursework required for the relevant endorsement.

(3) To be eligible to begin the ARL program, an applicant for a CTE school position who does not meet the requirements in R277-503-4(2) shall meet the requirements for a CTE license area of concentration as provided in R277-518.

(4) To be eligible for acceptance in the ARL program, an applicant shall be employed in a position at a Utah public or accredited private school where the applicant:

(a) receives a teaching assignment where the applicant has primary instruction responsibility for the assigned students;

(b) is designated the teacher of record for assigned courses for all school accountability and educator evaluation purposes;

(c) is responsible for the instructional planning of the courses including developing, adapting, and implementing the curriculum to meet student needs;

(d) analyzes and assesses student progress and adjusts instruction, materials, and delivery strategies to meet the students' needs;

(e) has final responsibility for determining student grades and credit for the courses taught by the applicant;

(f) is assigned in:

(i) a 7-12 secondary setting and employed at least 0.5 FTE in the applicant's eligible content areas; or

(ii) a K-6 elementary setting and employed at least 0.5 FTE and is responsible to teach language arts and reading, mathematics, science, and social studies or is employed in a state-sponsored dual immersion program; and

(g) shall be formally evaluated twice each school year consistent with R277-531, Public Educator Evaluation Requirements (PEER).

R277-503-6. Licensing by Agreement.

(1) An individual employed by an LEA shall satisfy the minimum requirements of R277-503-3 as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the LEA.

(2) An applicant shall obtain an ARL application for licensing from the Board's web site.

(3) After evaluation of a candidate's transcripts and Board-designated content test score, the ARL advisors and the candidate shall determine the specific content knowledge and pedagogical knowledge required of the license applicant to satisfy the requirements for licensing.

(4) The ARL advisors may identify higher education courses, district sponsored coursework, Board-approved professional development, or Board-approved competency tests to prepare or indicate content, content-specific, and developmentally-appropriate pedagogical knowledge required for licensing.

(5) An applicant who has been employed as an educator under a competency-based license or as a full-time instructional paraeducator may offer that experience in lieu of one or more

pedagogy courses as follows:

(a) The applicant has had at least three years of experience as an educator or paraeducator;

(b) The applicant's experience has been successful based on documentation from the LEA; and

(c) The Superintendent and employing LEA have approved the applicant's experience in lieu of pedagogy courses.

(6) An employing LEA shall assign a trained mentor to work with an applicant for licensing by agreement.

(7)(a) An LEA shall supervise and assess a license applicant's classroom performance for a minimum of one school year if the applicant teaches full-time or a minimum of two school years if the applicant teaches part-time.

(b) An LEA may request assistance from an institution of higher education or the ARL advisors in monitoring and assessing an applicant.

(8)(a) An LEA shall assess a license applicant's disposition as a teacher following a minimum of one school year full-time teaching experience.

(b) An LEA may request assistance in assessment under Subsection (8)(a).

(9) The ARL advisors shall annually review and evaluate a license applicant following training, assessments or course work, and the full-time teaching experience and evaluation by the LEA.

(10) Consistent with evidence and documentation received, the ARL advisors may recommend a license applicant to the Board for a Level 1 educator license.

R277-503-7. Licensing by Competency.

(1) An LEA may employ an individual as a teacher if the individual:

(a) has appropriate skills, training, or ability for an identified licensed teaching position in the LEA; and

(b) satisfies the minimum requirements of Section R277-503-3.

(2)(a) An employing LEA, in consultation with the applicant and the ARL advisors, shall identify Board-approved content knowledge and pedagogical knowledge examinations.

(b) The applicant shall pass designated examinations demonstrating the applicant's adequate preparation and readiness for licensing.

(3) An employing LEA shall assign a trained mentor to work with an applicant for licensing by competency.

(4) An LEA shall monitor and assess a license applicant's classroom performance during a minimum of one-year full-time or two-years part-time teaching experience.

(5) An LEA shall assess a license applicant's disposition for teaching following a minimum of one-year full-time teaching experience.

(6) An LEA may request assistance in the monitoring or assessment of a license applicant's classroom performance or disposition for teaching.

(7) Following the one-year training period, an LEA and the Superintendent shall verify all aspects of preparation including content knowledge, pedagogical knowledge, classroom performance skills, and disposition for teaching to the ARL advisors.

(8) If all evidence/documentation is complete and satisfactory, the Superintendent shall recommend an applicant for a Level 1 educator license.

(9) An ARL candidate under Section R277-503-5 shall be issued an ARL license or license area as appropriate that is presumed to expire at the end of the school year.

(10) An ARL license may be extended annually for two subsequent school years with the following documentation of progress in the ARL program:

(a) a copy of the supervisor's successful end-of-year evaluation;

(b) copies of transcripts and test results, or both, showing completion of required coursework;

(c) verification of working with a trained mentor; and

(d) satisfaction of the full-time full year experience.

R277-503-8. LEA Specific Competency-Based Licenses.

(1)(a) An LEA may apply to the Board for a Level 1 competency-based license for an applicant to fill a position in the LEA.

(b) The application shall demonstrate that other licensing routes for the applicant are untenable or unreasonable.

(2) An employing LEA shall request a Level 1 competency-based license no later than 60 days after the date of the individual's first day of employment.

(3) An application for a Level 1 competency-based license from the LEA for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b)(i) for a K-6 grade teacher, the satisfactory results of the state test including subject knowledge and teaching skills in the required core academic subjects under Subsection 53E-6-306(3)(a)(ii) as approved by the Board; or

(ii) for a teacher in grades 7-12, demonstration of a high level of competency in each of the core academic subjects in which the teacher teaches by passing the state core academic subject test required under Subsection R277-503-3(4), in each of the core academic subjects in which the teacher teaches at the Superintendent-established passing score.

(4) An application for a Level 1 competency-based license from an LEA for non-core teachers in grades K-12 shall provide documentation of:

(a) a bachelors degree, associates degree or skill certification; and

(b) skills, talents or abilities specific to the teaching assignment, as determined by the LEA.

(5) Following receipt of documentation and consistent with Subsection 53E-6-306(2), the Superintendent shall approve a Level 1 competency-based license.

(6) If an individual with a Level 1 competency-based license leaves the LEA before the end of the employment period, the LEA shall notify the Superintendent regarding the end-of-employment date.

(7) An individual's Level 1 competency-based license shall be valid only in the LEA that originally requested the competency-based license.

(8) A written copy of a Level 1 competency-based license shall prominently state the name of the LEA followed by LEVEL 1 - LEA SPECIFIC - COMPETENCY-BASED LICENSE.

(9)(a) An LEA may change the assignment of a competency-based license holder and provide notice to the Superintendent;

(b) The Superintendent may require additional competency-based documentation for the teacher to remain qualified.

(10) A Level 1 competency-based license is equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations, and subject to the same renewal procedures except that an individual may renew a Level 1 competency-based license.

(11) A Level 2 competency-based license may be issued to a Level 1 competency-based license holder if that individual successfully completes the Entry years Enhancement program as detailed in R277-522.

(12) A Level 2 competency-based license is equivalent to the Level 2 license as described in R277-500 and R277-502 as to length and professional development expectations.

(13) A Level 3 competency-based license may be issued to a Level 2 competency-based license holder if that individual

holds a doctorate in education or in a field related to a content unit of the public education system from an accredited institution.

(14) A Level 3 competency-based license is equivalent to the Level 3 license as described in R277-500 and R277-502 as to length and professional development expectations.

(15) If an individual holds a Utah license, an application for an LEA specific competency-based license shall be subject to additional Superintendent review based upon the following criteria:

(a) license level;

(b) current license status;

(c) area of concentration and endorsements on Utah license; and

(d) circumstances justifying the LEA specific license.

(16)(a) If an application is not approved based on the Superintendent's review of the criteria provided in Section R277-503-4, appropriate licensure procedures shall be recommended to the requesting LEA.

(b) An applicant may be required to:

(i) renew an expired license;

(ii) apply for an endorsement;

(iii) pass appropriate Board approved tests consistent with Subsection R277-503-3(4);

(iv) obtain an additional area of concentration;

(v) apply to Alternative Route to Licensure; or

(vi) satisfy other reasonable standards.

R277-503-9. Endorsement Routes.

(1)(a) An applicant shall successfully complete one of the following programs for an endorsement:

(i) a Board-approved institution of higher education educator preparation program with endorsements;

(ii) assessment, approval, and recommendation by a designated and subject-appropriate Board specialist; or

(iii) a Board-approved Utah institution of higher education or Utah LEA-sponsored endorsement program that includes content knowledge and content-specific pedagogical knowledge approved by the Superintendent.

(b)(i) The Superintendent shall be responsible for final recommendation and approval for programs described in Subsections (1)(a)(i) and (ii).

(ii) A university or LEA shall be responsible for final review and recommendation of programs described in Subsection (1)(a)(iii), and the Superintendent shall be responsible for final approval.

(2)(a) A restricted endorsement shall be available and limited to teachers in necessarily existent small schools as determined under R277-445.

(b) Teacher qualifications shall include at least nine semester hours of Superintendent-approved university-level courses in each course taught by the teacher holding a restricted endorsement.

(3) All provisions that directly affect the health and safety of students required for endorsements, such as prerequisites for drivers education teachers or coaches, shall apply to applicants seeking endorsements through all routes under this rule.

(4) Prior to an individual taking courses, exams or seeking a recommendation in the ARL licensing program, the individual shall have LEA and Superintendent authorization.

KEY: teachers, alternative licensing
January 10, 2017 Art X Sec 3
Notice of Continuation November 15, 2016 53E-3-501(1)(a)
53E-3-401(4)

R277. Education, Administration.
R277-504. Early Childhood, Elementary, Secondary, Special Education (K-12), and Preschool Special Education (Birth-Age 5) Licensure.
R277-504-1. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of the public schools in the State Board of Education and by Subsection 53E-3-501(1)(a), which directs the Board to make rules regarding the licensing of educators, 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:

(1) specify the requirements for Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Secondary (6-12), Special Education (K-12), and Preschool Special Education (Birth-Age 5) licensing; and

(2) specify the standards which the Board expects a teacher preparation institution to meet in specific areas for the institution to receive Board approval of the program.

R277-504-2. Definitions.

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

B. "Council for Exceptional Children" is an international professional organization dedicated to improving the educational success of both individuals with disabilities and individuals with gifts and talents. CEC advocates for appropriate governmental policies, sets professional standards, provides professional development, advocates for individuals with exceptionalities, and helps professionals obtain conditions and resources necessary for effective professional practice.

C. "Early Childhood license area of concentration" means an Early Childhood Education teaching license required for teaching kindergarten and permitting assignment in kindergarten through grade three. It is recommended for those teaching in formal public school programs below kindergarten level.

D. "Early intervention credential" is the highest qualified personnel standard established by the Department of Health that persons shall meet in able to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings. In order to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings, an individual shall have an Early Intervention Credential or a Preschool Special Education (Birth-Age 5) license.

E. "Elementary (1-8) license area of concentration" means an Elementary teaching license required for teaching grades one through eight.

F. "Elementary (K-6) license area of concentration" means an Elementary teaching license required for teaching grades kindergarten through six.

G. "Endorsement" means a specialty field or area listed on the teaching license which indicates the specific qualification of the holder.

H. "Highest requirements in the State applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any State-approved or State-recognized certification, license, registration, or other comparable requirement that applies to that profession or discipline.

I. "IEP" means a written statement of an individualized education program by an IEP team and developed, reviewed, and revised in accordance with Utah State Board of Education Special Education Rules and the Part B of the IDEA.

J. "Internship" means the placement of a teacher education student in an advanced stage of preparation, as a culminating experience, in employment in a school setting for a period of up to one school year during which the intern shall receive salary proportionate to the service rendered as determined by the LEA. An intern is supervised primarily by the school system but with a continuing relationship with college personnel and following a planned program designed to produce a demonstrably competent professional.

K. "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 applicants who have also met all ancillary requirements established by law or rule.

L. "Level 2 license" means a Utah professional educator license issued by the Board after satisfaction of all requirements for a Level 1 license and:

(1) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;

(3) additional requirements established by law or rule.

M. "Preschool Special Education (Birth-Age 5) license area of concentration" means a teaching license required for teaching preschool students with disabilities.

N. "Secondary license area of concentration" means a Secondary teaching license required for teaching grades six through twelve. Secondary license areas carry endorsements for the areas in which the holder is qualified to provide instruction.

O. "Special Education license area of concentration (K-12)" means Special Education teaching license required for teaching students with disabilities in kindergarten through grade twelve. Special Education areas of concentration carry endorsements in at least one of the following areas:

(1) Mild/Moderate Endorsement which indicates that the holder's preparation focused on teaching students with mild/moderate learning and behavior problems;

(2) Severe Endorsement which indicates that the holder's preparation focused on teaching students with severe learning and behavior problems;

(3) Deaf and Hard of Hearing Endorsement which indicates that the holder's preparation focused on teaching students who are deaf or other hearing impaired;

(4) Blind and Visually Impaired Endorsement which indicates that the holder's preparation focused on teaching students who are blind or other visually impaired; and

(5) Deafblind Endorsement which indicates that the holder's preparation focused on teaching students who are both blind or other visually impaired and deaf or other hearing impaired.

P. "Student teaching" means the placement of a teacher education student in an advanced stage of preparation for a period of guided teaching in a school setting during which the student assumes increasing responsibility for directing the learning of a group or groups of students over a period of time.

Q. "USOE" means the Utah State Office of Education.

R277-504-3. General Standards for Approval of Programs for the Preparation of Teachers.

A. The Board may approve the educator preparation program of an institution if the institution:

(1) prepares candidates to meet the Utah Effective Teaching Standards in R277-530;

(2) prepares candidates to teach the Utah Core Standards, the Utah Early Childhood Core Standards, and the Essential Elements as appropriate to the area of licensure as established by the Board;

(3) requires candidates to maintain a cumulative university

GPA of 3.0 and receive a C or better in all education related courses and major required content courses:

(a) This requirement applies to candidates admitted to the program after January 1, 2015.

(b) A candidate admitted to the program with a GPA below 3.0 under the 10 percent waiver provided in R277-502-3D shall maintain an overall GPA of 3.0 for all coursework completed after the candidate's admission to the program;

(4) requires the study of:

(a) content and content-specific pedagogy appropriate for the area of licensure;

(b) knowledge and skills designed to assist in the identification of students with disabilities and to meet the needs of students with disabilities in the regular classroom. Knowledge and skills shall include the following domains:

(i) knowledge of disabilities under IDEA and Section 504 of the Rehabilitation Act;

(ii) knowledge of the role of non-special-education teachers in the education of students with disabilities;

(iii) skills in providing tier one instruction on the Utah Core Standards and positive behavior supports to students with disabilities within a multi-tiered system of supports including:

(A) assessing and monitoring the education needs and progress of students with disabilities;

(B) implementing and assessing the results of interventions; and

(C) skills in the implementation of an educational program with accommodations and modifications established by an IEP or 504 plan for students with disabilities in the regular classroom; and

(c) knowledge and skills designed to meet the needs of diverse student populations in the regular classroom. These skills for diverse student populations shall include the skills to:

(i) allow teachers to create an environment using a teaching model that is sensitive to multiple experiences and diversity;

(ii) design, adapt, and deliver instruction to address each student's diverse learning strengths and needs; and

(iii) incorporate tools of language development into planning and instruction for English language learners and support development of English proficiency; and

(5) requires a student teaching culminating experience that:

(a) requires a minimum of 400 clock hours with at least 200 clock hours in a single placement;

(b) requires that student teachers meet the same contract hours as licensed teachers in the same LEA;

(c) requires that the student teacher not be employed in any capacity by the LEA where he is placed except as provided in R277-504-7B;

(d) includes placement in all content or licensure areas in which the candidate shall be licensed unless:

(i) no viable student teaching placement in one or more of the candidate's endorsement areas is available; or

(ii) the candidate is seeking a license in Elementary (1-8) and is completing an elementary student teaching placement, but has also completed the USOE course requirements for an endorsement;

(e) includes intermittent supervision and evaluation by institution personnel;

(f) includes direct supervision of the candidate by a classroom teacher that:

(i) has been jointly selected by the institution student teaching placement officer and the LEA-designated authority over student teaching placement;

(ii) has been deemed effective by an evaluation system meeting the standards of R277-531 or the LEA's equivalent; and

(iii) has received training from the institution on the role and responsibilities of a classroom mentor teacher for student teachers, including the standards of R277-515;

(g) include meaningful self-reflection with review and feedback from both the classroom mentor teacher and institution personnel; or

(6) Requires an internship culminating experience that:

(a) consists of full-time employment as an educator for one school year with a minimum of 1260 clock hours at a single school site;

(b) requires that interns meet the same contract teaching hours as licensed teachers in the same LEA;

(c) includes placement in the major content or licensure area in which the candidate shall be licensed;

(d) where possible, includes placement in all content or licensure areas in which the candidate shall be licensed unless:

(i) no viable internship in one or more of the candidate's non-major endorsement areas could be found; or

(ii) the candidate is seeking licensure in Elementary (1-8) and is completing an elementary internship, but has also completed the USOE course requirements for an endorsement;

(e) includes intermittent supervision and evaluation by institution personnel;

(f) includes an LEA assigned mentor that:

(i) has been jointly selected by the institution internship placement officer and the LEA-designated authority over internship placement;

(ii) has been deemed effective by an evaluation system meeting the standards of R277-531 or the LEA's equivalent; and

(iii) provides direct support and supervision to the intern during the regular school day in addition to the standard LEA supports of new teachers.

(g) includes meaningful self-reflection with review and feedback from both the assigned mentor and institution personnel;

B. The Board may accept the following for an individual candidate as completely or partially satisfying the student teaching/internship requirement:

(1) one year of full-time contract teaching experience in a teaching position as defined in R277-503-4(C)(4) in a public or accredited private school in the candidate's proposed licensure content areas may completely satisfy the requirement;

(2) teaching in a preschool or Headstart program may be accepted for up to one-half of the student teaching requirement;

(3) teaching experience in business or industry may be accepted for up to one-half of the student teaching requirement; and

(4) other experience accepted by the Board and designated as totally or partially fulfilling the requirement.

R277-504-4. Early Childhood Education (K-3) and Elementary (K-6) License Areas.

A. The Board may approve the Early Childhood Education (K-3), Elementary (K-6), Elementary (1-8) teacher preparation program of an institution if the program:

(1) is aligned with the 2010 National Association for the Education of Young Children Standards for Initial and Advanced Early Childhood Professional Preparation Programs or the 2007 Association for Childhood Education International Standards for Elementary Level Teacher Preparation, as appropriate; and

(2) requires study and experiences which provide appropriate content knowledge needed to teach:

(a) literacy including listening, speaking, writing, and reading;

(b) mathematics;

(c) physical and life science;

(d) health and physical education;

(e) social studies; and

(f) fine arts; and

(3) includes coursework specifically designed to prepare

teachers:

(a) in the science of reading instruction including phonemic awareness, phonics, fluency, vocabulary and comprehension;

(b) in the science of mathematics instruction including quantitative reasoning, problem solving, representation, and numeracy;

(c) with the technical skills to utilize common education technology;

(d) to integrate technology to support and meaningfully supplement the learning of students;

(e) to facilitate student use of software for personalized learning;

(f) to teach effectively in traditional, online-only, and blended classrooms;

(g) to design, administer, and review educational assessments in a meaningful and ethical manner;

(h) in early childhood development and learning, if it is an Early Childhood Education (K-3), or Elementary (K-6); and

(i) in a specific content area resulting in an endorsement added to the license area, if it is an Elementary (1-8) program.

B. The standards shall be applied to the specific age group or grade level for which the program of preparation is designed.

(1) An Early Childhood Education (K-3) program shall focus primarily on early childhood development and learning.

(2) An Elementary (K-6) shall include both early childhood development and learning and elementary content and pedagogy.

(3) An Elementary (1-8) shall focus primarily on elementary content and pedagogy.

C. A teacher holding an Elementary (1-8) license area may earn an Early Childhood (K-3) license area by completing specific coursework requirements established by USOE.

D. An Elementary (1-8) license permits the teacher to teach in any academic area in self-contained classes in grades 1-8.

E. An Elementary (1-8) license permits the teacher to teach specific content courses at the 7th or 8th grade level only if the teacher's license includes the appropriate endorsement.

R277-504-5. Secondary (6-12) License Area.

A. A Secondary (6-12) license area with endorsement(s) is valid in grades six through twelve.

B. A Secondary (6-12) license area requires a major or major equivalent in a content area, but the teacher cannot teach in an elementary self-contained class.

C. The Board may approve the secondary educator preparation program of an institution if the program:

(1) is an undergraduate level program and requires candidates to have completed:

(a) an approved content area or teaching major consistent with subjects taught in Utah secondary schools; and

(b) content coursework reasonably equivalent to that required for individuals completing a non-teaching degree in the subject; or

(2) Is a graduate level program and requires candidates to have completed:

(a) a bachelor's degree or higher from an accredited university; and

(b) coursework equivalent to the minimum requirements for an endorsement as established by USOE, including the appropriate content knowledge assessment; and

(3) includes coursework specifically designed to prepare candidates:

(a) with the technical skills necessary to utilize common education technology;

(b) to integrate technology to support and meaningfully supplement the learning of students;

(c) to facilitate student use of software for personalized learning;

(d) to teach effectively in traditional, online-only, and blended classrooms;

(e) to design, administer, and review educational assessments in a meaningful and ethical manner; and

(f) to include literacy and quantitative learning objectives in content specific classes in alignment with the Utah Core Standards.

D. After completing a Board-approved Secondary (6-12) educator preparation program, the license area shall be endorsed for all subjects in which the candidate has met the course requirements for the endorsement as established by USOE.

(1) A content area or teaching major requires not fewer than 30 semester hours of credit in one content area.

(2) An endorsement requires not fewer than 16 semester hours of credit in one content area.

R277-504-6. Special Education (K-12+) and Preschool Special Education (Birth-Age 5).

A. The Board may approve an institution's special education teacher preparation program if the program is aligned with the 2011 Council for Exceptional Children Special Education Standards for Professional Practice and is focused in one or more of the following special education areas:

(1) Mild/Moderate Disabilities

(2) Severe Disabilities

(3) Deaf and Hard of Hearing;

(4) Blind and Visually Impaired;

(5) Deafblind; or

(6) Preschool Special Education (Birth-Age 5).

B. The Board may issue teachers who hold Special Education (K-12+) license areas additional endorsements if all endorsement requirements are met. Teachers who hold only a Special Education (K-12+) license area may only be assigned as a teacher of record of students with disabilities.

C. The Board may approve a special education preparation program of an institution if the program includes coursework specifically designed to train candidates to:

(1) understand the legal and ethical issues surrounding special education;

(2) comply with IDEA and Utah State Board of Education Special Education Rules;

(3) work with other school personnel to implement and evaluate academic and positive behavior supports and interventions for students with disabilities within a multi-tiered system of supports;

(4) train and monitor education teachers, related service providers, and paraeducators in providing services and supports to students with disabilities;

(5) provide the necessary specialized instruction, as per IEPs, to students with disabilities, including

(a) core content from the Utah Early Childhood Core Standards and the Essential Elements and content specific pedagogy;

(b) skills in assessing and addressing the educational needs and progress of students with disabilities;

(c) skills in implementing and assessing the results of research and evidence-based interventions for students with disabilities; and

(d) skills in the implementation of an educational program with accommodations and modifications established by an IEP for students with disabilities.

D. The Board may issue Blind and Visually Impaired/Deaf and Hard of Hearing Endorsements required under this rule to meet the highest requirements in the State applicable to a specific profession or discipline required by the Individuals with Disabilities Education Act of 2004 (IDEA), Pub. L. No. 108-446, hereby incorporated by reference.

E. Preschool Special Education (Birth-Age 5) license

holders who teach children who are hearing impaired (Birth-Age 5) or vision impaired (Birth-Age 5) or both, in self-contained, categorical classrooms shall hold an endorsement for Deaf and Hard of Hearing (Birth-Age 5) or Blind and Visually Impaired (Birth-Age 5) or both.

R277-504-7. Miscellaneous.

A. Beginning with the 2015-2016 school year, an LEA that employs intern teachers shall have a policy that includes the following:

(1) the maximum number of interns that may be supported by each LEA assigned mentor, and

(2) a specific resource commitment to significant and quality LEA support services to interns.

B. The Middle Level license (5-9) continues to be valid; however, the Board has not issued a middle level license (5-9) since April 1, 1989 and it is no longer required of teachers or issued to teachers assigned to the middle school.

C. Consistent with LEA and university policy and R277-508-5E, a student teacher may work as a paid substitute in the classroom of the student teacher's classroom mentor teacher for no more than five days and no more than three consecutive days per university semester.

D. On the days a student teacher is working as a substitute teacher, the candidate's legal status as a substitute teacher/district employee will take precedence over the legal status as a teacher candidate.

E. A student teaching placement may be changed to an internship placement upon agreement of the student teacher, the university program, and the LEA.

KEY: teacher licensing, professional education
May 8, 2015 **Art X Sec 3**
Notice of Continuation September 2, 2014 **53E-3-501(1)(a)**
53E-3-401(4)

R277. Education, Administration.
R277-508. Employment of Substitute Teachers.
R277-508-1. 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 make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53E-3-501(1)(a), which directs the Board to make rules regarding the qualifications of educators and ancillary personnel providing direct student services.

(2) The purpose of this rule is to establish eligibility requirements and employment procedures for substitute teachers.

R277-508-2. Definitions.

(1) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" means the electronic file maintained on all licensed Utah educators, which includes:

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history;

(e) professional development information; and

(f) a record of disciplinary action taken against the educator.

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

(3) "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a Utah public school.

(4) "Substitute teacher" means an individual employed to take the place of a regular teacher who is temporarily absent.

R277-508-3. Hiring Priorities and Eligibility.

(1) An LEA shall give first priority in hiring substitute teachers to those who hold a valid license in the subject matter they will be teaching as a substitute.

(2) An LEA shall give second priority in hiring substitute teachers to persons who have a valid license in a field commonly taught in public schools.

(3) An LEA shall give third priority in hiring substitute teachers to persons with a college degree.

(3) An LEA shall evaluate prospective substitute teachers to ensure that they are capable of managing a class and carrying out the instructional program.

(4) A person seeking employment as a substitute teacher shall furnish evidence as requested from the hiring LEA that the person is physically and mentally fit to work.

(5)(a) An LEA may not employ any individual as a substitute teacher whose license has been revoked or is currently suspended by the Board or the licensing entity of another jurisdiction.

R277-508-4. Employment Procedures.

(1) An LEA shall establish policies for hiring substitute teachers, which shall include a requirement:

(a) that the LEA's staff obtain verification from CACTUS that an applicant's license has not been revoked or suspended; and

(b) for substitute teachers to have criminal background checks consistent with Rule R277-516.

(2) An LEA shall have a policy, which includes:

(a) periodic evaluation of substitute teachers; and

(b) a salary schedule to pay substitute teachers according to their training, experience, and competency.

(3) A regular teacher shall have lesson plans immediately available for use by substitute teachers.

(4) A student teacher may substitute in a class consistent with the instructions and policies from the higher education institution which the student attends.

A paraprofessional may substitute in a class consistent with LEA policies.

KEY: teachers, professional competency, school personnel
May 8, 2018 **Art X Sec 3**
Notice of Continuation April 2, 2018 **53E-3-501(1)(a)**
53E-3-401

R277. Education, Administration.
R277-510. Educator Licensing - Highly Qualified Assignment.
R277-510-1. 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)(a), which directs the Board to establish rules setting minimum standards for educators who provide direct student services; and

(c) Subsection 53E-3-401(4), which permits the Board to adopt rules in accordance with its responsibilities.

(2) The purpose of this rule is to provide definitions and requirements for an educator assignment to meet federal requirements for highly qualified status.

R277-510-2. Definitions.

(1) "Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).

(2) "Highly qualified" means a teacher has met the specific requirements of ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23) or 34 CFR 200.56.

(3) "License endorsement" or "endorsement" means:

(a) a speciality field or area earned through completing required course work established by the Superintendent or through demonstrated competency approved by the Superintendent; and

(b) listed on the Professional Educator License indicating the specific qualifications of the holder.

(4) "NCLB" means the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), 20 U.S.C. 7801.

(5) "Restricted endorsement" means an endorsement available and limited to teachers in necessarily existent small schools as determined under R277-445 that includes at least nine semester hours of Superintendent-approved university-level courses in each course taught by the teacher holding a restricted endorsement.

(6) "Teacher of record" for the purposes of this rule means the teacher to whom students are assigned for purposes of reporting for data submissions to the Superintendent.

R277-510-3. NCLB Highly Qualified Assignments - Early Childhood Teachers K-3.

(1) For a teacher assignment in kindergarten through grade 3 to be designated as NCLB highly qualified, the teacher shall have:

(a) a bachelor's degree;

(b) a Utah educator license with an early childhood area of concentration; and

(c) a passing score at the level designated by the Superintendent on a Board-approved content knowledge test.

(2) NCLB requirements do not apply to pre-k assignments.

R277-510-4. NCLB Highly Qualified Assignments - Elementary Teachers 1-8.

For a teacher assignment in grades 1 through 8 in an elementary setting to be designated as NCLB highly qualified, the teacher shall have:

(1) a bachelor's degree;

(2) a Utah educator license with an elementary area of concentration; and

(3) a passing score at the level designated by the Superintendent on a Board-approved content knowledge test.

R277-510-5. NCLB Highly Qualified Assignments - Secondary Teachers 6-12.

(1) For a teacher assignment in grades 6 through 12 to be designated as NCLB highly qualified, the teacher shall have:

(a) a bachelor's degree;

(b) a Utah educator license with a secondary area of concentration and endorsement in the content area assigned; and

(c) at least one of the following in the assignment content area:

(i) a university major degree, masters degree, doctoral degree, or National Board Certification in a related NCLB core academic content area;

(ii) a course work equivalent of a major degree (30 semester or 45 quarter hours) in a related NCLB core academic content area; or

(iii) a passing score at the level designated by the Superintendent on a Board-approved content knowledge test in a related NCLB core academic content area; if no Board-approved test is available, an endorsement is sufficient for highly qualified status.

(2) An assignment in grades 7 or 8 in a secondary setting given to a teacher holding an elementary area of concentration may be designated as NCLB highly qualified if the teacher holds an endorsement in the content area and meets one of the requirements of Subsection R277-510-5(1)(c).

(3) The requirements described in this section only apply to NCLB core academic subject assignments.

(4) Each NCLB core academic course assignment in grades 6 through 12 is subject to the above standards.

R277-510-6. NCLB Highly Qualified Assignments - Special Education Teachers.

(1) For a special education teacher assignment in grades k-8, excluding grade 7 or 8 mathematics, as the classroom teacher of record for a NCLB core academic subject to be designated as NCLB highly qualified, the teacher shall have:

(a) a bachelor's degree;

(b) a Utah educator license with a special education area of concentration; and

(c) a passing score on a Board-approved elementary content test.

(2) A special educator who would be NCLB highly qualified as a teacher of record in an elementary or early childhood regular education assignment is also NCLB highly qualified as a teacher of record in a special education assignment.

(3) For a special education teacher assignment in grades 7-12 as the classroom teacher of record for a NCLB core academic subject to be designated as NCLB highly qualified, the teacher shall have:

(a) a bachelor's degree;

(b) a Utah educator license with a special education area of concentration; and

(c) any one of the following in the assignment content area:

(i) a passing score at the level designated by the Superintendent on a Board-approved content knowledge test in a related NCLB core academic content area;

(ii) documentation of satisfactory professional development and experience as approved by the Superintendent in a related NCLB core academic content area;

(iii) a university major degree, masters degree, doctoral degree, or National Board Certification in a related NCLB core academic content area; or

(iv) a course work equivalent of a major degree (30 semester or 45 quarter hours) in a related NCLB core academic content area.

(4)(a) IDEA may contain requirements for teacher qualifications in addition to the requirements of NCLB and this

rule.

(b) R277-510 does not replace, supersede, or nullify any of the teacher qualification requirements of IDEA.

R277-510-7. NCLB Highly Qualified Assignments - Necessarily Existent Small Schools 7 - 12.

For a necessarily existent small school teacher assignment in grades 7 through 12 to be designated as NCLB highly qualified, the teacher shall have:

(1) a bachelor's degree;

(2) an educator license with a secondary area of concentration;

(3) an endorsement in the assignment content area; and

(4) at least one of the following in the assignment content area:

(a) a university major degree, masters degree, doctoral degree, or National Board Certification;

(b) a course work equivalent of a major degree (30 semester or 45 quarter hours);

(c) a passing score at the level designated by the Superintendent on a Board-approved content knowledge test; or

(d) documentation of satisfactory professional development and experience as approved by the Superintendent in a related NCLB core academic content area.

R277-510-8. LEA Highly Qualified Plans.

(1) An LEA shall submit a plan to the Superintendent describing strategies for progressing toward and maintaining the highly qualified status of all educator assignments.

(2) A plan described in Subsection (1) shall be updated annually.

(3) The Superintendent shall review LEA plans and provide technical support to LEAs to assist them in carrying out their plans to the extent of staff and resources available.

(4) The Superintendent shall set timelines for submission and review of LEA plans.

R277-510-9. Highly Qualified Timelines and Rules in Relation to Other Board Rules.

(1) Documented determinations of highly qualified status under previously enacted Board rules shall remain in effect notwithstanding any subsequent changes in highly qualified requirements.

(2) Other Board rules may include requirements related to licensure or educator assignment that do not specifically apply to NCLB highly qualified assignment status.

(3) This R277-510 does not supersede, replace, or nullify any of the requirements in other Board rules.

KEY: educators, highly qualified
March 9, 2016 **Art X Sec 3**
Notice of Continuation January 14, 2016 **53E-3-501(1)(a)**
53E-3-401(4)

R277. Education, Administration.
R277-511. Academic Pathway to Teaching (APT) Level 1 License.
R277-511-1. 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-6-201(2)(a), which allows the board by rule, to rank, endorse, or otherwise to:

(i) classify licenses; and

(ii) establish the criteria for an educator to obtain or retain a license; 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 standards and procedures:

(a) for an applicant to obtain an Academic Pathway to Teaching (APT) level 1 license; and

(b) for an APT level 1 license holder to obtain a level 2 license.

R277-511-2. Definitions.

(1)(a) "APT level 1 license" means a license obtained through the academic path to teaching process as described in this rule.

(b) "APT level 1 license" includes:

(i) an APT level 1 license with an Elementary (K-6) Concentration; and

(ii) an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement.

(2) "LEA administrator" means a school building principal or LEA administrator who:

(i) supervises an APT level 1 licensee; and

(ii) may recommend the APT level 1 licensee for Level 2 licensure to the Superintendent as described in Section R277-511-7.

(3) "Teacher leader" means a teacher designated as a teacher leader as described in R277-513.

R277-511-3. Superintendent Responsibilities.

(1) The Superintendent shall create an application for an APT level 1 license and publish the application on the Board's website.

(2) The Superintendent shall approve an application for an APT level 1 license if the applicant meets all of the requirements of Section R277-511-4 or Section R277-511-5.

R277-511-4. Requirements for an APT Level 1 License with an Elementary (K-6) Concentration.

(1) To qualify for an APT level 1 license with an Elementary (K-6) Concentration, an applicant shall:

(a) complete the application described in Subsection R277-511-3(1);

(b) have completed a bachelor's degree or higher;

(c) submit postsecondary transcripts to the Superintendent;

(d) receive a passing score on the Elementary Education: Multiple Subjects Praxis Assessment;

(e) complete the educator ethics review on the Board's website;

(f) successfully pass a background check as described in R277-516; and

(g) pay the applicable licensing fee.

(2) An APT level 1 license with an Elementary (K-6) Concentration is:

(a) equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations; and

(b) subject to the same renewal procedures.

R277-511-5. Requirements for an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement.

(1) To qualify for an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement, an applicant shall:

(a) complete the application described in Subsection R277-511-3(1);

(b) have completed a bachelor's degree or higher;

(c) submit postsecondary transcripts to the Superintendent;

(d) receive a passing score on one of the following that is related to the subject, field, or area to which they are seeking an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement:

(i) a Praxis II Subject Assessment; or

(ii) another Board-approved content knowledge assessment;

(e) complete the educator ethics review on the Board's website;

(f) successfully pass a background check as described in R277-516; and

(g) pay the applicable licensing fee.

(2) Except as provided in Subsection (3), an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement is:

(a) equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations; and

(b) subject to the same renewal procedures.

(3) An APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement holder may only seek an additional endorsement after the APT Level 1 License with a Secondary (6-12) Concentration holder obtains a level 2 license.

R277-511-6. Requirements for an LEA that Employs an APT Level 1 License Holder.

If an LEA employs an APT level 1 license holder, the LEA shall:

(1) assign a teacher leader to serve as a mentor to the APT level 1 license holder;

(2) prepare the APT level 1 license holder to meet the Utah Effective Educator Standards described in R277-530-5;

(3) prepare a mentoring plan for each APT Level 1 license holder; and

(4) provide an APT Level 1 license holder's mentoring plan to the Superintendent upon request.

R277-511-7. Requirements for an APT Level 1 License Holder to Gain a Level 2 License.

(1) To receive a Level 2 license, an APT level 1 license holder shall:

(a)(i) complete three years of teaching full-time in one LEA under supervision of the teacher leader mentor and LEA administrator; or

(ii) complete four years of at least 0.4 FTE teaching in one LEA under the supervision of a teacher leader mentor and the LEA administrator;

(b) satisfy all Entry Years Enhancement for Quality Teaching requirements designated in R277-522;

(c) complete the requirements of the APT Level 1 license holder's mentoring plan;

(d) complete any additional requirements of the recommending LEA, including coursework and professional learning that the recommending LEA requires;

(e) complete the educator ethics review on the Board's website;

(f) renew the educator's background check as required in R277-516; and

(g) obtain a recommendation from the LEA administrator; and

(h) pay applicable licensing fees.

(2)(a) An APT level 1 license holder seeking a level 2 license may request a one year extension of the APT level 1 license at the recommendation of the LEA Administrator up to a maximum of two one-year extensions.

(b) Unless required by the recommending LEA, the years of teaching in Subsection (1)(a) do not need to be consecutive.

KEY: Academic Pathway to Teaching, educator licensure
December 8, 2016 **Art X Sec 3**
53E-6-201
53E-3-401(4)

R277. Education, Administration.
R277-512. Online Licensure.
R277-512-1. 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; 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 to ensure that consistency, quality, and fairness are maintained for online license transaction processes.

R277-512-2. Definitions.

(1)(a) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on licenses and license applications, which may include:

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history;

(e) professional development information; and

(f) a record of disciplinary action taken by the Board against the educator.

(b) Information contained in an individual's CACTUS file may only be released in accordance with Title 63G, Chapter 2, Government Records Access Management Act.

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

(3) "License," for purposes of this rule, means an authorization issued by the Board which permits the holder to serve in a professional capacity in the public schools consistent with Subsection 53E-6-102(10).

(4) "License record" means the electronic record of license holder and license applicant personal information and credentials maintained by the Superintendent on the CACTUS database.

(5) "License transaction" means the interactions between a license holder or applicant and the Superintendent that result in issuance of:

(a) a license;

(b) a renewal of a license; or

(c) a modification of a license or license record.

(6) "Online license transaction" means those license transactions that take place via the process maintained by a contracted provider, chosen by the Superintendent.

(7) "Utah Professional Practices Advisory Commission" or "UPPAC" means a Commission established to assist and advise the Board in matters relating to the professional practices of educators, consistent with Title 53E, Chapter 6, Part 5, Utah Professional Practices Advisory Commission.

R277-512-3. Procedures.

(1) All current Board rules, statutory and Board definitions, and requirements established by statute and Board rules shall apply to all license transactions, regardless of whether the transactions occur online or by other means.

(2)(a) Educators may receive an electronic or paper verification of a licensure transaction.

(b) A verification provided under Subsection (2)(a) is not an educator license.

(3) CACTUS shall be the final repository of educator information and credentials for LEAs and other authorized CACTUS users.

(4) Timelines, electronic processes and procedures, payment procedures, formats, and other elements of online licensure transactions shall meet standards of quality, ease of use, and accessibility consistent with those generally found in other wide-spread online processes.

(5) The Superintendent shall conduct educator licensing transactions electronically.

(6) Approved Utah educator preparation institutions, LEAs, and other CACTUS users shall cooperate with the Superintendent by using the online tools and procedures provided by the Superintendent for transmission of information related to licensing.

R277-512-4. Audits.

(1) The Superintendent shall establish an auditing program that provides for review of online licensure transactions for:

(a) accuracy;

(b) reliability; and

(c) completeness.

(2) The Superintendent may subject any licensure transaction to audit:

(a) within one year without cause; or

(b) at any time with cause.

(3) An LEA may designate individuals, subject to approval by the Superintendent, to have the opportunity to access and review licenses acquired or renewed online to verify licensure of employees.

(4)(a) An audit conducted under Subsection (2) may include a review of license holder documentation to verify the statements made by the license holder as part of the online license transaction.

(b) In order to verify that the assertions made by a license holder were accurate, a license holder may be required to submit:

(i) transcripts;

(ii) records of participation in professional development activities;

(iii) supervisor letters or endorsements; and

(iv) other documentation requested by the Superintendent.

(5) If an audit finds that a license applicant or license holder intentionally provided false, misleading, or otherwise inaccurate information in a license transaction, the audit findings shall be forwarded to UPPAC.

(6) A license transaction that was completed on the basis of inaccurate information may be voided at any time with notice to the license holder.

R277-512-5. License Applicant and License Holder Responsibilities.

(1) A license applicant or license holder shall supply accurate and complete information in all license transactions.

(2) A license applicant or license holder shall maintain files and documentation of the information provided in a license transaction for a period of one year after the completion of the license transaction.

(3) A license applicant or license holder that supplies inaccurate, misleading, false, or otherwise unreliable information in any license transaction shall be subject to the full range of disciplinary actions that may be applied by UPPAC and the Board.

R277-512-6. Licensing Costs.

(1) The licensing process shall be automated and self-sustaining.

(2) The Superintendent shall incorporate current and emerging electronic and information technologies to better meet the needs of applicants for new licenses, for current license holders, for recommending institutions, for LEAs and the general public.

(3) The Superintendent shall determine and assess

licensing fees to license applicants that cover the actual and complete costs of licensing.

(4) The Board's Licensing Section shall maintain accurate records and documentation of:

(a) fees assessed;

(b) costs of online licensing; and

(c) any Superintendent review responsibilities.

R277-512-7. Licensing Records.

(1) The Superintendent shall record documentation of online licensure transactions in CACTUS.

(2)(a) License applicants shall be required to submit a social security number in order to be licensed.

(b) A license applicant's social security number shall be classified as private in accordance with Subsection 63G-2-302(2)(d).

(3) A license applicant or license holder shall update personal CACTUS information in a timely manner.

(4) CACTUS records may be used by the Superintendent for research and other valid educational purposes.

(5) The following records shall be classified as public pursuant to Title 63G, Chapter 2, Government Records Access and Management Act:

(a) licenses issued by the Board;

(b) endorsements on an educator's license;

(c) an educator's current assignment;

(d) an educator's assignment history in Utah public schools;

(e) an educator's education background; and

(f) Board disciplinary action against an educator's license, which resulted in:

(i) letter of reprimand;

(ii) suspension;

(iii) revocation; or

(iv) reinstatement.

(6) The Superintendent shall provide an online licensing database where the general public may access the information classified as public in Subsection (5).

KEY: online, licensure
January 10, 2017 Art X Sec 3
Notice of Continuation November 15, 2016 53E-3-501(1)(a)
53E-3-401(4)

R277. Education, Administration.
R277-513. Teacher Leader.
R277-513-1. 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-6-902, which requires the Board to:

(i) define the role of a teacher leader; and

(ii) establish the minimum criteria for a teacher to qualify as a teacher leader; 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) define the role of a teacher leader; and

(b) establish the minimum criteria for a teacher to qualify as a teacher leader.

R277-513-2. Definitions.

As used in this section, "teacher" has the same meaning as that term is defined in Section 53E-6-902.

R277-513-3. Minimum Criteria for a Teacher Leader.

An LEA may designate a teacher as a teacher leader if the teacher:

(1) is a level 2 or level 3 licensed teacher;

(2) has an educator evaluation effectiveness rating of effective or highly effective for at least two years prior to being designated as a teacher leader;

(3) demonstrates competence in working with adult learners and peers;

(4) demonstrates consistent leadership, focused collaboration, distinguished teaching, and continued professional growth; and

(5) is recommended by the building administrator to be designated as a teacher leader.

R277-513-4. Roles of a Teacher Leader.

A teacher leader's role may include:

(1) generally supporting school-based professional learning;

(2) training, supervising, and mentoring student teachers and new teachers;

(3) modeling effective instructional strategies for other teachers;

(4) serving as an instructional coach to develop effective instruction;

(5) guiding other educators in collecting, understanding, analyzing, and interpreting student-achievement data and using those findings to improve instruction;

(6) leading specific school improvement initiatives;

(7) leading efforts to modify or improve curriculum;

(8) acting as a liaison for community projects;

(9) serving as a learning facilitator for professional learning activities; and

(10) facilitating and coordinating professional learning communities.

R277-513-5. LEA Teacher Leader Compensation and Accommodations.

An LEA should:

(1) provide a bonus, pay increase, or other monetary incentive to compensate a teacher leader for the teacher leader's time performing duties described in Section R277-513-4; and

(2) reduce a teacher leader's classroom workload to provide the teacher leader time to perform the duties described in Section R277-513-4.

KEY: teachers, leaders, qualifications
November 7, 2016 **Art X Sec 3**
53E-6-902
53E-3-401(4)

R277. Education, Administration.
R277-514. Deaf Education in Public Schools.
R277-514-1. 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)(a), which requires the Board to establish the qualification and certification of educators.

(2) The purpose of this rule is to specify the requirements for Deaf Education licensing.

R277-514-2. Deaf Education (Birth to Age 22) License Area of Concentration.

(1) A deaf education (birth to age 22) license area of concentration permits an educator to teach a class composed of deaf and hard of hearing students from birth to age 22 if the educator holds the appropriate endorsement as described in R277-520-4.

(2) The Board may approve an application for a Deaf Education license area of concentration if the applicant:

(a)(i) completes a deaf education teacher preparation program approved by the Board as described in Section R277-514-3; or

(ii) holds a valid deaf education license issued by a state other than Utah under the National Association of State Directors of Teacher Education and Certification Interstate Agreement;

(b) passes a deaf education competency exam approved by the Board;

(c) has met the requirements of at least one of the following endorsements:

(i) Listening and Spoken Language endorsement, which indicates that the endorsement holder's preparation focused on teaching deaf and hard of hearing students with listening and spoken language strategies; or

(ii) ASL/English-bilingual/bicultural endorsement, which indicates that the endorsement holder's preparation focused on strategies that promote the development of American Sign Language and English literacy across the curriculum; and

(d) if the applicant intends to teach in grades six through twelve, has met the requirements of at least one content specific area endorsement.

R277-514-3. Deaf Education Program.

The Board may approve an institution of higher education's deaf education teacher preparation program if the program includes course work specifically designed to train candidates to:

(1) understand the legal and ethical issues surrounding deaf education;

(2) comply with:

(a) the Individuals with Disabilities Education Act of 2004, Pub. L. No. 108-446; and

(b) Board rule;

(3) address specific linguistic and cultural needs of deaf and hard of hearing students throughout the curriculum;

(4) demonstrate techniques for incorporating language into all aspects of the curriculum;

(5) demonstrate pedagogical skills unique to teaching reading, writing, math and other content areas to deaf and hard of hearing students;

(6) demonstrate basic fluency in the use of American Sign Language;

(7) understand audiological and physiological components of audition;

(8) understand techniques for teaching speech to deaf and hard of hearing students;

(9) understand the socio-cultural and psychological implications of hearing loss; and

(10) assess and address the educational needs and educational progress of deaf and hard of hearing students.

KEY: licensing, deaf education
August 7, 2017 **Art X Sec 3**
53E-3-401(4)
53E-3-501(1)(a)

R277. Education, Administration.
R277-515. Utah Educator Professional Standards.
R277-515-1. 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 schools in the Board;

(b) Subsection 53E-3-501(1)(a), which directs the Board to make rules regarding the certification of educators;

(c) Title 53E, Chapter 6, Educator Licensing and Professional Practices Act, which provides all laws related to educator licensing and professional practices; 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 statewide standards for public school educators that provide notice to educators and prospective educators and notice and protection to public school students and parents;

(b) recognize that licensed public school educators are professionals and, as such, should share common professional standards, expectations, and role model responsibilities; and

(c) distinguish behavior for which educators shall receive license discipline from behavior that all Utah educators should aspire to and for which license discipline shall be initiated only in egregious circumstances or following a pattern of offenses.

R277-515-2. Definitions.

(1)(a) "Boundary violation" means crossing verbal, physical, emotional, and social lines that an educator must maintain in order to ensure structure, security, and predictability in an educational environment.

(b) A "boundary violation" may include the following, depending on the circumstances:

(i) isolated, one-on-one interactions with students out of the line of sight of others;

(ii) meeting with students in rooms with covered or blocked windows;

(iii) telling risqué jokes to, or in the presence of a student;

(iv) employing favoritism to a student;

(v) giving gifts to individual students;

(vi) educator initiated frontal hugging or other uninvited touching;

(vii) photographing individual students for a non-educational purpose or use;

(viii) engaging in inappropriate or unprofessional contact outside of educational program activities;

(ix) exchanging personal email or phone numbers with a student for a non-educational purpose or use;

(x) interacting privately with a student through social media, computer, or handheld devices; and

(xi) discussing an educator's personal life or personal issues with a student.

(c) "Boundary violations" does not include:

(i) offering praise, encouragement, or acknowledgment;

(ii) offering rewards available to all who achieve;

(iii) asking permission to touch for necessary purposes;

(iv) giving pats on the back or a shoulder;

(v) giving side hugs;

(vi) giving handshakes or high fives;

(vii) offering warmth and kindness;

(viii) utilizing public social media alerts to groups of students and parents; or

(ix) contact permitted by an IEP or 504 plan.

(2)(a) "Conviction" means the final disposition of a judicial action for a criminal offense, except in cases of a dismissal on the merits.

(b) "Conviction" includes:

(i) a finding of guilty by a judge or jury;

(ii) a guilty or no contest plea; and

(iii) a plea in abeyance.

(3) "Core Standard" means a statement:

(a) of what a student enrolled in a public school is expected to know and be able to do at a specific grade level or following completion of an identified course; and

(b) established by the Board in Rule R277-700 as required by Section 53E-3-501.

(4) "Diversion agreement" means an agreement between a prosecutor and defendant entered into prior to a conviction delaying prosecution of a criminal charge for a specified period of time and contingent upon the defendant satisfying certain conditions.

(5)(a) "Educator" or "professional educator" means a person who currently holds a Utah educator license, held a license at the time of an alleged offense, is an applicant for a license, or is a person in training to obtain a license.

(b) "Professional educator" does not include a paraprofessional, a volunteer, or an unlicensed teacher in a classroom.

(6) "Illegal drug" means a substance included in:

(a) Schedules I, II, III, IV, or V established in Section 58-37-4;

(b) Schedules I, II, III, IV, or V of the federal Controlled Substances Act, Title II, Pub. L. No. 91-513; or

(c) any controlled substance analog.

(7) Grooming" means befriending and establishing an emotional connection with a child or a child's family to lower the child's inhibitions for emotional, physical, or sexual abuse.

(8) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

(9) "License applicant" means a person who is applying for:

(a) an initial license; or

(b) renewal of a license.

(10) "Licensing discipline" means a sanction, including an admonition, a letter of warning, a written reprimand, suspension of license, and revocation of license, or other appropriate disciplinary measure, for violation of a professional educator standard.

(11) "Misdemeanor offense," for purposes of this rule, does not include Class C or lower violations of Title 41, Utah Motor Vehicle Code

(12) "Plea in abeyance" means a plea of guilty or no contest that is not entered as a judgment or conviction but is held by a court in abeyance for a specified period of time.

(13) "Pornographic or indecent material" shall have the same meaning as defined in Subsection 76-10-1235(1)(a).

(14) "School-related activity" means any event, activity, or program:

(a) occurring at the school before, during, or after school hours; or

(b) that a student attends at a remote location as a representative of the school or with the school's authorization, or both.

(15) "Stalking" means the act of intentionally or knowingly engaging in a course of conduct directed at a specific person as defined in Section 76-5-106.5.

(16)(a) "Under the influence of alcohol or an illegal drug" means that a person:

(i) is under the influence of alcohol, an illegal drug, or the combined influence of alcohol and drugs to a degree that renders the person incapable of effectively working in a public school;

(ii) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test; or

(iii) has a blood or breath alcohol concentration of .08 grams or greater during work hours at a public school.

(b) An educator is presumed to be "under the influence of alcohol or an illegal drug" if the educator refuses a lawful request, made with reasonable suspicion by the educator's LEA, to submit to a drug or alcohol test.

(17) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, as established by Section 53E-6-501.

(18) "Weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury.

R277-515-3. Educator as a Role Model of Civic and Societal Responsibility.

(1) The professional educator is responsible for compliance with federal, state, and local laws.

(2) The professional educator shall familiarize himself or herself with professional ethics and is responsible for compliance with applicable professional standards.

(3) Failing to strictly adhere to Subsection (4) shall result in licensing discipline in accordance with Rule R277-215.

(4) The professional educator, upon receiving a Utah educator license:

(a) may not be convicted of any felony or misdemeanor offense that adversely affects the individual's ability to perform an assigned duty and carry out the responsibilities of the profession, including role model responsibility;

(b) may not be convicted of or commit any act of violence or abuse, including physical, sexual, or emotional abuse of any person;

(c) may not commit any act of cruelty to a child or any criminal offense involving a child;

(d) may not be convicted of a stalking crime;

(e) may not possess or distribute an illegal drug or be convicted of any crime related to an illegal drug, including a prescription drug not specifically prescribed for the individual;

(f) may not engage in conduct of a sexual nature described in Section 53E-6-603;

(g) may not be convicted of or subject to a diversion agreement for a sex-related or drug-related offense;

(h) may not provide to a student or allow a student under the educator's supervision or control to consume an alcoholic beverage or unauthorized drug;

(i) may not attend school or a school-related activity in an assigned employment-related capacity while possessing, using, or under the influence of alcohol or an illegal drug;

(j) may not intentionally exceed the prescribed dosage of a prescription medication while at school or a school-related activity;

(k) shall cooperate in providing all relevant information and evidence to the proper authority in the course of an investigation by a law enforcement agency or by the Division of Child and Family Services regarding potential criminal activity, except that an educator may decline to give evidence against himself or herself in an investigation if the evidence may tend to incriminate the educator as that term is defined by the Fifth Amendment of the U.S. Constitution;

(l) shall report suspected child abuse or neglect to law enforcement or the Division of Child and Family Services pursuant to Sections 53E-6-701 and 62A-4a-409 and comply with rules and LEA policy regarding the reporting of suspected child abuse;

(m) shall strictly adhere to state laws regarding the possession of a firearm while on school property or at a school-sponsored activity and enforce an LEA policy related to student access to or possession of a weapon;

(n) may not solicit, encourage, or consummate an inappropriate relationship, whether written, verbal, or physical, with a student or minor;

(o) may not engage in grooming of a student or minor;

(p) may not:

(i) participate in sexual, physical, or emotional harassment towards any public school-age student or colleague; or

(ii) knowingly allow harassment toward a student or colleague;

(q) may not make inappropriate contact in any communication, including written, verbal, or electronic, with a minor, student, or colleague, regardless of age or location;

(r) may not interfere or discourage a student's or colleague's legitimate exercise of political and civil rights, acting consistent with law and LEA policy;

(s) shall provide accurate and complete information in a required evaluation of himself or herself, another educator, or student, as directed, consistent with the law;

(t) shall be forthcoming with accurate and complete information to an appropriate authority regarding known educator misconduct that could adversely impact performance of a professional responsibility, including a role model responsibility, by himself or herself, or another;

(u) shall provide accurate and complete information required for licensure, transfer, or employment purposes;

(v) shall provide accurate and complete information regarding qualifications, degrees, academic or professional awards or honors, and related employment history when applying for employment or licensure;

(w) shall notify the Superintendent at the time of application for licensure of past license disciplinary action or license discipline from another jurisdiction;

(x) shall notify the Superintendent honestly and completely of past criminal convictions at the time of the license application and renewal of licenses;

(y) shall provide complete and accurate information during an official inquiry or investigation by LEA, state, or law enforcement personnel; and

(z) shall report an arrest, citation, charge, or conviction to the educator's LEA in accordance with Section R277-516-3.

(5) An LEA shall report violations described in Subsection (4) to UPPAC.

(6)(a) Failure to adhere to this Subsection (6) may result in licensing discipline in accordance with Rule R277-215.

(b) A penalty shall be imposed, most readily, if an educator has received a previous documented warning from the educator's employer.

(c) An educator may not:

(i) exclude a student from participating in any program or deny or grant any benefit to any student on the basis of race, color, creed, sex, national origin, marital status, political or religious belief, physical or mental condition, family, social, or cultural background, or sexual orientation; and

(ii) may not engage in conduct that would encourage a student to develop a prejudice on the grounds described in Subsection (6)(c)(i) or any other, consistent with the law.

(d) An educator shall maintain confidentiality concerning a student unless revealing confidential information to an authorized person serves the best interest of the student and serves a lawful purpose, consistent with:

(i) 53E-9-202, Utah Family Educational Rights and Privacy Act; and

(ii) the Federal Family Educational Rights and Privacy Acts, 20 U.S.C. Sec. 1232g and 34 CFR Part 99.

(e) Consistent with Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, Section 53E-3-512, and rule, a professional educator:

(i) may not accept a bonus or incentive from a vendor or potential vendor or a gift from a parent of a student, or a student

where there may be the appearance of a conflict of interest or impropriety;

(ii) may not accept or give a gift to a student that would suggest or further an inappropriate relationship;

(iii) may not accept or give a gift to a colleague that is inappropriate or furthers the appearance of impropriety;

(iv) may accept a donation from a student, parent, or business donating specifically and strictly to benefit a student;

(v) may accept, but not solicit, a nominal appropriate personal gift for a birthday, holiday, or teacher appreciation occasion, consistent with LEA policy and Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(vi) may not use the educator's position or influence to:

(A) solicit a colleague, student, or parent of a student to purchase equipment, supplies, or services from the educator or participate in an activity that financially benefits the educator unless approved in writing by the LEA; or

(B) promote an athletic camp, summer league, travel opportunity, or other outside instructional opportunity from which the educator receives personal remuneration and that involve students in the educator's school system, unless approved in writing consistent with LEA policy and rule; and

(vii) may not use school property, a facility, or equipment for personal enrichment, commercial gain, or for personal uses without express supervisor permission.

R277-515-4. Educator Responsibility for Maintaining a Safe Learning Environment and Educational Standards.

(1) A professional educator maintains a positive and safe learning environment for a student and works toward meeting an educational standard required by law.

(2)(a) Failure to strictly adhere to this Subsection (2) shall result in licensing discipline in accordance with Rule R277-215.

(b) The professional educator, upon receiving a Utah educator license:

(i) shall take prompt and appropriate action to prevent harassment or discriminatory conduct toward a student or school employee that may result in a hostile, intimidating, abusive, offensive, or oppressive learning environment;

(ii) shall resolve a disciplinary problem according to law, LEA policy, and local building procedures and strictly protect student confidentiality and understand laws relating to student information and records;

(iii) shall supervise a student appropriately at school and a school-related activity, home or away, consistent with LEA policy and building procedures and the age of the students;

(iv) shall take action to protect a student from any known condition detrimental to that student's physical health, mental health, safety, or learning;

(v)(A) shall demonstrate honesty and integrity by strictly adhering to all state and LEA instructions and protocols in managing and administering a standardized test to a student consistent with Section 53E-4-312 and Rule R277-404;

(B) shall cooperate in good faith with a required student assessment;

(C) shall submit and include all required student information and assessments, as required by statute and rule; and

(D) shall attend training and cooperate with assessment training and assessment directives at all levels;

(vi) may not use or attempt to use an LEA computer or information system in violation of the LEA's acceptable use policy for an employee or access information that may be detrimental to young people or inconsistent with the educator's role model responsibility;

(vii) may not knowingly possess, while at school or any school-related activity, any pornographic or indecent material in any form;

(viii) may not knowingly use school equipment to view, create, distribute, or store pornographic or indecent material in any form; and

(ix) may not knowingly use, view, create, distribute, or store pornographic or indecent material involving children.

(3) An LEA shall report violations of Subsection (2) to UPPAC.

(4)(a) Failure to adhere to this Subsection (4) may result in licensing discipline in accordance with Rule R277-215.

(b) A penalty shall be imposed, most readily, if an educator has received a previous documented warning from the educator's employer.

(c) A professional educator:

(i) shall demonstrate respect for a diverse perspective, idea, and opinion and encourage contributions from a broad spectrum of school and community sources, including a community whose heritage language is not English;

(ii) shall use appropriate language, eschewing profane, foul, offensive, or derogatory comments or language;

(iii) shall maintain a positive and safe learning environment for a student;

(iv) shall make appropriate use of technology by:

(A) involving students in social media responsibly, transparently, and primarily for purposes of teaching and learning per school and district policy;

(B) maintaining separate professional and personal virtual profiles;

(C) respecting student privacy on social media; and

(D) taking appropriate and reasonable measures to maintain confidentiality of student information and education records stored or transmitted through the use of electronic or computer technology;

(v) shall work toward meeting an educational standard required by law;

(vi) shall teach the objectives contained in a Core Standard;

(vii) may not distort or alter subject matter from a Core Standard in a manner inconsistent with the law;

(viii) shall use instructional time effectively consistent with LEA policy; and

(ix) shall encourage a student's best effort in an assessment.

R277-515-5. Professional Educator Responsibility for Compliance with LEA Policy.

(1)(a) Failure to strictly adhere to this Subsection (1) shall result in licensing discipline in accordance with Rule R277-215.

(b) A professional educator:

(i) understands, respects, and does not violate appropriate boundaries:

(A) established by ethical rules and school policy and directive in teaching, supervising, and interacting with a student or colleague; and

(B) described in Subsection R277-515-2(1); and

(ii) shall conduct financial business with integrity by honestly accounting for all funds committed to the educator's charge, as school responsibilities require, consistent with LEA policy.

(2) An LEA shall report violations of Subsection (1) to UPPAC.

(3)(a) Failure to adhere to this Subsection (3) may result in licensing discipline in accordance with Rule R277-215.

(b) A penalty shall be imposed most readily, if an educator has received a previous documented warning from the educator's employer.

(c) The professional educator:

(i) understands and follows a rule and LEA policy;

(ii) understands and follows a school or administrative policy, procedure, or documented directive specific to a rule or policy;

(iii) resolves a grievance with a student, colleague, school community member, and parent professionally, with civility, and in accordance with LEA policy; and

(iv) follows LEA policy for collecting money from a student, accounting for all money collected, and not commingling any school funds with personal funds.

R277-515-6. Professional Educator Conduct.

(1) A professional educator exhibits integrity and honesty in relationships with an LEA administrator or personnel.

(2)(a) Failure to adhere to this Subsection (2) may result in licensing discipline in accordance with Rule R277-215.

(b) A penalty shall be imposed most readily, if an educator has received a previous documented warning from the educator's employer.

(c) The professional educator:

(i) shall communicate professionally and with civility with a colleague, school and community specialist, administrator, and other personnel;

(ii) shall maintain a professional and appropriate relationship and demeanor with a student, colleague, school community member, and parent;

(iii) may not promote a personal opinion, personal issue, or political position as part of the instructional process in a manner inconsistent with law;

(iv) shall express a personal opinion professionally and responsibly in the community served by the school;

(v) shall comply with an LEA policy, supervisory directive, and generally-accepted professional standard regarding appropriate dress and grooming at school and at a school-related event;

(vi) shall work diligently to improve the educator's own professional understanding, judgment, and expertise;

(vii) shall honor all contracts for a professional service;

(viii) shall perform all services required or directed by the educator's contract with the LEA with professionalism consistent with LEA policy and rule; and

(ix) shall recruit another educator for employment in another position only within a LEA timeline and guideline.

R277-515-7. Violations of Professional Ethics.

(1) This rule establishes standards of ethical decorum and behavior for licensed educators in the state.

(2) Beginning in the 2018-19 school year, to obtain a license or renew a license issued by the Board, a license applicant shall review this rule and execute a form as part of the licensure or renewal process verifying that the educator:

(a) has read R277-515 and R277-516; and

(b) understands that the educator's conduct is governed by R277-515 and R277-516.

(3) An LEA shall:

(a) annually train educators employed by the LEA on the Utah Educator Professional Standards described in Rules R277-515 and R277-516; and

(b) provide written assurance of the training described in Subsection (3)(a) in accordance with R277-108.

(4) Provisions of this rule do not prevent, circumvent, replace, nor mirror criminal or potential charges that may be issued against a professional educator.

(5) The Board and Superintendent shall adhere to the provisions of this rule in licensing and disciplining a licensed Utah educator.

(6) Reporting and employment provisions related to professional ethics are provided in:

(a) Section 53G-11-406;

(b) Section 53E-6-604;

(c) Section 53G-8-503; and

(d) Section R277-516-7.

KEY: educators, professional, standards

December 1, 2017	**Art X Sec 3**
Notice of Continuation November 6, 2017	**53E-3-501(1)(a)**
	53E-6
	53E-3-401(4)

R277. Education, Administration.
R277-516. Professional Standards and Training for Non-licensed Employees and Volunteers.
R277-516-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b)(i) Subsection 53E-3-301(3), which instructs the Superintendent to perform duties assigned by the Board that include:

(ii) presenting to the Governor and the Legislature each December a report of the public school system for the preceding year that includes:

(A) investigation of all matters pertaining to the public schools; and

(B) statistical and financial information about the school system which the Superintendent considers pertinent;

(c) Subsections 53E-3-501(1)(a)(i) and (iii), which direct the Board to:

(i) establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services; and

(ii) the evaluation of instructional personnel; and

(d) Title 53G, Chapter 11, Part 4, Background Checks, which directs the Board to require educator license applicants to submit to background checks and provide ongoing monitoring of licensed educators.

(2) The purpose of this rule is to ensure that all students who are compelled by law to attend public schools, subject to release from school attendance consistent with Section 53G-6-204, are instructed and served by public school teachers and employees who have not violated laws that would endanger students in any way.

R277-516-2. Definitions.

(1) "Association" means the same as that term is defined in Subsection 53G-7-1101(3).

(2) "Charter school governing board" means a board designated by a charter school to make decisions for the operation of the charter school.

(3) "Charter school board member" means a current member of a charter school governing board.

(4) "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the database maintained on all licensed Utah educators, which includes information such as:

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history;

(e) professional development information;

(f) completion of employee background checks; and

(g) a record of disciplinary action taken against the educator.

(5) "Contract employee" means an employee of a staffing service who works at a public school under a contract between the staffing service and the public school.

(6) "DPS" means the Department of Public Safety.

(7) "LEA" or "local education agency" for purposes of this rule includes the Utah Schools for the Deaf and the Blind.

(8)(a) "Licensed educator" means an individual who holds a valid Utah educator license and has satisfied all requirements to be a licensed educator in the Utah public school system (examples are traditional public school teachers, charter school teachers, school administrators, Board employees, and school district specialists).

(b) A licensed educator may or may not be employed in a position that requires an educator license.

(c) A licensed educator includes an individual who:

(i) is student teaching;

(ii) is in an alternative route to licensing program or position; or

(iii) holds an LEA-specific competency-based license.

(9) "Non-licensed public education employee" means an employee of a an LEA who:

(a) does not hold a current Utah educator license issued by the Board under Title 53E, Chapter 6, Educator Licensing and Professional Practices Act; or

(b) is a contract employee.

(10) "Public education employer" means the education entity that hires and employs an individual, including public school districts, the Utah State Office of Education, Regional Service Centers, and charter schools.

(11) "Utah Professional Practices Advisory Commission" or "UPPAC" means an advisory commission established to assist and advise the Board in matters relating to the professional practices of educators, established in Section 53E-6-501.

(12) "Volunteer" means a volunteer who may be given significant unsupervised access to children in connection with the volunteer's assignment.

R277-516-3. Licensed Public Education Employee Personal Reporting of Arrests.

(1) A licensed educator who is arrested, cited or charged with the following alleged offenses shall report the arrest, citation, or charge within 48 hours or as soon as possible to the licensed educator's district superintendent, charter school director or designee:

(a) any matters involving an alleged sex offense;

(b) any matters involving an alleged drug-related offense;

(c) any matters involving an alleged alcohol-related offense;

(d) any matters involving an alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person;

(e) any matters involving an alleged felony offense under Title 76, Chapter 6, Offenses Against Property;

(f) any matters involving an alleged crime of domestic violence under Title 77, Chapter 36, Cohabitant Abuse Procedures Act; and

(g) any matters involving an alleged crime under federal law or the laws of another state comparable to the violations listed in Subsections (a) through (f).

(2) A licensed educator shall report convictions, including pleas in abeyance and diversion agreements within 48 hours or as soon as possible upon receipt of notice of the conviction, plea in abeyance or diversion agreement.

(3) An LEA superintendent, director, or designee shall report conviction, arrest or offense information received from a licensed educator to the Superintendent within 48 hours of receipt of information from a licensed educator.

(4) The Superintendent shall develop an electronic reporting process on the Board's website.

(5) A licensed educator shall report for work following an arrest and provide notice to the licensed educator's employer unless directed not to report for work by the employer, consistent with school district or charter school policy.

R277-516-4. Non-licensed Public Education Employee, Volunteer, and Charter School Board Member Background Check Policies.

(1) An LEA shall adopt a policy for non-licensed public education employee, volunteer, and charter school board member background checks that includes at least the following components:

(a) a requirement that the individual submit to a background check and ongoing monitoring through registration

with the systems described in Section 53G-11-404 as a condition of employment or appointment; and

(b) identification of the appropriate privacy risk mitigation strategy that will be used to ensure that the LEA only receives notifications for individuals with whom the LEA maintains an authorizing relationship.

(2) An LEA policy shall describe the background check process necessary based on the individual's duties.

R277-516-5. Non-licensed Public Education Employee, Volunteer, or Charter School Board Member Arrest Reporting Policy Required from LEAs.

(1) An LEA shall have a policy requiring a non-licensed public employee, a volunteer, a charter school board member, or any other employee who drives a motor vehicle as an employment responsibility, to report offenses specified in Subsection (3).

(2) An LEA shall post the policy described in Subsection (1) on the LEA's website.

(3) An LEA's policy described in Subsection (1) shall include the following minimum components:

(a) reporting of the following:

(i) convictions, including pleas in abeyance and diversion agreements;

(ii) any matters involving arrests for alleged sex offenses;

(iii) any matters involving arrests for alleged drug-related offenses;

(iv) any matters involving arrests for alleged alcohol-related offenses; and

(v) any matters involving arrests for alleged offenses against the person under Title 76, Chapter 5, Offenses Against the Person.

(b) a timeline for receiving reports from non-licensed public education employees;

(c) immediate suspension from student supervision responsibilities for alleged sex offenses and other alleged offenses which may endanger students during the period of investigation;

(d) immediate suspension from transporting students or public education vehicle operation or maintenance for alleged offenses involving alcohol or drugs during the period of investigation;

(e) adequate due process for the accused employee consistent with Section 53G-11-405;

(f) a process to review arrest information and make employment or appointment decisions that protect both the safety of students and the confidentiality and due process rights of employees and charter school board members; and

(g) timelines and procedures for maintaining records of arrests and convictions of non-licensed public education employees and charter school board members.

(4) An LEA shall ensure that the records described in R277-516-5(3)(g):

(a) include final administrative determinations and actions following investigation; and

(b) are maintained:

(i) only as necessary to protect the safety of students; and

(ii) with strict requirements for the protection of confidential employment information.

R277-516-6. Association Professional Standard Setting, Training, and Monitoring.

(1) Beginning with the 2017-2018 school year, a public school may not be a member of, or pay dues to an association that adopts rules or policies that are inconsistent with this R277-516-6.

(2) An association shall establish policies or rules that require:

(a) coaches and individuals who oversee interscholastic activities or work with students as part of an interscholastic activity to meet a set of professional standards that are consistent with the Utah Educator Professional Standards described in Rule R277-515; and

(b) the association or public school to annually train each coach or other individual who oversees or works with students as part of an interscholastic activity of a public school on the following:

(i) child sexual abuse prevention as described in Section 53G-9-207;

(ii) the prevention of bullying, cyber-bullying, hazing, harassment, and retaliation as described in:

(A) Title 53G, Chapter 9, Part 6, Bullying and Hazing; and

(B) R277-613; and

(iii) the professional standards described in Subsection (2)(a).

(3) An association shall establish procedures and mechanisms to:

(a) monitor LEA compliance with the association's training requirements described in Subsection (2); and

(b) track the employment history of individuals who receive a certification from the association.

R277-516-7. Public Education Employer Responsibilities Upon Receipt of Arrest Information.

(1) A public education employer that receives arrest information about a licensed public education employee shall review the arrest information and assess the employment status consistent with Section 53E-6-604, Rule R277-515, and the LEA's policy.

(2) A public education employer that receives arrest information about a non-licensed public education employee, volunteer, or charter school board member shall review the arrest information and assess the individual's employment or appointment status:

(a) considering the individual's assignment and duties; and

(b) consistent with a local board-approved policy for ethical behavior of non-licensed employees, volunteers, and charter school board members.

(3) A local board shall provide appropriate training to non-licensed public education employees, volunteers, and charter school board members about the provisions of the local board's policy for self-reporting and ethical behavior of non-licensed public education employees, volunteers, and charter school board members.

(4) A public education employer shall cooperate with the Superintendent in investigations of licensed educators.

R277-516-8. Misconduct Notification Requirements and Procedures.

(1)(a) An educator who has reasonable cause to believe that a student may have been physically or sexually abused by a school's employee shall immediately report that belief to:

(i) law enforcement;

(ii) the school principal; and

(iii) to any other entity to which a report is required by law.

(b) A school administrator who receives a report described in Subsection (1)(a) shall immediately submit the information to UPPAC if the employee is licensed as an educator.

(2) A local superintendent or charter school director shall notify UPPAC if an educator is determined, pursuant to an administrative or judicial action, or internal LEA investigation, to have had disciplinary action taken for, or, to have engaged in:

(a) unprofessional conduct or professional incompetence that:

(i) results in suspension for more than one week or termination;

(ii) requires mandatory licensing discipline under R277-

515; or

(iii) otherwise warrants UPPAC review; or

(b) immoral behavior.

(3) An educator who fails to comply with Subsection (1) may:

(a) be found guilty of unprofessional conduct; and

(b) have disciplinary action taken against the educator.

(4) The Superintendent may withhold, reduce, or terminate funding to an LEA for failure to make a required report under this R277-516 through the process described in Rule R277-114.

KEY: background checks, school employees, self reporting

September 21, 2017	**Art X Sec 3**
Notice of Continuation July 19, 2017	**53E-3-301(3)(a)**
	53E-3-301(3)
	53E-3-501(1)(a)(i)
	53E-3-501(1)(a)(iii)

R277. Education, Administration.
R277-517. LEA Codes of Conduct.
R277-517-1. 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 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 require LEAs to create a code of conduct applicable to the LEA's staff.

R277-517-2. Definitions.

(1) "Boundary violation" means the same as that term is defined in R277-515.

(2) "Staff" or "staff member" means an employee, contractor, or volunteer with unsupervised access to students.

R277-517-3. Required Code of Conduct.

(1) Each LEA shall adopt a code of conduct applicable to the LEA's staff.

(2) A code of conduct, adopted pursuant to Subsection (1), shall include, at a minimum:

(a) a statement that a staff member should avoid boundary violations, as defined in Rule R277-515, with students;

(b) a statement that a staff member may not subject a student to:

(i) physical abuse;

(ii) verbal abuse;

(iii) sexual abuse; or

(iv) mental abuse;

(c) a statement that a staff member shall report any suspected incidents of:

(i) physical abuse;

(ii) verbal abuse;

(iii) sexual abuse;

(iv) mental abuse; or

(v) neglect;

(d) a statement that a staff member may not touch a student in a way that makes a reasonably objective student feel uncomfortable;

(e) a statement regarding appropriate verbal or electronic communication between a staff member and a student;

(f) a statement regarding providing gifts, special favors, or preferential treatment to a student or group of students;

(g) a statement that a staff member shall not discriminate against a student on the basis of sex, race, religion, or any other prohibited class;

(h) a statement regarding appropriate use of electronic devices and social media for communication between a staff member and a student;

(i) a statement regarding use of alcohol, tobacco, and illegal substances during work hours and on school property;

(j) a statement that a staff member is required to:

(i) report any suspicion of child abuse or bullying to the proper authorities;

(ii) annually read and sign all policies related to identifying, documenting, and reporting child abuse; and

(iii) for an employee or contractor, annually attend abuse prevention training required in Section 53G-9-207; and

(3) An LEA shall post a code of conduct adopted pursuant to Subsection (1) on the LEA's website.

(4) An LEA shall provide information to staff that they should report and how to report:

(a) known violations of the LEA's code of conduct; and

(b) known violations of the Utah Educator Standards contained in R277-515.

KEY: codes of conduct
January 10, 2017 **Art X Sec 3**
53E-3-401(4)

R277. Education, Administration.
R277-518. Career and Technical Education Licenses.
R277-518-1. 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 53E-6-201 which permits the Board to issue licenses for educators, and Subsection 53E-3-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards for a CTE license area and endorsements. An appropriate CTE or secondary license area and appropriate endorsement(s) are required for all persons teaching CTE programs at the secondary and adult level where high school credit is earned. Specific to adult education, an appropriate CTE, elementary or secondary license area is required for all persons awarding adult education high school completion credits in multiple subjects consistent with R277-733-4L.

R277-518-2. Definitions.

A. "Adult education" means organized and structured programs or competencies which directly or indirectly prepare students for post-secondary or training opportunities, and/or entering and retaining employment opportunities. Adult education programs provide qualifying out-of-school youth and adult students with literacy skills below the collegiate/post-secondary level with a continuous education system, driven by a student education occupational plan (SEOP), through competency-based instruction, with opportunities to improve their basic literacy levels, English as a second language skills, or high school level of education consistent with R277-733.

B. "ARL Program" means the alternative licensing route as provided in R277-503-4, administered by USOE.

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

D. "Career and technical education (CTE)" means organized educational programs or competencies which directly or indirectly prepare students for employment, or for additional preparation leading to employment, in occupations where entry requirements do not generally require a baccalaureate or advanced degree. CTE programs provide all students a continuous education system, driven by a student education occupational plan (SEOP), through competency-based instruction, culminating in essential life skills, certified occupational skills, and meaningful employment. Categories include agriculture; business; family and consumer sciences; health science; information technology; marketing; skilled and technical sciences; technology and engineering education; and work-based learning, consistent with R277-916.

E. "CTE Alternative Preparation Program (APP) license area of concentration (license area)" means the provisional license area of concentration issued prior to March 1, 2014 by the Board for a three year period which enables the holder to teach only in a specific CTE or technical field, or adult education in the public school system and may require educational coursework.

F. "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 applicants who have also met all ancillary requirements established by law or rule.

G. "Level 2 license" means a Utah professional educator license issued by the Board after satisfaction of all requirements for a Level 1 license and:

(1) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;

(3) additional requirements established by law or rule.

H. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school, or holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

I. "A license area of concentration (license area)" is obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies such as Early Childhood (K-3), Elementary 1-8, Middle (5-9) (still valid, but not issued after 1988), Secondary (6-12), Administrative/Supervisory, CTE, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders. License areas of concentration may also bear endorsements relating to subjects or specific assignments.

J. "USOE" means the Utah State Office of Education.

R277-518-3. CTE License Required.

A CTE or secondary license area with appropriate endorsements is required for all persons teaching CTE programs at the secondary and adult level where high school credit is earned.

R277-518-4. Career and Technical Education License Area Eligibility.

A. To be eligible to earn a CTE license area through the ARL Program, an applicant shall:

(1) have six years of documented, related occupational experience within the 10 years prior to the Program application in any of the following CTE license areas:

(a) family and consumer sciences;

(b) health sciences;

(c) information technology;

(d) skilled and technical sciences; or

(e) work-based learning; and

(2) have documentation:

(a) of an offer of a teaching assignment in a Utah public or accredited private school;

(b) that is directly related to the applicant's occupational experience; and

(c) of experience which is in an approved CTE license area.

B. Periods of employment lasting less than one month and periods of employment prior to 18 years of age are not accepted for purposes of calculating the occupational experience requirement.

C. An associate's degree in a related area may be counted for up to two years of occupational experience to satisfy the requirement in R277-518-4A(1).

D. An applicant for a CTE license area is not required to have a bachelor's degree.

E. State-approved testing:

The occupational experience requirement may be waived by the appropriate USOE Program Specialist or Coordinator if the applicant has passed a state-approved competency examination in the respective field at or above the USOE established cut-off scores. Individual applicant scores may be used for licensing purposes up to five years after completion of the respective examination(s).

F. In addition to meeting the requirements of R277-518-

4A(1), an ARL Program applicant for a CTE license area shall:

(1) meet all endorsement specific standards established by the USOE; and

(2) hold the applicable license issued by the Utah State Department of Commerce, Division of Occupational and Professional Licensing in any area where such licensure or certification exists.

G. An applicant for a CTE license area shall complete pedagogical coursework or satisfy pedagogical standards consistent with R277-503-4. An ARL Program applicant for a CTE license area shall provide evidence of mastery of the following areas of pedagogy:

(1) instruction, technology, assessment, and planning;

(2) creation of a learning environment;

(3) basic special education/IDEA requirements;

(4) teaching diverse populations; and

(5) literacy strategies in content areas.

H. An applicant for a CTE license area shall provide documentation of participation in transition to teaching orientation and participation in the CTE New Teacher Academy.

I. An ARL Program applicant for a CTE license area with an adult education endorsement is restricted to employment in an accredited adult education program.

R277-518-5. Career and Technical Education Speciality License Area.

A. If an ARL Program applicant is teaching one CTE course and is employed for less than 0.37 FTE in relation to the respective school schedule, the ARL Program applicant may earn a CTE Specialist license area with one year of teaching experience and the recommendation of the employing LEA, in lieu of the CTE license area provided in R277-518-4, in the following endorsement areas:

(1) Adult Education;

(2) Exercise Science/Sports Medicine;

(3) Pharmacy Technician;

(4) Fire Science;

(5) Law Enforcement;

(6) Nurse Assistant; and

(7) Additional areas as approved by USOE in which professionals are required to meet licensure requirements outside of educator licensure.

B. The ARL Program applicant shall:

(1) have had regular employment in the CTE license area in which he is assigned to teach;

(2) have had one year of public school teaching experience; and

(3) have the recommendation of the employing LEA.

C. A CTE specialty license area ARL applicant is not required to pay the ARL professional growth plan fee. These applicants shall not receive ongoing monitoring or program completion support from the USOE ARL office beyond the request for licensure recommendation at the completion of one year of teaching.

D. A CTE specialty license area is only valid for employment in the areas listed in R277-518-5A as long as the holder is teaching one CTE course and is employed for less than 0.37 FTE.

E. An individual holding a CTE Specialist license area may be upgraded to a regular CTE license area or Secondary (6-12) license area upon payment of the additional license area recommendation fee, the completion of the requirements of R277-518-4F, and the recommendation of the employing LEA.

F. An individual with a CTE specialist Level 1 license area shall continue as a Level 1 license holder indefinitely despite the Level 1 limitations in R277-502-4A(6), but shall satisfy the requirements of Section 53E-6-401 and a subsequent review prior to classroom employment, consistent with LEA employment policies.

KEY: educator licensing, professional education, career and technical education

March 10, 2014 Art X Sec 3

Notice of Continuation February 26, 2018 53E-6-201

53E-3-401(3)

R277. Education, Administration.
R277-519. Educator Professional Learning Procedures and USBE Credit.
R277-519-1. 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 allows the Board to make rules regarding the qualifications of personnel providing direct student services and the certification of educators; 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 establish definitions and standards for awarding USBE credit for professional learning.

R277-519-2. Definitions.

"Professional learning" has the same meaning as provided in Subsection 53G-11-303(1).

R277-519-3. Professional Learning Requirements for Course Submission.

(1) The Superintendent shall approve proposals for USBE professional learning.

(2) A professional learning proposal described in Subsection (1) shall include:

(a) a description of how the proposal provides fidelity to the professional learning standards as provided in Section 53G-11-303;

(b) a descriptive outline of the professional learning;

(c) a schedule of meeting dates and times; and

(d) professional qualifications of each instructor.

(3) An LEA or other organization approved by the Superintendent shall request approval for USBE professional learning credit through the online professional learning system connected to the online Board certification system.

(4) An LEA or other organization approved by the Superintendent shall make a request under Subsection (3) at least one week prior to the beginning of the scheduled professional learning.

R277-519-4. USBE Professional Learning Credit.

(1) The Superintendent shall award USBE credit upon completion of professional learning as follows:

(a) one-half credit for seven to thirteen contact hours plus a two hour assigned learning task or reflection;

(b) one credit for fourteen to twenty contact hours plus a four hour assigned learning task or reflection;

(2) Total credit for a professional learning course may not exceed 3 credits.

KEY: teacher certification, professional competency
January 9, 2018 **Art X Sec 3**
Notice of Continuation February 14, 2017 **53E-3-501(1)(a)**
53E-3-401(4)

R277. Education, Administration.
R277-520. Appropriate Licensing and Assignment of Teachers.
R277-520-1. 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-6-201(2)(a), which authorizes the Board to rank, endorse, or classify licenses.

(2) The purpose of this rule is to provide criteria for:

(a) local school boards to employ educators in appropriate assignments;

(b) the Board to provide state funding to local school boards for appropriately qualified and assigned staff; and

(c) the Board and local school boards to satisfy the requirements of ESEA in order for local school boards to receive federal funds.

R277-520-2. Definitions.

(1) "Content specialist" means a licensed educator who provides instruction or specialized support for students and teachers in a school setting.

(2) "Core academic subjects or areas" under the Elementary and Secondary Education Act (ESEA), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11) means:

(a) English;
(b) reading or language arts;
(c) mathematics;
(d) science;
(e) foreign languages;
(f) civics and government;
(g) economics;
(h) arts;
(i) history; and
(j) geography.

(3) "Demonstrated competency" means that a teacher shall demonstrate current expertise to teach a specific class or course through the use of lines of evidence which may include:

(a) completed Board approved course work;
(b) content tests; or
(c) years of successful experience including evidence of student performance.

(4) "Eminence" means distinguished ability in rank, in attainment of superior knowledge and skill in comparison with the generally accepted standards and achievements in the area in which the authorization is sought as provided in R277-520-5.

(5) "Letter of authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by an LEA.

(6) "Level 1 license" means:

(a) a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program; or

(b) pursuant to an agreement under the NASDTEC Interstate Agreement, to candidates who have also met all ancillary requirements established by law or rule.

(7) "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.

(8) "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.

(9)(a) "License areas of concentration" means a designation to a license obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies that may include:

(i) Early Childhood (k-3);
(ii) Elementary (k-6);
(iii) Elementary 1-8;
(iv) Middle (still valid, but not issued after 1988, 5-9);
(v) Secondary (6-12):
(vi) Administrative/Supervisory (k-12);
(vii) Career and Technical Education;
(viii) School Counselor;
(ix) School Psychologist;
(x) School Social Worker;
(xi) Special Education (k-12);
(xii) Preschool Special Education (birth-age 5);
(xiii) Communication Disorders;
(xiv) Speech-Language Pathologist; and
(xv) Speech-Language Technician.

(b) License areas of concentration may also bear endorsements relating to subjects or specific assignments.

(10)(a) "License endorsement" or "endorsement" means a specialty field or area earned through completing required course work established by the Board or through demonstrated competency approved by the Board;

(b) The endorsement shall be listed on the Professional Educator License indicating the specific qualification of the holder.

(11) "Professional staff cost program funds" means funding provided to school districts based on the percentage of a district's professional staff that is appropriately licensed in the areas in which staff members teach.

(12) "SAEP" means State Approved Endorsement Program. This identifies an educator working on a professional development plan to obtain an endorsement.

R277-520-3. Required Licensing.

(1) All teachers in public schools shall hold a Utah educator license along with appropriate areas of concentration and endorsements.

(2) An LEA shall receive assistance from the Superintendent to the extent of resources available to have all teachers fully licensed.

(3) An LEA is expected to hire teachers who are licensed or in the process of becoming fully licensed and endorsed.

(4) Failure to ensure that an educator has appropriate licensure may result in the Board withholding all LEA funds related to salary supplements under Section 53F-2-405 and R277-110 and educator quality under Subsection 53F-2-305(2) and R277-486 until teachers are appropriately licensed pursuant to the Board's authority under Section 53E-3-401.

R277-520-4. Appropriate Licenses with Areas of Concentration and Endorsements.

(1) An educator assigned to teach a class in kindergarten through grade 3 shall hold a current Utah Educator License with:

(a) an early childhood (k-3) license area of concentration;

(b) an elementary (k-6) license area of concentration;

(c) for an educator assigned to teach a class in grade 1 through grade 3, an elementary (1-8) license area of concentration; or

(d) for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education (birth-age 22) license area of concentration.

(2) An educator assigned to teach a class in grade 4 through grade 8 in an elementary setting shall hold a current Utah Educator License with:

(a) an elementary (k-6) or an elementary (1-8) license area of concentration; or

(b) for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education (birth-age 22) license area of concentration.

(3) An elementary content specialist in Fine Arts or Physical Education shall hold a current Utah Educator License with an elementary or secondary license area of concentration with the appropriate K-12 content endorsement.

(4) An elementary content specialist in reading or English as a Second Language shall hold a current Utah Educator License with an elementary or secondary license area of concentration with the appropriate subject/content endorsement.

(5) An educator assigned to teach a class in grade 6 through grade 8, including middle-level, intermediate, and junior high schools, shall hold a current Utah Educator License with:

(a) an elementary (1-8) or a secondary (6-12) license area of concentration with the appropriate subject/content endorsement for all assigned courses; or

(b) for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education (birth-age 22) license area of concentration with the appropriate subject or content endorsement for all assigned courses.

(6) An educator assigned to teach a class in grade 9 through grade 12 shall hold a current Utah Educator License with:

(a) a secondary (6-12) or a career and technical education license area of concentration with the appropriate subject/content endorsement for all assigned courses; or

(b) for an educator assigned to teach a class composed of deaf and hard of hearing students, a deaf education (birth-age 22) license area of concentration with the appropriate subject or content endorsement for all assigned courses.

(7) An educator assigned to serve or teach a class of students with disabilities shall hold a current Utah Educator License with a special education (k-12) license area of concentration and, if the educator is the teacher of record of secondary mathematics for students with disabilities, shall also hold the appropriate subject/content endorsement.

(8) An educator assigned to serve preschool-aged students with disabilities shall hold a current Utah Educator License with a preschool special education (birth-age 5) license area of concentration.

(9) An educator assigned to serve deaf and hard of hearing students shall hold:

(a) a current Utah Educator License with a special education (k-12) license area of concentration and deaf and hard of hearing endorsement; or

(b) a deaf education (birth-age 22) license area of concentration.

(10) An educator assigned to provide student support services as defined in Rule R277-506 shall hold a current Utah Educator License with the appropriate support service license area of concentration.

(11) An educator assigned as a school-based or LEA-based specialist shall hold a current Utah Educator License with the appropriate license area of concentration and endorsement as defined by the LEA.

(12) An educator assigned in an administrative position requiring an educator license, as defined by the district, shall hold a current Utah Educator License and an administrative/supervisory (k-12) license area of concentration.

(a) A superintendent of a school district may be licensed with a letter of authorization granted by the Board consistent with Section 53G-4-301.

(b) An educator assigned in an administrative position in a charter schools is exempt from this requirement consistent with Section 53G-5-405.

R277-520-5. Eminence.

(1) The purpose of an eminence authorization is to allow individuals with exceptional training or expertise, consistent with Subsection R277-520-2(4), to teach or work in the public schools on a limited basis.

(2) Documentation of the exceptional training, skills or expertise may be required by the Superintendent prior to the approval of the eminence authorization.

(3) Teachers with an eminence authorization may teach no more than 37% of the regular instructional load except as provided in Subsection (4).

(4) In identified circumstances, teachers with an eminence authorization may teach more than 37% of the regular instructional load.

(5) The Board may approve an eminence authorization if the LEA can find no other qualified individual to fill the position, then:

(a) the LEA shall submit the following documented information to the Superintendent annually:

(i) description;

(ii) recruitment efforts;

(iii) the qualifications of all applicants; and

(iv) the LEA's rationale for hiring the individual;

(b) the Superintendent shall review the information within 15 days of receipt;

(c) the Superintendent shall notify the individual and the LEA if the Superintendent approves the documented information;

(d) the LEA shall submit a request for a Letter of Authorization to the Board for the individual through normal administrative procedures; or

(6) An individual has exceptional skills, expertise, and experience that make the individual the primary candidate for the position, then:

(a) the LEA shall submit the following documented information to the Superintendent annually:

(i) information about the position;

(ii) the individual's expertise, and experience; and

(iii) the LEA's rationale for hiring the individual.

(b) the Superintendent shall review the information within 15 days of receipt.

(c) the Superintendent shall notify the individual and the LEA if the Superintendent approves the documented information.

(d) the LEA shall submit a request for a Letter of

Authorization to the Board for the individual through normal administrative procedures.

(7) An LEA shall require an individual teaching with an eminence authorization to have a criminal background check consistent with Section 53E-6-401 prior to employment by the LEA.

(8) An LEA that employs the teacher with an eminence authorization shall determine the amount and type of professional development required of the teacher.

(9) An LEA that employs a teacher with an eminence authorization shall apply for renewal of the authorization annually.

(10) An eminence authorization may apply to:

(a) an individual without a teaching license; or

(b) an unusual and infrequent teacher situation where a license-holder is needed to teach in a subject area for which the license-holder is not endorsed, but in which the license-holder may be eminently qualified.

R277-520-6. Routes to Appropriate Endorsements for Teachers.

(1) An educator may add an endorsement to an existing license area of concentration by completing the endorsement requirements established by the Board.

(2) An endorsement requirement in a core academic subject area shall include passage of a Board-approved content knowledge assessment.

(3) A teacher may demonstrate competency in subject areas of the teacher's teaching assignment as approved by the Superintendent to meet specific endorsement requirements except the Board approved content knowledge assessment.

(4) An educator shall be properly endorsed consistent with Section R277-520-3 or have a Board approved SAEP. Otherwise, the Board may withhold professional staff cost program funds pursuant to the Board's authority under Subsection 53E-3-401(4).

R277-520-7. Board-Approved Endorsement Program (SAEP).

(1) An educator assigned to teach in a subject for which the educator does not hold the appropriate endorsement and who has successfully completed at least 9 semester credit hours of the endorsement requirements shall be placed on an SAEP as determined by the Superintendent.

(2) An individuals participating in an SAEP shall demonstrate progress toward completion of the required endorsements annually, as determined jointly by the LEA and the Superintendent.

(3) An SAEP may be granted for one two-year period and may be extended by the Superintendent for up to 2 additional years if the individual has made progress towards completing the SAEP.

(4) An individual currently participating in an SAEP is considered to hold the endorsement for the purposes of meeting the requirements of Section R277-520-4.

R277-520-8. Background Check Requirement and Withholding of State Funds for Non-Compliance.

(1) An educators qualified under any provision of this R277-520 shall also satisfy the criminal background requirement of Section 53E-6-401 prior to unsupervised access to students.

(2) If an LEA does not appropriately employ and assign teachers consistent with this R277-520, the LEA may have state appropriated professional staff cost program funds withheld pursuant to R277-486, Professional Staff Cost Formula, pursuant to the Board's authority under Section 53E-3-401.

KEY: educators, licenses, assignments
August 7, 2017 **Art X Sec 3**

Notice of Continuation June 6, 2017 **53E-3-401(4)**
53E-6-201(2)(a)

R277. Education, Administration.
R277-522. Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.
R277-522-1. 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-6-103(2)(a)(iii), which finds that the implementation of progressive strategies regarding induction, professional development and evaluation are essential in creating successful teachers; and

(d) Section 53E-6-301, which directs the Board to establish rules for the training and experience required of educator license applicants.

(2) The purpose of this rule is to outline required entry years enhancements of professional and emotional support for Level 1 teachers to develop successful teaching skills and strategies with assistance from experienced colleagues.

R277-522-2. Definitions.

(1) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" has the same meaning as set forth in Subsection R277-512-2(1).

(2) "Entry years" means the three years a beginning teacher holds a Level 1 license.

(3) "Interstate New Teacher Assessment and Support Consortium" or "INTASC" means the organization that has established Model Standards for Beginning Teacher Licensing and Development, which include ten principles reflecting what beginning teachers should know and be able to do as a professional teacher.

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

(5) "Level 1 license" has the same meaning as set forth in Subsection R277-503-2(9).

(6) "Level 2 license" has the same meaning as set forth in Subsection R277-503-2(10).

(7) "Level 3 license" has the same meaning as set forth in Subsection R277-503-2(11).

(8) "Mentor" means a Level 2 or Level 3 educator, who is trained to advise and guide Level 1 teachers.

(9) "Praxis II" or "Praxis II - Principles of Learning and Teaching" is a widely-used standards-based test designed by the Educational Testing Services to assess a beginning teacher's pedagogical knowledge.

(10) "Professional development" means locally or Board-approved education-related training or activities that enhance an educator's background consistent with Rule R277-501.

(11) "Teaching assessment or evaluation" means an observation of a Level 1 teacher's instructional skills by a school district or school administrator using an evaluation tool based on or similar to INTASC principles.

(12) "Working portfolio" means a collection of documents prepared by a Level 1 teacher and used as a tool for evaluation.

R277-522-3. Required Entry Years Enhancements Requirements for a Level 1 Teacher to Advance to a Level 2 License.

(1) Prior to advancement to a Level 2 license, a Level 1 teacher shall:

(a) satisfactorily collaborate with a trained mentor;

(b) pass a required pedagogical exam;

(c) complete three years of employment and evaluation; and

(d) compile a working portfolio.

(2) A principal shall assign a mentor to each Level 1 teacher in the first semester of teaching to supervise and act as a resource for the entry level teacher.

(3) A mentor teacher shall teach in the same school, and where feasible, in the same subject area as the Level 1 teacher.

(4) A mentor assigned in accordance with Subsection (2) shall:

(a) hold a Level 2 or 3 license; and

(b) have completed a mentor training program including continuing professional development.

(5) A mentor assigned in accordance with Subsection (2) shall:

(a) guide the Level 1 teacher to meet the procedural demands of the school and school district;

(b) provide moral and emotional support;

(c) arrange for opportunities for the Level 1 teacher to observe teachers who use various models of teaching;

(d) share personal knowledge and expertise about new materials, planning strategies, curriculum development and teaching methods;

(e) assist the Level 1 teacher with classroom management and discipline;

(f) support the Level 1 teacher on an ongoing basis;

(g) help the Level 1 teacher to understand the implications of student diversity for teaching and learning;

(h) engage the Level 1 teacher in self-assessment and reflection; and

(i) assist with development of the Level 1 teacher's portfolio.

(6) A Level 1 teacher shall pass the Praxis II with a qualifying score of at least 160 prior to advancing to Level 2 licensure.

(a) A Level 1 teacher may take the Praxis II successive times.

(b) The Superintendent shall post a Level 1 teacher's Praxis II results in CACTUS.

(7) A Level 1 teacher shall successfully complete evaluation through an LEA or accredited private school.

(a) A Level 1 teacher shall maintain full employment for three years in an LEA or accredited private school.

(b) An employing LEA or accredited private school may, following evaluation of a Level 1 teacher's experience, determine that teaching experience outside of the Utah public schools satisfies the teaching experience requirement of this rule.

(c) An LEA has discretion in determining the employment or reemployment status of individuals.

(d)(i) A Level 1 teacher's employing LEA or accredited private school is responsible for conducting the evaluations required under this rule.

(ii) An LEA may assign evaluations required under this rule to a school principal.

(e) A Level 1 teacher's evaluations shall take place at least twice during the first year of teaching and at least twice during each of the following two years with a satisfactory final evaluation.

(8) A Level 1 teacher shall compile a working portfolio during the teacher's entry years.

(a) A Level 1 teacher's employing LEA or accredited private school shall review and evaluate the portfolio.

(b) The Superintendent may review the portfolio upon request during the Level 1 teacher's second year of teaching.

(9) A portfolio required under Subsection (8) shall be based upon INTASC principles; and may:

(a) include teaching artifacts;

(b) include notations explaining the artifacts; and

(c) include a reflection and self-assessment of the teacher's own practice; or

(d) be interpreted broadly to include the employing LEA's

or accredited private school's requirement of samples of the first year teaching experience.

R277-522-4. Satisfaction of Entry Years Enhancements.

(1) If a Level 1 teacher fails to complete all enhancements as enumerated in Section R277-522-3, the Level 1 teacher may remain in a provisional employment status until the Level 1 teacher completes the enhancements.

(a) An LEA or accredited private school may make a written request to the Superintendent for a one year extension of the Level 1 license in order to provide time for the educator to satisfy entry years enhancements.

(b) A Level 1 teacher may repeat some or all of the entry years enhancements.

(c) An opportunity to repeat or appeal an incomplete or unsatisfactory entry years enhancements process shall be designed and offered by the employing LEA or accredited private school.

(2) An LEA or accredited private school shall make an annual recommendation to the Board of teachers approved in its schools to receive a Level 2 license, including documentation demonstrating completion of the enhancements.

(3) An LEA or accredited private school may also report the names of teachers who did not successfully complete entry years enhancements to the Board.

(4) The Superintendent shall prepare an annual report tracking the success of retention and the job satisfaction of Utah educators who complete the entry years enhancement program.

KEY: mentoring, teachers
November 7, 2017 **Art X Sec 3**
Notice of Continuation September 13, 2017 **53E-6-103(2)(a)(iii)**
53E-6-301
53E-3-401(4)

R277. Education, Administration.
R277-524. Paraprofessional/Paraeducator Programs, Assignments, and Qualifications.
R277-524-1. 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 gives the Board authority to adopt rules in accordance with its responsibilities, Subsection 53E-3-501(1)(a)(i), which requires the Board to establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and NCLB, P.L. 107-110, Title 1, Sec, 1119 which requires that each local education agency receiving assistance under this part shall ensure that all paraprofessionals shall be appropriately qualified.

B. The purpose of this rule is to designate appropriate assignments of paraprofessionals and qualifications for paraprofessionals hired before and after January 6, 2002 consistent with NCLB requirements.

C. This rule establishes the formula for distribution of Paraeducator funding under Section 53F-2-411 to eligible schools. The rule provides minimum standards for use of funds and reporting requirements.

R277-524-2. Definitions.

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

B. "Core academic subjects or areas" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB).

C. "Direct supervision of a licensed teacher" means:

(1) the teacher prepares the lesson and plans the instruction support activities the paraprofessional carries out, and the teacher evaluates the achievement of the students with whom the paraprofessional works; and

(2) the paraprofessional works in close and frequent proximity with the teacher.

D. "Eligible school," for purposes of this rule and the Paraeducator Funding Program, means a Title I school that is one of the state's lowest-performing Title I priority schools as defined by ESEA.

E. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.

F. "Paraeducator funding" means supplemental state funding provided under Section 53F-2-411 to Title I schools identified as in need of improvement under the Elementary and Secondary Education Act (ESEA), Title IX, Part A, 20 U.S.C. 7801 to hire additional paraeducators to assist students in achieving academic success.

G. "Paraprofessional" or "paraeducator" means an individual who works under the supervision of a teacher or other licensed/certificated professional who has identified responsibilities in the public school classroom.

R277-524-3. Appropriate Assignments or Duties for Paraprofessionals.

Paraprofessionals may:

A. provide individual or small group assistance or tutoring to students under the direct supervision of a licensed teacher during times when students would not otherwise be receiving instruction from a teacher.

B. assist with classroom organization and management, such as organizing instructional or other materials;

C. provide assistance in computer laboratories;

D. conduct parental involvement activities;

E. provide support in library or media centers;

F. act as translators;

G. provide supervision for students in non-instructional settings.

R277-524-4. Requirements for Paraprofessionals.

A. Paraprofessionals hired before January 6, 2002 who function under R277-504-3A, and working in programs supported by Title I funds shall satisfy one of the following:

(1) The individual has completed at least two years (minimum of 48 semester hours) at an accredited higher education institution; or

(2) The individual has obtained an associates (or higher) degree from an accredited higher education institution; or

(3) The individual has satisfied a rigorous state assessment, approved by the Board, that demonstrates:

(a) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(b) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate; or

(4) The individual has satisfied a rigorous local assessment, approved by the local board, that demonstrates:

(a) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(b) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

B. Paraprofessionals hired after January 6, 2002 in programs supported by Title I funds shall satisfy R277-524-4B(1)(2)(3) or (4).

(1) Individual shall have earned a secondary school diploma or a recognized equivalent; and

(2) The individual has completed at least two years (minimum of 48 semester hours) at an accredited higher education institution; or

(3) The individual has obtained an associates (or higher) degree from an accredited higher education institution; or

(4) The individual has satisfied a rigorous state or local assessment about the individual's knowledge of an ability to assist students in core courses under NCLB.

C. The individual shall satisfactorily complete a criminal background check consistent with Section 53G-11-402 and R277-516.

R277-524-5. Variances.

The provisions of this rule do not apply to:

A. paraprofessionals who are proficient in English and a language other than English who provide translator services; or

B. paraprofessionals who have only parental involvement or similar responsibilities.

R277-524-6. Use of Funds.

Local education agencies may use Title I funds in addition to other funds available and identified by the local education agency to support ongoing training and professional development for paraprofessionals.

R277-524-7. Board Responsibilities.

A. The Board shall annually distribute funds provided under Section 53F-2-411 to eligible Title I schools. The funds shall be divided equally among eligible schools.

B. The Board shall submit an annual report to the Public Education Appropriations Subcommittee on the implementation of this program.

R277-524-8. Responsibilities of Eligible Schools Receiving Paraeducator Funding.

A. Paraeducators hired with these funds shall meet the qualifications under R277-524-4.

B. Paraeducators hired with these funds shall provide additional aid in the classroom to assist students in achieving academic success as defined in R277-524-3A.

C. Schools that accept the Paraeducator Funding shall demonstrate, as required by USOE reporting, that funds are used to supplement other state and federal funds to provide paraeducator services.

D. Schools accepting these funds shall provide an annual report as directed by the USOE that includes the following:

(1) the number of paraeducators hired with program money;

(2) school funding, in addition to funds provided under this rule, the school used to supplement program money to hire paraeducators; and

(3) accountability measures, including student test scores and other student assessment elements for students served by the program.

KEY: paraprofessional qualifications, NCLB
May 8, 2014 **Art X Sec 3**
Notice of Continuation March 14, 2014 **53E-3-401(4)**
53E-3-501(1)(a)(i)
P.L. 107-110, Title 1, Sec. 1119

R277. Education, Administration.
R277-526. Paraeducator to Teacher Scholarship Program.
R277-526-1. 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 make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53F-5-205(9), which requires the Board to make rules to administer the Paraeducator to Teacher Scholarship Program.

(2) The purpose of this rule is to:

(a) distribute funds to paraeducators seeking to become licensed educators; and

(b) establish application and accountability procedures to provide funding to prospective educators directly and fairly.

R277-526-2. Definitions.

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

(2) "Paraeducator" means the same as that term is defined in Subsection 53F-5-205(1)(b).

(3) "Paraeducator Scholarship Selection Committee" or "committee" means the committee established by the Board to select scholarship recipients as required by Subsection 53F-5-205(5).

(4) "Scholarship" means funds paid directly to a Utah institution of higher education on behalf of a paraeducator in accordance with Section 53F-5-205.

R277-526-3. Scholarship Amounts and Requirements.

(1) A paraeducator shall use a stipend awarded under this rule solely for expenses approved by Section 53F-5-205 and this rule annually between July 1 and the following June 30.

(2) A scholarship recipient shall remain continuously employed by an LEA in accordance with Subsection 53F-5-205(8).

(3) A scholarship recipient shall provide documentation of progress toward graduation, as requested by the scholarship recipient's employer or the Board.

(4) A scholarship recipient who does not remain employed for the duration of the scholarship period or who does not satisfactorily complete funded courses shall be responsible to reimburse the Board for the amount of scholarship funding.

R277-526-4. Applicant Scholarships Recipient and LEA Responsibilities.

(1) An LEA shall employ a scholarship recipient for a minimum of 10 hours per week at the time of application for the scholarship and during any year in which the paraeducator receives the scholarship.

(2) A scholarship applicant shall submit a completed application found on the Board website to the applicant's LEA.

(3) An applicant shall provide university transcripts and information about tuition expenses on the application based on the most recent information available from the Utah institution of higher education to which the applicant has either been admitted or made application.

(4) An LEA shall submit all applications to the Superintendent on or before May 15 annually.

(5) A scholarship recipient and the LEA whose employee receives funding under this program shall cooperate on any assessment required by the Board.

R277-526-5. State Board of Education Staff/Committee Responsibilities.

(1) The committee shall consist of:

(a) one representative of the Board designated by the Board;

(b) one representative of the Board of Regents designated by the Board of Regents;

(c) one representative of the largest parent/teacher association in the state;

(d) no more than two additional representatives of the general public designated by the Board.

(2) The committee shall receive completed applications from LEAs consistent with R277-526-4.

(3) The committee shall determine funding for applicants from applications received from LEAs after considering the number of applications received and the amount of funding available.

(4) The committee may develop and consider additional selection criteria including:

(a) support from the recommending LEA; and

(b) geographical distribution of recipients.

(5) The committee shall provide names of scholarship recipients to the Board for review and comment by August 1, annually.

(6) The committee or the Board may require a summary assessment of the increased number of paraeducators who become educators and other program results from participating scholarship recipients and LEAs.

KEY: paraeducators, scholarships

February 7, 2017	**Art X Sec 3**
Notice of Continuation December 14, 2016	**53E-3-401(4)**
	53F-5-205(9)

R277. Education, Administration.
R277-527. International Guest Teachers.
R277-527-1. 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 Subsection 53E-3-501(1)(a), which directs the Board to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student services.

B. The purpose of this rule is to establish procedures for qualified international guest teachers who meet the definition of R277-527-1B to be effectively hired and placed by Utah LEAs with assistance and direction from the USOE to encourage cultural exchange and foreign language development among Utah public school students.

R277-527-2. Definitions.

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

B. "International guest teacher (guest teacher)" means a foreign educator who has earned a public teaching credential or license in a foreign country and who is currently legally residing in the United States and the state of Utah with the specific purpose to teach in Utah public schools. For this definition to apply, the international guest teacher shall be a resident of a foreign country that has a Memorandum of Understanding with the Board.

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. "USOE" means the Utah State Office of Education.

R277-527-3. Utah State Board of Education/USOE Responsibilities.

A. The Board shall develop and State Superintendent shall sign a Memorandum of Understanding between the Board and the appropriate government agency of the country of origin of guest teachers, as identified by the Board.

B. The USOE shall work with guest teachers and their resident countries and the United States Department of State, if necessary, to secure appropriate visas or travel and work documents for guest teachers to legally teach in the public schools in Utah.

C. The USOE shall verify that guest teachers have appropriate licenses or credentials from the guest teachers' resident countries that satisfy the requirements of Utah law and any applicable federal requirements.

D. The USOE shall work with interested LEAs to make schools aware of guest teachers with specific credentials and language skills and to inform guest teachers about openings in specific grade levels and curriculum areas in various geographic locations in Utah.

E. The USOE shall require and review a guest teacher's criminal background checks required under Section 53G-11-403 and a criminal background clearance from the guest teacher's resident country or both prior to authorizing the guest teacher to work in Utah.

F. The Board may determine that it will seek guest teachers only from foreign countries that provide transportation or per diem expenses or both for USOE representatives to screen and interview potential guest teachers.

G. Following review and approval of a guest teacher's credentials and background, a guest teacher may receive an International Guest Teacher license equivalent to a Level 1 license.

R277-527-4. International Guest Teacher Requirements.

A. Guest teachers shall have a United States issued social security number prior to an LEA processing any payment to the guest teacher.

B. Guest teachers shall cooperate with the USOE in required submission of information including criminal background check information, copies of credentials, copies of transcripts in the language and format designated by the USOE.

C. Guest teachers shall assume all responsibility for living and transportation expenses while participating in the International Guest Teachers Program.

D. Guest teachers shall be responsible for compliance with all state of Utah/Board and employing LEA professional and ethical public school educator requirements.

E. Guest teachers who violate district employment or state or district professional practices may have their employment contract terminated consistent with at will employment provisions; the conduct of individual guest teachers may influence continued participation in the International Guest Teacher Program between the Board and a guest teacher's resident country.

R277-527-5. Other Provisions.

A. The opportunity for teachers from outside the United States to be licensed to teach in Utah schools with assistance provided by the USOE under this rule shall be available only to individuals from countries with which the Board has signed a Memorandum of Understanding.

B. A business or third party may not facilitate a Memorandum of Understanding between a foreign country and the Board, but may facilitate the hiring process at the request of the LEA.

C. Internationally credentialed educators may seek appropriate licensing to teach in Utah schools. Those educators from countries that do not have Memoranda of Understanding with the Board shall be licensed under R277-502.

D. It is the responsibility of the prospective guest teacher or the guest teacher's home country to ensure that the guest teacher has the appropriate visa or authorization or both to live and teach in the United States for the agreed upon time period and teaching assignment.

KEY: international guest teachers
February 7, 2014 Art X Sec 3
Notice of Continuation September 13, 2018 53E-3-401(4)
53E-3-501(1)(a)

R277. Education, Administration.
R277-528. Use of Public Education Job Enhancement Program (PEJEP) Funds.
R277-528-1. Authority and Purpose.

A. The rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board; Subsection 53F-2-514(3)(c)(ii), which requires the Board to make a rule that provides for repayment of a portion of the initial payment by the teacher if the teacher fails to complete the Program with exceptions; Subsection 53F-2-514(5)(b), which directs the Board to develop criteria for PEJEP awards; 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 standards and procedures for ongoing participation in PEJEP.

R277-528-2. Definitions.

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

B. "Council for Accreditation of Educator Preparation (CAEP)" is a nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.

C. "National Council for Accreditation of Teacher Education (NCATE)" is a nationally recognized organization which accredits the education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.

D. "PEJEP awards" means awards granted to eligible PEJEP participants that satisfy the purposes of the original PEJEP funding and USOE documentation requirements.

E. "Public Education Job Enhancement Program (PEJEP)" means a program authorized under Subsection 53F-2-514(2).

F. "Teacher Education Accreditation Council (TEAC)" is a nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.

G. "USOE" means the Utah State Office of Education.

R277-528-3. PEJEP Participants.

A. PEJEP participants shall commit to required courses for advanced degrees and endorsements consistent with Subsection 53F-2-514(2).

B. Qualified Utah institutions of higher education shall be reimbursed for the tuition for eligible PEJEP participants.

C. PEJEP participants shall receive textbook reimbursements directly.

D. PEJEP participants shall provide documentation annually, by October 1, to the USOE, demonstrating full-time employment as educators during the previous school year.

E. If a PEJEP participant changes employers, leaves public education, or moves from the state, he shall notify the USOE immediately. The USOE may require repayment or partial repayment, consistent with Subsection 53F-2-514(3)(c)(ii).

F. PEJEP participants shall notify the USOE of the participants' satisfaction of their teaching commitment at the conclusion of their Program.

R277-528-4. University Program Eligibility.

A. A Utah higher education institution (university) program that provides licensure and endorsements in areas outlined in Subsection 53F-2-514(2) shall be eligible to receive tuition reimbursement for eligible PEJEP participants.

B. University endorsement or education programs that desire to enroll PEJEP participants shall meet the following minimum requirements:

(1) provide documentation to the USOE of university program accreditation by NCATE/TEAC/CAEP;

(2) provide to the USOE an overview of the university endorsement program including:

(a) program requirements and eligibility standards for participants;

(b) a screening process for prospective participants;

(c) course syllabi; and

(d) a yearly evaluation of the program.

C. The USOE may determine the eligibility of university programs on an annual basis.

D. The USOE shall reimburse tuition directly to university programs for PEJEP participants.

R277-528-5. Evaluation.

A. The USOE shall maintain records of PEJEP award participants.

B. The USOE shall prepare an annual report for the Board that demonstrates use of PEJEP funding consistent with the intent of original PEJEP legislation.

KEY: educators, awards
March 10, 2014 **53F-2-514**
53E-3-401(4)

R277. Education, Administration.
R277-530. Utah Effective Educator Standards.
R277-530-1. 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) Subsections 53E-3-501(1)(a)(i) and (ii), which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services.

(2) The purpose of this rule is to establish:

(a) statewide effective teaching standards for Utah public education teachers;

(b) statewide educational leadership standards for Utah public education administrators; and

(c) statewide educational school counselor standards for Utah public education school counselors.

R277-530-2. Definitions.

(1) "Educator" means an individual licensed by the Board under Section 53E-6-102(8).

(2) "School administrator" means an educator serving in a position that requires a Utah Educator License with an Educator Leadership license area of concentration and who supervises Level 2 educators.

(3) "The Utah Effective Educator Standards" means:

(a) the Effective Teaching Standards described in R277-530-5;

(b) the Educational Leadership Standards described in R277-530-6; and

(c) the Educational School Counselor Standards described in R277-530-7.

R277-530-3. Board Expectations for Effective Teaching, Educational Leadership, and Educational School Counselor Standards.

(1) The Board hereby establishes the Effective Educator Standards as the foundation of educator development, which includes:

(a) alignment of teacher and school administrator preparation programs;

(b) expectations for licensure; and

(c) the screening, hiring, induction, and mentoring of beginning teachers, school administrators, and other licensed educators.

(2) The Board uses the Effective Educator Standards to direct and ensure the implementation of Utah's Core Standards.

(3) The Board relies on the Effective Educator Standards as the basis for an evaluation system and tiered-licensing system.

(4) The Board's model educator assessment system, for use by LEAs, is based on the Effective Educator Standards.

(5) The Board provides resources, including professional learning, which assist LEAs in integrating the Effective Educator Standards into educator practices.

R277-530-4. LEA Responsibilities for Effective Educator Standards.

(1) An LEA shall develop policies to support educators, school administrators, and school counselors in implementation of the Effective Educator Standards.

(2) An LEA shall develop professional learning experiences and professional learning plans for relicensure using the Effective Educator Standards to assess educator progress toward implementation of the standards.

(3) An LEA shall adopt formative and summative educator assessment systems based on the Effective Educator Standards to facilitate educator growth toward expert practice.

(4) An LEA shall use the Effective Educator Standards as a basis for the development of a collaborative professional culture to facilitate student learning.

(5) An LEA shall implement induction and mentoring activities for beginning teachers and school administrators that support implementation of the Effective Educator Standards.

R277-530-5. Effective Teaching Standards.

(1) The Effective Teaching Standards focus on the high-leverage concepts of:

(a) personalized learning for diverse learners;

(b) a strong focus on application of knowledge and skills;

(c) improved assessment literacy;

(d) a collaborative professional culture; and

(e) leadership roles for teachers.

(2) Utah educators shall demonstrate the following skills and work functions designated in the following ten standards:

(a) Learner Development - An educator understands cognitive, linguistic, social, emotional, and physical areas of student development;

(b) Learning Differences - An educator understands individual learner differences and cultural and linguistic diversity;

(c) Learning Environments - An educator works with learners to create environments that support individual and collaborative learning, encouraging positive social interaction, active engagement in learning, and self motivation;

(d) Content Knowledge - An educator understands the central concepts, tools of inquiry, and structures of the discipline;

(e) Assessment - An educator uses multiple methods of assessment to engage learners in their own growth, monitor learner progress, guide planning and instruction, and determine whether the outcomes described in content standards have been met;

(f) Instructional Planning - An educator plans instruction to support students in meeting rigorous learning goals by drawing upon knowledge of content areas, core curriculum standards, instructional best practices, and the community context;

(g) Instructional Strategies - An educator uses various instructional strategies to ensure that all learners develop a deep understanding of content areas and their connections, and build skills to apply and extend knowledge in meaningful ways;

(h) Reflection and Continuous Growth - An educator is a reflective practitioner who uses evidence to continually evaluate and adapt practice to meet the needs of each learner;

(i) Leadership and Collaboration - An educator is a leader who engages collaboratively with learners, families, colleagues, and community members to build a shared vision and supportive professional culture focused on student growth and success; and

(j) Professional and Ethical Behavior - An educator demonstrates the highest standards of legal, moral, and ethical conduct as required in the Utah Educator Professional Standards described in Rule R277-515.

R277-530-6. Educational Leadership Standards.

(1)(a) The Board expects that school administrators shall meet the standards of effective teaching and have the knowledge and skills to guide and supervise the work of educators, lead the school learning community, and manage the school's learning environment in order to provide effective, high quality instruction to all of Utah's students.

(b) The Educational Leadership Standards focus on:

(i) visionary leadership;

(ii) advocacy for high levels of student learning;
(iii) leading professional learning communities; and
(iv) the facilitation of school and community collaboration.

(2) In addition to meeting the standards of an effective teacher, school administrators shall demonstrate the following traits, skills, and work functions designated in the following six standards:

(a) Visionary Leadership - A school administrator promotes the success of every student by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is largely shared and supported by stakeholders;

(b) Teaching and Learning - A school administrator promotes the success of every student by advocating, nurturing and sustaining a school focused on teaching and learning conducive to student, faculty, and staff growth;

(c) Management for Learning - A school administrator promotes the success of every student by ensuring management of the organization, operation, and resources for a safe, efficient, and effective learning environment;

(d) Community Collaboration - A school administrator promotes the success of every student by collaborating with faculty, staff, parents, and community members, responding to diverse community interests and needs and mobilizing community resources;

(e) Ethical Leadership - A school administrator promotes the success of every student by acting with, and ensuring a system of, integrity, fairness, equity, and ethical behavior; and

(f) Systems Leadership - A school administrator promotes the success of every student by understanding, responding to, and influencing the interrelated systems of political, social, economic, legal, policy, and cultural contexts affecting education.

R277-530-7. Educational School Counselor Standards.

In addition to meeting the Effective Teaching Standards described in Section R277-530-5 and the Educational Leadership Standards described in Section R277-530-6, an educational school counselor shall demonstrate the following traits, skills, and work functions designated in the following seven standards:

(1) Collaboration, Leadership and Advocacy - An educational school counselor is a leader who engages collaboratively with learners, families, colleagues, and community members to build a shared vision and supportive professional culture focused on student growth and success;

(2) Collaborative Classroom Instruction - An educational school counselor delivers a developmental and sequential guidance curriculum prioritized according to the results of the school needs assessment;

(3) The Plan for College and Career Readiness Process - An educational school counselor implements the individual planning component by guiding individuals and groups of students and their parents or guardians through the development of educational and career plans;

(4) Systemic Approach to Dropout Prevention with Social and Emotional Supports - An educational school counselor provides responsive services through the effective use of individual and small-group counseling, consultation and referral skills and implements programs for student support in dropout prevention;

(5) Data-Driven Accountability and Program Evaluation - An educational school counselor collects and analyzes data to guide program direction and emphasis;

(6) Systemic School Counseling Program Management - An educational school counselor is involved in management activities that establish, maintain and enhance the total school counseling program; and

(7) Professional and Ethical Behavior - An educational school counselor demonstrates the highest standard of legal, moral and ethical conduct, as required in the Utah Educator Professional Standards described in R277-515.

KEY: educators, effectiveness, leadership, standards
October 11, 2016 Art X Sec 3
Notice of Continuation August 15, 2013 53E-3-501(1)(a)(i) and (ii)
53E-3-401(4)

R277. Education, Administration.
R277-531. Public Educator Evaluation Requirements (PEER).
R277-531-1. 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) Subsections 53E-3-501(1)(a)(i) and (ii), which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services; and

(d) Section 53G-11-504, which directs that the Board adopt rules to guide school district employee evaluations.

(2) The purpose of this rule is to provide a statewide educator evaluation system framework that includes required Board directed expectations and components and additional school district determined components and procedures to ensure the availability of data about educator effectiveness.

(3) The process shall:

(a) focus on the improvement of high quality instruction and improved student achievement;

(b) include common data that can be aggregated and disaggregated to inform Board and school district decisions about retention, preparation, recruitment, and improved professional learning practices; and

(c) ensure school districts engage in a consistent process statewide of educator evaluation.

R277-531-2. Definitions.

(1) "Educator" means an individual licensed under Section 53A-6-103 and who meets the requirements of Rule R277-502.

(2) "Educator Evaluation Program" means a school district's process, policies, and procedures for evaluating an educator's performance according to the educator's various assignments.

(3) "Formative evaluation" means an evaluation that provides an educator with information and assessments on how to improve the educator's performance.

(4) "Instructional quality data" means data acquired through observation of an educator's instructional practices.

(5) "Joint educator evaluation committee" means the local committee described under Section 53G-11-506 that develops and assesses a school district evaluation program.

(6) "School administrator" means an educator:

(a) serving in a position that requires a Utah Educator License with an Administrative area of concentration; and

(b) who supervises Level 2 educators.

(7) "Summative evaluation" means an evaluation that is used to make annual decisions or ratings of an educator's performance and may inform decisions on salary, confirmed employment, personnel assignments, transfers, or dismissals.

(9) "Utah Effective Educator Standards" means:

(a) the Effective Teaching Standards established in Section R277-530-5;

(b) the Educational Leadership Standards established in Section R277-530-6; and

(c) the Educational School Counselor Standards established in Section R277-530-7.

(10) "Valid and reliable measurement tool" means an instrument that has proved consistent over time and uses non-subjective criteria that require minimal interpretation.

R277-531-3. Public Educator Evaluation Framework.

(1) The Board provides the public education evaluation framework described in this section, which includes general evaluation system areas and additional discretionary components required in a school district's educator evaluation system.

(2) A school district shall:

(a) have a joint educator evaluation committee;

(b) base the school district's educator evaluation system on the Utah Effective Educator Standards in Rule R277-530;

(c) establish and articulate performance expectations individually for all licensed school district educators;

(d) use valid and reliable measurement tools including, at a minimum:

(i) observations of instructional quality;

(ii) evidence of student growth;

(iii) parent and student input; and

(iv) other indicators as determined by the school district;

(e) provide an annual rating of educator performance using uniform statewide terminology and definitions, and include summative and formative components;

(f) direct the revision or alignment of all related school district policies, as necessary, to be consistent with the school district Educator Evaluation System;

(g) use valid, reliable, and research-based measurements that shall:

(i) employ a variety of measurement tools;

(ii) measure student growth for educators;

(iii) provide evaluation for non-instructional licensed educators and administrators; and

(h) provide both formative and summative evaluation data.

(3) A school district may consider data gathered from tools to inform decisions about employment and professional learning.

(4) A school district shall discuss and protect the confidentiality of educator data in the evaluation process.

(5)(a) A school district evaluation system shall provide for clear and timely notice to educators of the components, timelines, and consequences of the evaluation process; and

(b) A school district evaluation system shall provide for timely discussion with evaluated educators to include professional growth plans as required in Rule R277-500 and evaluation conferences.

(6) A school district evaluation system shall provide support for instructional improvement, including:

(a) assessing the professional learning needs of educators; and

(b) identifying educators who do not meet expectations for instructional quality and providing support as appropriate at the school district level, which may include providing educators with mentors, coaches, and specialists in effective instruction, and setting timelines and benchmarks to assist educators toward greater improved instructional effectiveness and student achievement.

(7) A school district evaluation system shall maintain records and documentation of required educator evaluation information.

(8) A school district evaluation system shall require the evaluation of all licensed educators at least once a year in accordance with Section R277-533.

(9) A school district evaluation system shall provide at least an annual rating for each licensed educator, including teachers, school administrators, and other non-teaching licensed positions, using Board-directed statewide evaluation terminology and definitions.

(10) A school district evaluation system shall include the following specific educator performance criteria:

(a) school district-determined instructional quality measures;

(b) complete integration of student academic growth score; and

(c) other measures as determined by the school district,

including data required from student or parent input.

(11) A school district evaluation system shall identify potential employment consequences, including discipline and termination, if an educator fails to meet performance expectations.

(12) A school district evaluation system shall include a review or appeals procedure for an educator to challenge the process of a summative evaluation that provides for adequate and timely due process for the educator consistent with Subsection 53G-11-508(2).

(13) A school district may include additional components in its evaluation system.

(14) A local board of education shall review and approve its school district's proposed evaluation systems in an open meeting prior to the local board's submission to the Board.

(15) A school district shall report educator effectiveness data to the Superintendent annually, on or before June 30.

R277-531-4. Board Support and Monitoring of LEA Evaluation Systems.

The Superintendent, under supervision of the Board, shall:

(1) develop a model educator evaluation system that includes performance expectations consistent with this rule;

(2) evaluate and recommend tools and measures for use by school districts as they develop and initiate their local educator evaluation systems; and

(3) annually monitor 25% of the school districts' evaluation systems.

R277-531-5. Compensation.

(1) A school district shall implement an employee compensation system, no later than the 2018-19 school year, that is aligned to the school district's educator evaluation system.

(2) An educator's annual advancement on an adopted salary schedule shall be based primarily upon an evaluation system that differentiates among four levels of performance as described in Section 53G-11-507 and R277-533, unless the educator:

(a) is a provisional educator; or

(b) is in the first year of an assignment, including a new subject, grade level, or school.

KEY: educators, evaluations, requirements
August 7, 2017 **Art X Sec 3**
Notice of Continuation August 15, 2016 **53E-3-501(1)(a)(i)**
53E-3-401(4)

R277. Education, Administration.
R277-602. Carson Smith 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 Carson Smith 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 Carson Smith 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)(a) The Superintendent shall make a scholarship payment in accordance with Section 53F-4-304 and this rule.

(b) The Superintendent may distribute a scholarship payment to a private school through electronic transfer after the Superintendent is able to verify the scholarship student's attendance at the private school through a Board provided software application.

(5)(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) In accordance with Subsection 53F-4-304(4), if a student does not continue in enrollment, the Superintendent may:

(i) modify the payment to the private school; or

(ii) if payment has already been made for that quarter, request reimbursement from the private school for an amount equal to the portion of the scholarship attributable to the number of remaining days in the quarter.

(6) A parent shall cooperate and respond within 10 days to an enrollment cross-checking request from the Superintendent.

(7) 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 Carson Smith Scholarship is entitled to receive the scholarship during the subsequent eligibility period.

(3) A Carson Smith 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) In accordance Subsection 53F-4-302(8), a Carson Smith Scholarship student may participate in the Statewide Online Education Program described in Part 5, Statewide Online Education Program in the same manner as other private school students as described in Section 53F-4-507.

(5) A Carson Smith Scholarship student is eligible to receive equitable services under the Individuals with Disabilities Education Act.

(6) An LEA shall cooperate with the Superintendent in cross-checking Carson Smith Scholarship student enrollment information to ensure scholarship payments are not erroneously made.

(7)(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 Carson Smith 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, 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 53F4-303(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 may 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 Carson Smith 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 private school shall annually:

(a) obtain an audit and report from a licensed independent certified public accountant that conforms with the following requirements:

(i) the audit shall be performed in accordance with generally accepted auditing standards;

(ii) the financial statements shall be presented in accordance with generally accepted accounting principles; and

(iii) the audited financial statements shall be as of a period within the last 12 months; or

(b) contract with an independent licensed certified public accountant to conduct an agreed upon procedures engagement described in Subsection (4);

(3) The Superintendent shall annually publish:

(a) an agreed upon procedures document for a new private school to apply for eligibility to accept Carson Smith Scholarship students; and

(b) an agreed upon procedures document for a continuing private school to apply for continued eligibility to accept Carson Smith Scholarship students.

(4) A private school that seeks to enroll Carson Smith Scholarship students shall submit an agreed upon procedures document described in Subsection (3):

(a) for a new private school seeking eligibility to accept Carson Smith Scholarship students for the first time, by the May 1 prior to the fiscal year that the private school is seeking eligibility; and

(b) for a school seeking continued eligibility to accept Carson Smith Scholarship students, by the November 30 prior to the school year in which they are reapplying.

(5)(a) A private school that seeks to enroll a Carson Smith Scholarship student shall, in concert with the parent seeking a Carson Smith 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.

(6) 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).

(7) 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 absences during all of the prior ten consecutive school days.

(8) 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.

(9)(a) An approved eligible private school that changes ownership shall submit a new application for eligibility to receive a Carson Smith 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 Carson Smith 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 Carson Smith Scholarship students consistent with the requirements and timelines of this rule.

R277-602-7. Carson Smith 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 Carson Smith 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
October 16, 2018 **Art X Sec 3**
Notice of Continuation: August 13, 2015 **53E-3-401(4)**
53F-4-3

R277. Education, Administration.
R277-620. Suicide Prevention Programs.
R277-620-1. Definitions.

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

B. "Intervention" means an effort to prevent a student from attempting suicide.

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. "Parent notification" means a notice provided by a public school to a students' parent(s) consistent with Section 53A-11a-203(2) and 53A-11a-301(3)(e).

E. "Postvention" means mental health intervention after a suicide attempt or death to prevent or contain contagion.

F. "Program for secondary grades" means a youth suicide prevention program for students in grades 7 through 12, including grade 6 if middle or junior high school includes grade 6.

G. "State suicide prevention coordinator" means the person designated by the Department of Health - State Division of Substance Abuse and Mental Health in Section 62A-15-1101.

H. "USOE" means the Utah State Office of Education.

I. "USOE suicide prevention coordinator" means person designated by the Board to oversee the youth suicide prevention programs of LEAs and who is responsible to coordinate prevention programs, services, and efforts with the state suicide prevention coordinator.

J. "Youth protection and mental health seminar" means a seminar offered for each 11,000 students enrolled in a school district to parents of students consistent with Section 53A-15-1301.

R277-620-2. Authority and Purpose.

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

B. The purposes of this rule are:

(1) to provide for collaboration with the Department of Health and Department of Human Services to establish, oversee, and provide model policies, programs for LEAs and training for parents about youth suicide prevention programs;

(2) to require LEAs to have and update youth protection policies; and

(3) to direct LEAs to send notice to parents and protect the confidentiality of the required parent notification record regarding bullying and suicide incidents.

R277-620-3. Board, USOE and LEA Responsibilities.

A. Board and USOE responsibilities:

(1) The USOE suicide prevention coordinator shall oversee LEA youth suicide prevention programs.

(2) The USOE, in collaboration with the Department of Health - State Division of Substance Abuse and Mental Health and the state suicide prevention coordinator, shall establish model youth suicide prevention programs for LEAs that include training and resources addressing prevention of youth suicides, youth suicide intervention, and postvention for family, students and faculty.

(3) Based on legislative appropriation, the Board shall distribute funds to LEAs so that LEAs can select and implement evidenced-based practices and programs, or emerging best practices and programs, to support suicide prevention efforts in the school district or charter school.

(4) The Board shall report jointly with the state suicide prevention coordinator to the Legislature's Education Interim Committee in 2014 on:

(a) the progress of LEA programs; and

(b) the Board's coordination efforts with the Department of Health - State Division of Substance Abuse and Mental Health and the state suicide prevention coordinator.

B. LEA responsibilities:

(1) LEAs shall implement youth suicide prevention programs for students in secondary grades, including grades 7 through 12 and grade 6, if grade 6 is part of a secondary grade model.

(2) The programs shall include components provided in Section 53A-15-1301(2).

(3) LEAs shall update bullying, cyber-bullying, harassment, hazing, and retaliation policy(ies) consistent with Section 53A-11a-301 and R277-613, including the required parent notification outlined in Sections 53A-11a-203(2) and 53A-11a-301(3)(e) and R277-613-4C and D.

(4) LEAs shall provide necessary reporting information consistent with Section 53A-15-1301(3) and (5) for the Board's report on the coordination of suicide prevention programs and seminar program implementation to the Legislature's Education Interim Committee.

KEY: public schools, suicide prevention programs, parent notifications, seminars
October 9, 2014 Art X Sec 3
Notice of Continuation October 5, 2018 53A-1-401(3)

R277. Education, Administration.
R277-706. Public Education Regional Service Centers.
R277-706-1. Definitions.

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

B. "Eligible regional service center" means a regional service center formed by two or more school districts by means of an interlocal entity in accordance with Title 11, Chapter 13, Interlocal Cooperation Act.

C. "USOE" means the Utah State Office of Education.

R277-706-2. 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 53G-4-410(6), that directs the Board to make rules regarding eligible regional services center, and Subsection 53E-3-401(4), which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions and procedures for school districts to form interlocal agreements and to provide for distribution of legislative funds to eligible regional service centers by the Board.

R277-706-3. Eligible Regional Service Centers.

A. Two or more school districts may enter into an interlocal agreement and form an interlocal entity.

B. An eligible regional service center may receive funds if the Legislature appropriates money.

C. An interlocal agreement shall confirm and ratify the regional service center as of the effective date of the interlocal agreement.

R277-706-4. Distribution of Funds.

A. The USOE shall distribute funds, if provided by the Legislature, in equal amounts to eligible regional service centers based on:

(1) requests from eligible regional service centers; and

(2) satisfaction and submission of all information and requirements set by the Board.

B. The USOE shall provide notice that completed applications for regional service center funds are due to the USOE consistent with timelines provided by the USOE.

C. The Board may review and consider a different distribution plan for future years.

D. Legislative funding, if provided, shall be distributed to eligible regional service centers after July 1 annually.

R277-706-5. Eligible Regional Service Center Responsibilities.

A. Eligible regional service centers shall submit an annual application for available funds to the Board consistent with USOE timelines.

B. A regional service center application for funds shall include:

(1) a copy of completed interlocal agreement(s);

(2) a proposed budget and request for funds from the Board;

(3) a current external audit of current regional service center assets and liabilities in the initial application for funds and with each annual application;

(4) assurance signed by all parties to the interlocal agreement that the USOE shall have access to all regional service center records upon request;

(5) an annual financial report from the previous fiscal year; and

(6) a plan for the use and distribution of regional service center funds for the applicable fiscal year with specific attention to delivery of Utah Education Network and Telehealth services and the delivery of education-related services.

C. A regional service center shall provide an annual performance report beginning with fiscal year 2012 including information about:

(1) the regional service center delivery of Utah Education and Telehealth Network services;

(2) the type, amount, and effectiveness of delivery of public and higher education related services; and

(3) the coordination of public and higher education related services.

KEY: eligible regional service centers

October 9, 2014	**Art X Sec 3**
Notice of Continuation: September 2, 2014	**53G-4-410(6)**
	53E-3-401(4)

R277. Education, Administration.
R277-708. Enhancement for At-Risk Students.
R277-708-1. 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-2-410, which directs the Board to manage the Enhancement for At-Risk Students interventions by:

(i) developing a funding formula;

(ii) developing performance criteria;

(iii) administering the intervention;

(iv) distributing the appropriation; and

(v) monitoring and reporting the effectiveness of the interventions; 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)(a) The purpose of this rule is to establish criteria and procedures for distributing Enhancement for At-Risk Students funds to LEAs.

(b) The intent of the rule and the legislative appropriation is to improve academic achievement of students who are at risk of academic failure.

R277-708-2. Definitions.

(1) "At-risk of academic failure" means a k-12 public school student who:

(a) scores below proficient on a Board or LEA approved assessment; or

(b) meets an LEA governing board's approved definition of at-risk of academic failure.

(2) "Available funds" means the total funds appropriated for the Enhancement for At-Risk Students interventions, less funding designated for gang prevention under Subsection 53F-2-410(1)(b)(i).

(3) "Data Clearinghouse" means the electronic data collection system used by the Superintendent to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

(4) "LEA governing board" means:

(a) a charter school governing board; or

(b) a district's local school board.

(5) "LEA share" means the percentage of k-12 students from an LEA who are at risk of academic failure compared to the total count for the state of Utah from the previous school year.

(6) "Limited English Proficiency" or "LEP" means the total number of English learner or "EL" students in an LEA from the October 1 count from the previous school year, including:

(a) the number of EL students receiving a score of 1-4 on the English language proficiency assessment; and

(b) the number of students previously classified as English Proficient based on a score of 5 or 6 on the English language proficiency assessment.

(7) "Low performance on a statewide assessment" means the unduplicated count of k-12 students from an LEA scoring below proficient in Reading/Language, Math, and Science on one of the following exams from the previous school year:

(a) the Student Assessment of Growth and Excellence (SAGE);

(b) the Special Education adaptive testing Dynamic Learning Maps or "DLM"; or

(c) other Board approved assessment.

(8) "Mobility" means the number of k-12 students enrolled less than 160 days or its equivalent in one school within a school year, as determined by the prior year's year-end average daily membership submission.

(9) "Poverty" means the total number of k-12 students in an LEA reported as economically disadvantaged using federal child nutrition income eligibility guidelines for free or reduced-priced under the federal school lunch program from the official October 1 enrollment count from the previous school year.

R277-708-3. Allocation of Enhancement for At-Risk Student Funds.

(1) The Superintendent shall award available funds to an LEA based on an equal weighting of:

(a) low performance on a Board approved assessment;

(b) poverty;

(c) mobility; and

(d) limited English proficiency.

(2) The Superintendent shall base an LEA's allocation on the certified data from the Data Clearinghouse using the most recent school year for which data is complete and available.

(3) The Superintendent shall use the following funding formula to determine an LEA base to distribute to LEAs:

(a) the Superintendent shall annually calculate 4% of the state appropriation of the Enhancement for At-Risk Students funding available for LEA grants to provide a base amount to LEAs.

(b) The Superintendent shall divide the base amount described in Subsection (3)(a) equally among all eligible LEAs.

(4) The Superintendent shall annually calculate 20% of the state appropriation of the Enhancement for At-Risk Students on a per school basis to provide a targeted amount to LEAs with traditional elementary schools, secondary schools, and alternative high schools with at least 75% poverty.

(5) Of the funds remaining after the distributions described in Subsections (3) and (4), the Superintendent shall determine an LEA's share based on the LEA's percentage of students with at-risk factors for the state.

(6) The Superintendent shall use data from the Board's Data Warehouse for each LEA from the previous school year to determine the students who qualify under the following definitions:

(a) low performance on a Board approved assessment;

(b) poverty;

(c) mobility; and

(d) limited English Proficiency.

(7) The Superintendent shall allocate funds appropriated for at-risk factors to each LEA based on the LEA's proportion of at-risk factors in comparison to the statewide total.

(8) The Superintendent shall notify an LEA that qualifies for funding of the LEA's level of funding annually by May 1.

R277-708-4. Fiscal Procedures.

(1) An LEA shall submit its application to the Superintendent annually by November 1 through the Board's grant management system.

(2) The Superintendent shall distribute available funds to LEAs with an approved application monthly based on a one-twelfth distribution beginning on July 1.

(3) An LEA shall spend all allocated funds annually by June 30.

(4) An LEA that accepts funds for Enhancement for At-Risk Students intervention services shall be subject to Board accounting, auditing, and budgeting rules and policies.

(5)(a) With written approval from the Superintendent, an LEA may carry over and spend ten percent or $50,000, whichever is less, of state Enhancement for At-Risk Student funds in the next fiscal year.

(b) An LEA shall submit a request to carry over funds under Subsection (5)(a) to the Superintendent annually.

(c) An LEA shall detail approved carry over amounts in a revised budget submitted through the Board's grant management

system.

(d) The Superintendent shall review and approve a revised budget submitted under Subsection (5)(c) no later than October 1 in the year submitted.

R277-708-5. Application Process.

(1) An LEA may use funds for activities that support academic achievement of students who are at risk of academic failure.

(2) An LEA shall establish the following to include in the LEA's application for Enhancement for At-Risk Student money:

(a) specific measurable goals, including a baseline measurement, related to increased academic achievement of students at-risk of academic failure;

(b) proposed activities that are directly tied to the LEA's plan to increase student achievement;

(c) a copy of the LEA's comprehensive plan for student and classroom management, and school discipline required in Section R277-609-4; and

(d) if the LEA establishes an LEA specific definition of a student at-risk of academic failure as described in Subsection R277-708-2(1)(b), the LEA governing board's approved definition of a student at-risk of academic failure.

(3) Annually, an LEA shall provide the following information to the Superintendent:

(a) a report of the LEA's use of funds through the annual financial reporting process;

(b) the LEA's outcome data related to the specific measurable goals included in the LEA's application; and

(c) a report of intervention effectiveness based on performance criteria defined by the Superintendent.

R277-708-6. Oversight: Monitoring, Evaluation and Reports.

(1) The Superintendent may recommend that the Board designate no more than one percent of the total appropriation from the Enhancement for At-Risk Students to be used specifically by the Superintendent for oversight, monitoring and evaluation of:

(a) LEA implementation of the intervention; and

(b) compliance with state law and this rule.

(2)(a) The Superintendent shall conduct tri-annual intervention reviews of each LEA receiving Enhancement for At-Risk Students funding to ensure intervention compliance.

(b) In the Superintendent's discretion or for good cause, the Superintendent may conduct additional formal or informal:

(i) monitoring;

(ii) reviews; or

(iii) site visits.

(3) If the Superintendent identifies violations as a result of a review described in Subsection (2)(a), an LEA shall prepare and submit to the Superintendent a written corrective action plan for each finding made by the Superintendent.

(4) If an LEA fails to resolve findings identified by the Superintendent under Subsection (3), the Superintendent may withhold funds as provided in R277-114.

R277-708-7. Gang Prevention and Intervention Funds.

(1) Consistent with Subsection 53F-2-410(1)(b), the Superintendent shall distribute funding to LEAs for gang prevention and intervention.

(2) An LEA desiring to receive gang prevention and intervention funds shall submit a proposal consistent with Rule R277-436.

KEY: students at risk
March 14, 2018 **Art X Sec 3**
Notice of Continuation September 15, 2016 **53F-2-410**
53E-3-401(4)

R277. Education, Administration.
R277-710. Intergenerational Poverty Interventions in Public Schools.
R277-710-1. 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-5-207(4), which directs the Board to accept proposals and award grants under the program.

(2) The purpose of this rule is:

(a) to provide for distribution of funds to LEAs; and

(b) to provide for out-of-school educational services that assist students affected by intergenerational poverty in achieving academic success.

(3) This rule provides eligibility criteria, provides minimum application criteria, provides timelines, and provides for Superintendent oversight and reporting.

R277-710-2. Definitions.

(1) "Eligible student" means a student in grades k-12 of the public school system who is classified as a child affected by intergenerational poverty.

(2)(a) "Intergenerational poverty (IGP)" means poverty in which two or more successive generations of a family continue in the cycle of poverty and government dependence.

(b) "Intergenerational poverty" does not include situational poverty as defined in Subsection 35A-9-102(2).

(3) "Program" means the Intergenerational Poverty Interventions Grant Program that provides educational services outside of the regular school day (after school program).

R277-710-3. Grant Eligibility.

(1) Only LEAs are eligible to apply for funds under the program.

(2) An LEA, in designing the LEAs program services, may collaborate with a community-based organization that provides quality after school programs.

(3) The Board shall give priority to applicants that have a significant number or percentage of students affected by intergenerational poverty.

(4) Program funds are intended to provide supplemental services beyond what is already available through state and local funding.

(a)(i) For an LEA with a school that has an existing after school program, the program funds may be used to augment the amount or intensity of services to benefit students affected by IGP.

(ii) A program applicant that has an existing after school program may apply for a grant in the range of $30,000 to $50,000 per school year.

(b)(i) For an LEA with a school that does not have an existing after school program, the program funds may be used to establish a quality after school program.

(ii) A program applicant without an existing after school program may apply for grants in the range of $100,000-$150,000 per school year.

(5) An LEA that participates in the program and serves students in grades k-6 may be eligible to apply for additional federal after school funding through the Department of Workforce Services.

R277-710-4. Program Requirements.

An applicant for a program grant shall design a program that includes the following minimum components:

(1) a description of the level of administrative support and leadership at the LEA to effectively implement, monitor, and evaluate the program;

(2) an explanation of how the LEA will provide adequate supervision and support to successfully implement or increase programs at the school level;

(3) a summary of a needs assessment conducted by the LEA to determine the academic needs and interests of participating students and their families;

(4) the identification of intended outcomes of the program and how these outcomes will be measured;

(5) an explanation of how the LEA or school will provide services to improve the academic achievement of children affected by intergenerational poverty;

(6) a commitment to assess program quality and effectiveness and make changes as needed;

(7) an outline of the scope of services, including days of the week, number of hours, and number of weeks;

(8) an explanation of the LEA's strategy for coordinating with and engaging the Department of Workforce Services to provide services for the LEA's eligible students;

(9) an explanation of how the LEA will work with the Department of Workforce Services, the Department of Health, the Department of Human Services, and the juvenile courts to provide services to the LEA's eligible students;

(10) the identification of IGP eligible students categorized by age, and schools in which the LEA plans to develop programs with the grant money;

(11) an annual program budget and identification of the estimated cost per student; and

(12) establishment and maintenance of data systems that inform program decisions and annual reporting requirements.

R277-710-5. Application Process.

(1) The Superintendent shall solicit competitive grant applications from LEAs, score the applications, and make funding recommendations to the Board.

(2) An LEA may apply for a grant through the Utah Consolidated Application (UCA).

(3)(a) The Superintendent shall convene a panel of application reviewers who demonstrate no conflicts of interest.

(b) The panel reviewers shall score applications and the panel shall make recommendations for funding to the Board.

(4) In a year when there is a grant competition:

(a) the application deadline is June 16;

(b) the application review shall be completed by June 23;

(c) the Superintendent shall provide recommendations of grant applicants to the Board no later than July 1; and

(d) the Superintendent shall notify grant recipients no later than August 5.

(5) The Superintendent, in future years, subject to continuing appropriations, may adjust the time periods and create applicable timelines to allow LEAs more time to propose programs and complete applications.

R277-710-6. Superintendent Oversight and Reporting Requirements.

(1) The Superintendent shall provide adequate oversight in the administration of the IGP program to include:

(a) conducting the annual application process and awarding funds;

(b) monitoring program implementation; and

(c) gathering and reporting required data.

(2) To effectively administer the IGP program, the Superintendent shall reserve up to 5% of the appropriation for the program for administrative and evaluation purposes.

(3) An LEA that receives program grant money shall annually provide to the Superintendent the information that is necessary for the Board's report to the Utah Intergenerational Welfare Reform Commission as required by Subsection 53F-5-

207(7).

(4) The annual report required under Subsection 53F-5-207(7) shall include:

(a) the progress of LEA programs in expending grant money;

(b) the progress of LEA programs in improving the academic achievement of children affected by intergenerational poverty; and

(c) the LEA's coordination efforts with the Department of Workforce Services, the Department of Health, the Department of Human Services, and the juvenile courts.

KEY: public schools, poverty, intervention

August 11, 2016 **Art X Sec 3**
53E-3-401(4)
53F-5-207

R277. Education, Administration.
R277-711. High Quality School Readiness Expansion.
R277-711-1. 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 53F-5-303, which requires the Board to make rules to:

(i) implement a grant program for LEAs to increase capacity in high-quality school readiness programs; and

(ii) create a tool to determine quality of a school readiness program; and

(d) Section 53F-5-304, which requires the Board to make rules to implement a grant program for home-based technology programs to provide high-quality school readiness programs.

(2) The purpose of this rule is to:

(a) designate the tool for the Superintendent to use in determining if a school readiness program is high quality; and

(b) designate procedures for an LEA to apply to the Board to receive grant money.

R277-711-2. Definitions.

(1) "Eligible LEA" means an LEA that provides a school readiness program that the Superintendent has determined to be a high-quality program consistent with procedures established in this Rule.

(2) "Program" means the high-quality school readiness expansion program established in Title 53F, Chapter 5, Part 3, Expanded Access to High Quality School Readiness Programs Act.

R277-711-3. Grant Applications - Timelines.

(1) The Superintendent shall:

(a) develop a grant application that allows an LEA to apply to participate in the program; and

(b) make the grant application available on the Board's website.

(2) An LEA may apply for a grant described in Section 53F-5-303 by submitting an application to the Superintendent on or before the date published on the Board's website.

(3)(a) An LEA may notify the Superintendent of the LEA's intention to apply for a grant at any time.

(b) If an LEA intends to be considered for a grant for the upcoming school year, the LEA 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 tool described in Section R277-711-4 to determine if the applying LEA is an eligible LEA.

(6) The Superintendent shall notify an eligible LEA of successful receipt of a grant by July 1.

R277-711-4. Superintendent and LEA Responsibilities - Tool to Determine Quality of an LEA School Readiness Program.

(1) The Superintendent shall create a tool to determine whether or not an LEA school readiness program may be designated as high quality.

(2) The tool described in Subsection (1) shall consist of the following components:

(a)(i) the Early Childhood Environmental Rating Scale (ECERS) observational tool for an observer to rate a program through a site visit; or

(ii) another observational tool that the Superintendent trusts to be a reliable tool;

(b) an application from the LEA containing the high quality components described in 53F-6-304; and

(c) an on-site visit and interview with the Superintendent's designated staff.

(3) The Superintendent shall establish a scoring rubric for how the application will be evaluated, and make the rubric available to applicants.

(4) The Superintendent shall maintain a list of state-funded high-quality school readiness programs operating in each LEA's geographic boundaries, which have been designated as high quality through use of the tool.

(5) The Superintendent shall provide for a flag in a student's data file to indicate the type of state-funded high-quality school readiness program that the student participated in.

(6)(a) The Superintendent may require an LEA that receives program money to develop a corrective action plan and successfully implement the corrective action plan if the LEA fails to:

(i) comply with statutory provisions or the requirements of this Rule;

(ii) meet expected goals; or

(iii) maintain all the high-quality elements of the school readiness program.

(b) If an LEA fails to successfully implement a corrective action plan described in Subsection (6)(a), the Superintendent may discontinue or reduce funding of program grant monies to the LEA.

(7) The Superintendent shall administer the grant program for home-based technology providers as provided in Section 53F-5-304.

(8) The Superintendent shall administer and oversee the evaluation of the program as provided in Section 53F-5-307.

KEY: grants, school readiness program
October 11, 2016

Art X Sec 3
53E-3-401(4)
53F-5-303
53F-5-304

R277. Education, Administration.
R277-712. Competency-based Grant Programs.
R277-712-1. 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-5-502, which requires the Board to:

(i) define outcome-based measures for each type of grant awarded to LEA's;

(ii) establish a grant application process;

(iii) establish a review committee; and

(iv) adopt metrics to analyze the quality of a grant application; 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) define outcome-based measures for each type of grant awarded to LEA's;

(b) establish a grant application process;

(c) establish a review committee; and

(d) adopt metrics to analyze the quality of a grant application.

R277-712-2. Definitions.

(1) "Advisory committee" means the advisory committee established by the Board in Section R277-712-3.

(2) "Grant program" means the same as that term is defined in Subsection 53F-5-501(5).

R277-712-3. Competency-based Advisory Committee Membership and Duties.

(1) The advisory committee shall include the following ten individuals:

(a) the Deputy Superintendent of Instructional Services or the Deputy's designee, who is a non-voting member of the advisory committee;

(b) one member who is an expert in blended learning;

(c) one member who is an expert in STEM education;

(d) one member who is an expert in assessment of student learning;

(e) one member who is a former school district superintendent;

(f) one member who is a current school administrator;

(g) one member who is a current charter school administrator;

(h) one member who is a former LEA administrator;

(i) one member who is a current teacher; and

(j) one member who is a former teacher.

(2) In addition to the committee members described in Subsection (1), the advisory committee may select additional grant application reviewers to assist the advisory committee with the work described in Subsection (3).

(3) The advisory committee shall:

(a) establish metrics to analyze the quality of a grant application;

(b) review an LEA's planning grant application to determine whether the planning grant application:

(i) meets the criteria described in Section 53F-5-503 and Section R277-712-5; and

(ii) should be selected by the Board as one of three LEAs to receive a planning grant;

(c) make a recommendation to the Superintendent and the Board on which grant applications should be selected by the Board; and

(d) perform other duties as directed by:

(i) the Board; or

(ii) the Superintendent.

(4) The advisory committee, or the Superintendent on behalf of the advisory committee, shall present the advisory committee's recommendations on grant applications to the Board for approval.

R277-712-4. Pre-grant Approval Requirements.

(1) Before an LEA submits a planning grant application to the advisory committee for approval by the Board, the LEA shall have at least two LEA representatives participate in the competency-based technical assistance training conducted by the Superintendent, including;

(a) the school district superintendent or charter school executive director; and

(b)(i) the LEA's curriculum director; or

(ii) the LEA's proposed competency-based education program manager.

(2) A member of an LEA's local school board or charter school governing board and other staff identified by the applying LEA may participate in the technical assistance training described in Subsection (1).

R277-712-5. Grant Application.

(1) An LEA may apply for a planning grant described in Section 53F-5-503 by submitting an application to the Superintendent.

(2) The Superintendent shall:

(a) develop a grant application;

(b) set a deadline for the application to be submitted to the Superintendent; and

(c) make the grant application available to LEAs on the Board's website.

R277-712-6. Procedure and Requirements for Awarding a Planning Grant.

(1) The advisory committee and the Superintendent shall make recommendations to the Board based on:

(a) the criteria described in Subsection 53F-5-503(2);

(b) the LEA's proposed budget for the LEA's competency-based program; and

(c) the LEA's outcome based measurements described in Subsection (2).

(2)(a) For a planning grant, an LEA shall include outcome-based measurements as part of the LEA's competency-based program to measure the performance of the LEA's plan.

(b) The outcome-based measurements described in Subsection (2)(a) shall include at least one measurement of student growth and proficiency.

(c) The outcome-based measurements described in Subsection (2)(a) may include:

(i) parent and student satisfaction with the LEA's competency-based program;

(ii) cost savings;

(iii) an increase in the LEA's graduation rate; and

(iv) number of credits earned by students through the competency-based program.

KEY: competency-based instruction, grant programs
October 11, 2016 **Art X Sec 3**
53F-5-502
53E-3-401(4)

R277. Education, Administration.
R277-713. Concurrent Enrollment of High School Students in College Courses.
R277-713-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) 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-2-409, which directs the Board to provide for the distribution of concurrent enrollment dollars in rule.

(2) The purpose of the concurrent enrollment program is to provide a challenging college-level and productive experience in high school, and to provide transition courses that can be applied to postsecondary education.

(3) The purpose of this rule is to specify the standards and procedures for concurrent enrollment courses and the criteria for funding appropriate concurrent enrollment expenditures.

R277-713-2. Definitions.

(1) "Concurrent Enrollment" means a public high school student is enrolled in a course that satisfies both high school graduation requirements and qualifies for higher education credit at a USHE institution.

(2) "Concurrent Enrollment Program" or "Program" means the program created in Section 53E-10-302 that receives funding in accordance with Section 53F-2-409, which allows students to participate in concurrent enrollment courses.

(3) "Master course list" means a list of approved courses, maintained by the Superintendent and USHE, which may be offered and funded through the concurrent enrollment program.

(4) "USHE" means the Utah System of Higher Education.

R277-713-3. Student Eligibility and Participation.

(1) A student participating in the program shall:

(a) be enrolled in a public high school in the state and counted in average daily membership for that high school, as required in Subsection 53E-10-301(4);

(b) have on file at the participating school, a current student SEOP, as defined in Section 53E-2-304.

(c) have completed a concurrent enrollment participation form, including a parent permission form and acknowledgment of program participation requirements, as required in section 53E-10-304; and

(d)(i) be enrolled in grade 11 or 12; or

(ii) if allowed by exception, be enrolled in grade 9 or 10, as detailed in Subsection 53E-10-302(5).

(2) Student eligibility requirements for the program shall be:

(a) established by an LEA and a USHE institution; and

(b) sufficiently selective to predict a successful experience for qualified students.

(3) An LEA has the primary responsibility for identifying a student who is eligible to participate in a concurrent enrollment class.

(4) To ensure that a student is prepared for college level work, an LEA shall appropriately evaluate the student's abilities prior to participation in concurrent enrollment courses, and to determine that the student meets prerequisites previously established for the same campus-based course by the sponsoring USHE institution.

R277-713-4. Course Credit and Offerings - Course Approval Process.

(1) Credit earned through a concurrent enrollment course:

(a) has the same credit hour value as when taught on a college campus;

(b) applies toward graduation on the same basis as a course taught at a USHE institution to which the credits are submitted;

(c) generates higher education credit that becomes a part of a student's permanent college transcript;

(d) generates high school credit that is consistent with the LEA policies for awarding credit for graduation; and

(e) is transferable from one USHE institution to another.

(2) A USHE institution is responsible to determine the credit for a concurrent enrollment course, consistent with State Board of Regents policies.

(3) An LEA and a USHE institution shall provide the Superintendent and USHE with proposed new course offerings, including syllabi and curriculum materials, by November 15 of the year preceding the school year in which the courses would be offered.

(4) A concurrent enrollment course shall be approved by the Superintendent and USHE, and designated on the master course list, maintained by the Superintendent and USHE.

(5)(a) Concurrent enrollment course offerings shall reflect the strengths and resources of the respective schools and USHE institutions and be based upon student needs.

(b) The number of courses selected shall be kept small enough to ensure coordinated statewide development and professional development activities for participating teachers.

(6) To provide for the focus of energy and resources on quality instruction in the concurrent enrollment program, program courses shall be limited to courses in:

(a) English;
(b) mathematics;
(c) fine arts;
(d) humanities;
(e) science;
(f) social science;
(g) world languages; and
(h) career and technical education.

(7) A Technology-intensive concurrent enrollment (TICE) course is a hybrid course, having a blend of different learning activities, available both in the classroom and online, or may be delivered exclusively online.

(8) A concurrent enrollment course shall be a course at the 1000 or 2000 level in postsecondary education, except for a 3000-level accelerated foreign language course, which may be approved as a concurrent enrollment course for eligible students.

(9) A concurrent enrollment course may not be approved if it is:

(a) a high school course that is typically offered in grade 9 or 10; or

(b) a postsecondary course below the 1000 level.

(10) The appropriate USHE institution shall take responsibility for course content, procedures, examinations, teaching materials, and program monitoring and all procedures and materials shall be consistent with Utah law, and shall ensure quality and comparability with courses offered on a college or university campus.

R277-713-5. Program Management and Delivery.

(1)(a) Concurrent enrollment courses and curriculum may be provided through live classroom instruction or by other means, including electronic communications.

(b) An LEA and a USHE institution shall design and implement courses to take full advantage of the most currently available educational technology.

(2) An LEA shall use a Superintendent-designated 11-digit course code for a concurrent enrollment course.

(3) An LEA and a USHE institution shall jointly align information technology systems with all individual student academic achievement data so that student information will be

tracked through both education systems consistent with Section 53E-4-308.

R277-713-6. Faculty and Educator Requirements.

(1) An educator who is not employed by a USHE institution and teaches a concurrent enrollment course shall:

(a) be employed by an LEA;

(b) have secondary endorsements in each subject area in which they teach; and

(c) have a Level 4 mathematics endorsement if the educator teaches a mathematics concurrent enrollment course.

(2) An educator employed by an LEA who teaches a concurrent enrollment course shall be approved as an adjunct faculty member at the contracting USHE institution prior to teaching the concurrent enrollment course.

(3) High school educators who hold adjunct or part time faculty status with a USHE institution for the purpose of teaching concurrent enrollment courses shall be included as fully as possible in the academic life of the supervising academic department at the USHE institution.

(4) An LEA and a USHE institution shall share expertise and professional development, as necessary, to adequately prepare a teacher to teach in the concurrent enrollment program, including federal and state laws specific to student privacy and student records.

(5) A USHE institution that employs a faculty member who teaches in a high school has responsibility for ensuring and maintaining documentation that the faculty member has successfully completed a criminal background check, consistent with Section 53G-11-402.

R277-713-7. Concurrent Enrollment Funding and Use of Concurrent Enrollment Funds.

(1) Program funds shall be allocated in accordance with Section 53F-2-409.

(2) Program funds allocated to LEAs may not be used for any other program or purpose, except as provided in Section 53F-2-206.

(3) Concurrent enrollment funding may not be used to fund a parent- or student-initiated college-level course at an institution of higher education.

(4) The Superintendent may not distribute concurrent enrollment funds to an LEA for reimbursement of a concurrent enrollment course:

(a) that is not on the master course list;

(b) for a student that has exceeded 30 semester hours of concurrent enrollment for the school year;

(c) for a concurrent enrollment course repeated by a student; or

(d) taken by a student:

(i) who has received a diploma;

(ii) whose class has graduated; or

(iii) who has participated in graduation exercises.

(5)(a) An LEA shall receive a pro-rated amount of the funds appropriated for concurrent enrollment according to the number of semester hours successfully completed by students registered through the LEA in the prior year compared to the state total of completed concurrent enrollment hours.

(b) Successfully completed means that a student received USHE credit for the course.

(6) An LEA's use of state funds for concurrent enrollment is limited to the following:

(a) aid in professional development of adjunct faculty in cooperation with the participating USHE institution;

(b) assistance with delivery costs for distance learning programs;

(c) participation in the costs of LEA personnel who work with the program;

(d) student textbooks and other instructional materials;

(e) fee waivers for costs or expenses related to concurrent enrollment for fee waiver eligible students under R277-407;

(f) purchases by LEAs of classroom equipment required to conduct concurrent enrollment courses; and

(g) other uses approved in writing by the Superintendent consistent with the law and purposes of this rule.

(7) An LEA that receives program funds shall provide the Superintendent with the following:

(a) end-of-year expenditures reports; and

(b) an annual report regarding supervisory services and professional development provided by a USHE institution.

(8) Appropriate reimbursement may be verified at any time by an audit.

R277-713-8. Student Tuition and Fees.

(1) A concurrent enrollment program student may be charged partial tuition and program-related fees, in accordance with Section 53E-10-305.

(2) Postsecondary tuition and participation fees charged to a concurrent enrollment student are not fees, as defined in R277-407, and do not qualify for a fee waiver under R277-407.

(3)(a) All costs related to concurrent enrollment classes that are not tuition and participation fees are subject to a fee waiver consistent with R277-407.

(b) Concurrent enrollment costs subject to fee waiver may include consumables, lab fees, copying, material costs, and textbooks required for the course.

(4)(a) Except as provided in Subsection (4)(b), an LEA shall be responsible for fee waivers.

(b) An agreement between a USHE institution and an LEA may address the responsibility for fee waivers.

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

(1) An LEA and a USHE institution that plan to collaborate to offer a concurrent enrollment course shall enter into an annual contract for the upcoming school year by no later than May 30.

(2) An LEA shall provide the Superintendent a copy of each annual contract entered into between the LEA and a USHE institution for the upcoming school year by no later than May 30.

(3) An LEA and a USHE institution shall use the standard contract language developed by the Superintendent and USHE.

KEY: students, curricula, higher education

August 11, 2016	**Art X Sec 3**
Notice of Continuation July 19, 2017	**53E-3-401(4)**
	53E-3-501(1)(c)
	53E-10-3

R277. Education, Administration.
R277-714. Dissemination of Information About Juvenile Offenders.
R277-714-1. Definitions.

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

B. "FERPA" means the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, a federal law designed to protect the privacy of students' education records. The law is hereby incorporated by reference.

C. "GRAMA" means the Government Records Access and Management Act, Title 63G, Chapter 2, a Utah law designed to govern access to and control of government records.

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. "Superintendent" means the State Superintendent of Public Instruction.

R277-714-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision over public schools in the Board, Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities, and Section 53G-8-404, which directs the Board to adopt rules governing the dissemination of information about juvenile offenders in the public schools.

B. The purpose of this rule is to provide procedures for LEAs to follow in notifying school personnel of offenders in their schools and for protecting the confidentiality of the information.

R277-714-3. Dissemination of Information.

A. The dissemination of any information about students among agencies and LEAs shall be consistent with FERPA and GRAMA, including applicable time periods and protection of confidential information.

B. Each LEA shall establish by written policy which staff members have authority to receive confidential information about students, depending upon the offense and the circumstances. This policy shall be approved by the LEA and available to parents and students upon request.

C. A dispute regarding the dissemination of information shall be decided in favor of a student's rights to privacy, except in the event of apparent imminent danger to persons or property.

KEY: public education, dissemination of information, juvenile offenders

March 12, 2012	**Art X Sec 3**
Notice of Continuation June 10, 2014	**53E-3-401(4)**
	53G-8-404

R277. Education, Administration.
R277-715. Out-of-School Time Program Standards.
R277-715-1. 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-4-301(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 53E-3-508, which requires the Board to adopt rules to set standards for high quality out-of-school time programs.

(2) The purpose of this rule is to set standards for high quality out-of-school time programs, and establish the programs required to adopt those standards.

R277-715-2. Definitions.

(1) "Assessment tool" means the Utah After-school Program Quality Assessment and Improvement Tool developed by a statewide multi-agency stakeholder group, and administered by the Utah After-school Network.

(2) "Out-of-school time" means time that a student at a participating program is engaged in a learning environment that is not during regular school hours, including before school, after school, and during the summer.

(3) "Participating program" means a program that receives funds from the Board or from the Department of Workforce Services to support the program's out-of-school time programming.

R277-715-3. Requirements and Standards for High Quality Out-of-School Time Programs.

(1) A participating program shall:

(a) use the assessment tool to determine the extent to which the program is meeting the standards described in this Section;

(b) ensure that it is working toward achieving the standards described in this Section; and

(c) collect and submit student attendance data to the Superintendent in a format prescribed by the Superintendent.

(2) The Superintendent shall provide for a flag in a student's data file to indicate the student's attendance in a participating program.

(3) The safety standard includes the following components in order to provide a safe, healthy, and nurturing environment for all participants, including that:

(a) staff are professionally qualified to work with program participants;

(b) policies and procedures are established and implemented to ensure the health and safety of all program participants;

(c) program participants are carefully supervised to maintain safety;

(d) a transportation policy is established and communicated to staff and families of participants; and

(e) a consistent and responsive behavior management plan is established and implemented.

(4) The relationships standard includes the following components in order to develop and maintain positive relationships among staff, participants, families, schools, and communities, including that:

(a) staff and participants know, respect, and support each other;

(b) the program communicates and collaborates with the school and the community; and

(c) the program fosters family involvement to support program goals.

(5) The skills standard includes the following components in order to encourage participants to learn new skills, including that:

(a) participants are actively engaged in learning activities that promote critical thinking, creative thinking, and that build on the individual's interests and strengths;

(b) the program aligns academic support and interventions to the school-day curricula to address student learning needs; and

(c) the program offers a variety of life skill activities and needs-based support to promote leadership skills, personal growth, and responsible behaviors toward self and others.

(6) The administration standard includes the following components in order to ensure that the program is effectively administered, including that the program:

(a) has established a plan for increasing capacity, ensuring program quality, and promoting sustainability, including sound fiscal management;

(b) establishes and consistently implements clearly-defined policies and procedures;

(c) recruits, hires, and trains diverse and qualified staff members who value and nurture all participants; and

(d) provides professional development and training opportunities to enhance staff job performance.

KEY: out-of-school time, programs, standards, students
November 7, 2016 **Art X Sec 3**
53E-3-401(4)
53E-3-508

R277. Education, Administration.
R277-716. Alternative Language Services for Utah Students.
R277-716-1. 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) Title III; 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:

(a) to address the requirements of Title III and implementing regulations and case law;

(b) to clearly define the respective responsibilities of the Superintendent and LEAs:

(i) in identifying ELL/LEP students who are currently enrolled in Utah schools; and

(ii) in providing consistent and appropriate services to identified students; and

(c) in order to:

(i) meet Title III requirements;

(ii) meet funding eligibility requirements; and

(iii) appropriately distribute ELL/LEP funds to LEAs with adequate policies.

R277-716-2. Definitions.

(1) "Alternative language services program" or "ALS program" means a research-based language acquisition instructional service model used to achieve English proficiency and academic progress of identified students.

(2) "Alternative language services" or "ALS" means language services designed to meet the education needs of all language minority students so that students are able to participate effectively in the regular instruction program.

(3) "Annual measurable achievement objectives" or "AMAOs" means English Language Proficiency Performance Targets established by the Superintendent consistent with Title III requirements for public school students who are receiving language acquisition services in the state of Utah as required by 20 U.S.C. 6842.

(4) "Approved language acquisition instructional services model" means methods of ALS instruction that are evidence-based and recommended by the U.S. Department of Education and the Superintendent.

(5) "Consolidated Utah Student Achievement Plan" means the application for federal funds authorized under ESEA, and other federal sources submitted annually to the Superintendent.

(6) "English Language Learner/Limited English Proficient" or "ELL/LEP" means an individual:

(a) who has sufficient difficulty speaking, reading, writing, or understanding the English language, and whose difficulties may deny the individual the opportunity to:

(i) learn successfully in classrooms where the language of instruction is English; or

(ii) participate fully in society;

(b) who was not born in the United States or whose native language is a language other than English and who comes from an environment where a language other than English is dominant; or

(c) who is an American Indian or Alaskan native or who is a native resident of the outlying areas and comes from an environment where a language other than English has had a significant impact on such individual's level of English language proficiency.

(7) "Immigrant children and youth" for purposes of this rule means individuals who:

(a) are ages 3 through 21;

(b) were born outside of the United States; and

(c) have not been attending one or more schools in any one or more states of the United States for more than three full academic years.

(8) "Instructional Materials Commission" means a Commission appointed by the Board to evaluate instructional materials for recommendation by the Board consistent with Title 53E, Chapter 4, State Instructional Materials Commission.

(9) "Language acquisition instructional program" means an instructional program for students for the purpose of developing and attaining English proficiency, while meeting state academic content and achievement standards.

(10) "State Approved Endorsement Program" or "SAEP" means a professional development plan on which a licensed Utah educator is working to obtain an endorsement.

(11) "Title III" means federal provisions for providing language instruction to ELL/LEP students under 20 U.S.C. 6801, et seq.

R277-716-3. Superintendent Responsibilities.

(1) The Superintendent shall make available an identification and placement procedure model to LEAs to provide language acquisition services for ELL/LEP students.

(2) The Superintendent shall develop and require all LEAs to use the statewide annual assessment based on the AMAOs for English language acquisition to measure growth and progress in:

(a) listening;

(b) speaking;

(c) reading;

(d) writing; and

(e) comprehension.

(3) The Utah Academic Language Proficiency Assessment (UALPA) shall be administered throughout the school year.

(4) An LEA may determine restricted testing dates within the school year.

(5) The Superintendent shall apply a formula and distribute funds to LEAs for identification and services to ELL/LEP students and their families.

(a) The formula shall provide an amount based upon eligible students and available funds, to be distributed to all eligible LEAs and consortia consistent with Title III requirements.

(b) The formula shall provide for an additional amount to qualifying LEAs based on numbers of immigrant children and youth.

(6) The Superintendent shall make models and accountability measures in providing ALS services to students available to LEAs.

(7) An LEA shall use Superintendent-identified models or models based upon educational research.

(8) An LEA that receives Title III funds under this rule shall provide the following to the Superintendent:

(a) a budget as part of the Consolidated Utah Student Achievement Plan data on student achievement;

(b) the number of students served with Title III funds;

(c) assurances and documentation maintained of services or a program used to serve students;

(d) assurances and documentation maintained of required parent notification; and

(e) a biennial report summarizing the LEA's progress in Subsection (10) in addition to the annual Consolidated Utah Student Achievement Plan information.

(9) The Superintendent shall provide timelines to LEAs for meeting Title III requirements.

(10) The Superintendent shall assist and provide training to LEAs in development of ALS and Title III services to students who do not meet prescribed English proficiency AMAOs.

(11) An LEA shall maintain:

(a) an ALS budget plan;

(b) a plan for delivering student instruction;

(c) ALS assessments to date;

(d) a sample of parent notification required under Subsection R277-716-4(7); and

(e) documentation or evidence of progress of required Title III AMAOs.

(12) The Superintendent shall conduct on-site audits of all funded ALS programs at least once every five years.

(13) The Superintendent shall provide technical assistance during on-site audits and as the Superintendent deems necessary.

R277-716-4. LEA Responsibilities.

(1) An LEA that receives funds under Title III shall assure as part of the Consolidated Utah Student Achievement Plan that the LEA has a written plan that:

(a) includes an ELL/LEP student find process, including a home language survey and a language proficiency for program placement, that is implemented with student registration;

(b) uses a valid and reliable assessment of an ELL/LEP student's English proficiency in:

(i) listening;

(ii) speaking;

(iii) reading;

(iv) writing; and

(v) comprehension;

(c) provides language acquisition instructional services based on Board-approved Utah English Language Proficiency Standards;

(d) establishes student exit criteria from ALS programs or services; and

(e) includes the ELL/LEP student count, by classification, prior to July 1 of each year.

(2) Following receipt of Title III funds, an LEA shall:

(a) determine what type of Title III ALS services are available and appropriate for each student identified in need of ALS services, including:

(i) dual immersion;

(ii) ESL content-based; and

(iii) sheltered instruction;

(b) implement an approved language acquisition instructional program designed to achieve English proficiency and academic progress of an identified student;

(c) ensure that all identified ELL/LEP students receive English language instructional services, consistent with Subsection (1)(c);

(d) provide adequate staff development to assist an ELL/LEP teacher and staff in meeting AMAOs; and

(e) provide necessary staff with:

(i) curricular materials approved by the Instructional Materials Commission consistent with Rule R277-469; and

(ii) facilities for adequate and effective training.

(3) If an LEA does not meet AMAOs, the LEA shall develop and implement improvement plans to satisfy AMAOs.

(4) Following evaluation of student achievement and services, an LEA shall:

(a) analyze results and determine the program's success or failure; and

(b) modify a program or services that are not effective in meeting the state AMAOs.

(5) An LEA shall have a policy to identify and serve students who qualify for services under IDEA, including:

(a) implementing procedures and training, consistent with federal regulations and state special education rules, that ensure ELL/LEP students are not misidentified as students with disabilities due to their inability to speak and understand English;

(b) reviewing the assessment results of a student's language proficiency in English and other language prior to initiating evaluation activities, including selecting additional assessment tools;

(c) conducting assessments for IDEA eligibility determination and educational programming in a student's native language when appropriate;

(d) using nonverbal assessment tools when appropriate;

(e) ensuring that accurate information regarding a student's language proficiency in English and another language is considered in evaluating assessment results;

(f) considering results from assessments administered both in English and in a student's native language;

(g) ensuring that all required written notices and communications with a parent who is not proficient in English is provided in the parent's preferred language to the extent practicable, including utilizing interpretation services when appropriate; and

(h) coordinating the language acquisition instructional services and special education and related services to ensure that the IEP is implemented as written.

(6) An LEA shall provide information and training to staff that:

(a) limited English proficiency is not a disability; and

(b) if there is evidence that a student with limited English proficiency has a disability, the staff shall refer the student for possible evaluation for eligibility under IDEA.

(7)(a) An LEA shall notify a parent who is not proficient in English of the LEA's required activities.

(b) A school shall provide information about required and optional school activities in a parent's preferred language to the extent practicable.

(c) An LEA shall provide interpretation and translation services for a parent at:

(i) registration;

(ii) an IEP meeting;

(iii) an SEOP meeting;

(iv) a parent-teacher conference; and

(v) a student disciplinary meeting.

(d) An LEA shall provide annual notice to a parent of a student placed in a language acquisition instructional program at the beginning of the school year or no later than 30 days after identification.

(e) If a student has been identified as requiring ALS services after the school year has started, the LEA shall notify the student's parent within 14 days of the student's identification and placement.

(8) A required notice described in Subsection (7) shall include:

(a) the student's English proficiency level;

(b) how the student's English proficiency level was assessed;

(c) the status of the student's academic achievement;

(d) the methods of instruction proposed to increase language acquisition, including using both the student's native language and English if necessary;

(e) specifics regarding how the methods of instruction will help the child learn English and meet age-appropriate academic achievement standards for grade promotion and graduation; and

(f) the specific exit requirements for the program including:

(i) the student's expected rate of transition from the program into a classroom that is not tailored for an LEP student; and

(ii) the student's expected high school graduation date if funds appropriated consistent with this rule are used for a secondary school student.

(9)(a) An LEA shall provide notice to a parent of an ELL/LEP student if the LEA fails to meet AMAOs.

(b) An LEA shall provide a parent the notice described in Subsection (9)(a) within 30 days of the LEA's receipt of the annual State Title III Accountability Report from the

Superintendent.

R277-716-5. Teacher Qualifications.

(1) A Utah educator who is assigned to provide instruction in a language acquisition instructional program shall comply with the State ESL Endorsement requirements provided in Rule R277-520.

(2) A Utah educator whose primary assignment is to provide English language instruction to an ELL/LEP student shall have an ESL or ESL or Bilingual endorsement consistent with the educator's assignment.

R277-716-6. Miscellaneous Provisions.

(1)(a) An LEA that generates less than $10,000 from the LEA's ELL/LEP student count, may form a consortium with other similar LEAs.

(b) A consortium described in Subsection (1)(a) shall designate a fiscal agent and shall submit all budget and reporting information from all of the member LEAs of the consortium.

(c) Each member of a consortium shall submit plans and materials to the fiscal agent of the consortium for final reporting submission to the Superintendent.

(d) A fiscal agent of a consortium described in Subsection (1)(a) shall assume all responsibility of an LEA under Section R277-716-4.

(2) No LEA or consortium may withhold more than two percent of Title III funding for administrative costs in serving ELL/LEP students.

KEY: alternative language services
April 7, 2016 Art X Sec 3
Notice of Continuation February 16, 2016 53E-3-401(4)

R277. Education, Administration.
R277-717. High School Course Grading Requirements.
R277-717-1. 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), 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 establish requirements for awarding credit when a student repeats a course or takes a comparable course and earns a higher grade.

R277-717-2. Definitions.

(1) "Comparable course" means a course that fulfills the same graduation credit requirements as a course for which a student seeks to improve a grade.

(2) "Course" means a course that a student:

(a) is enrolled in; and

(b)(i) completes; or

(ii) withdraws from but still receives a grade.

(3) "Highest grade" means a grade that reflects the higher grade of:

(a) a course and a repeat of the course; or

(b) a course and a comparable course.

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

(5) "Recurring course" means a course that a student takes more than once to:

(a) further the student's understanding and skills in the course subject, such as journalism or band; or

(b) satisfy a different credit requirement that the course may fulfill, such as an art class that fulfills an elective requirement and an art requirement.

(6) "Student" means an individual enrolled in an LEA in grade 9, 10, 11, or 12.

R277-717-3. Course Grade Forgiveness.

(1)(a) A student may, to improve a course grade received by the student:

(i) repeat the course one or more times; or

(ii) enroll in and complete a comparable course.

(b) A grade for an additional unit of a recurring course does not change a student's original course grade for purposes of this section.

(2) If a student repeats a course, the student's LEA:

(a) shall adjust, if necessary, the student's course grade and grade point average to reflect the student's highest grade and exclude a lower grade;

(b) shall exclude from the student's permanent record the course grade that is not the highest grade; and

(c) may not otherwise indicate on the student's current record that the student repeated the course.

(3)(a) If a student enrolls in a comparable course, the student shall, at the time of enrolling in the comparable course, inform the student's LEA of the student's intent to enroll in the course for the purpose of improving a course grade.

(b) If a student enrolls in a comparable course, the student's LEA:

(i) shall confirm, at the time the student enrolls in the comparable course, that the comparable course fulfills the same credit requirements as the course that the student intends to replace with the comparable course grade;

(ii) shall update the student's current record and grade point average to reflect the highest grade between the course and the comparable course and exclude the lower grade and corresponding course; and

(iii) may not otherwise indicate the course or comparable course for which the student did not receive the highest grade on the student's record.

KEY: students, grades, credits
March 14, 2018 **Art X Sec 3**
53E-3-401(4)

R277. Education, Administration.
R277-718. Out-of-School Time Program Quality Improvement Grants.
R277-718-1. 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-5-210, which creates a grant program for out-of-school time programs, and requires the Board to adopt rules to administer the grant program.

(2) The purpose of this rule is to outline grant procedures, including:

(a) an application procedure;

(b) criteria and procedures for awarding grants; and

(c) requirements for grant recipients.

R277-718-2. Definitions.

(1) "Assessment tool" means the same as defined in R277-715.

(2) "Grant program" means the Educational Improvement Opportunities Outside of the Regular School Day Grant Program established in Section 53F-5-210.

(3) "Participating program" means the same as defined in R277-715

(4) "Private matching funds" does not include funds from federal, state, or local government sources.

(5) "Quality observation process" means a process in which a trained and certified specialist observes a participating program that is awarded funds under the grant program, using a valid observation tool, on the extent to which the program is implementing the standards described in R277-715-3.

R277-718-3. Grant Applications.

(1) The Superintendent shall create an application consistent with the provisions of Subsection 53F-5-210(4), and make the application available to participating programs operated by LEAs.

(2) The application shall require the LEA to provide evidence and report how it intends to provide the matching private funds required in Subsection 53F-5-210(7), including the source of funding the LEA intends to use.

(3) For each year the Superintendent is authorized to solicit grant applications, the Superintendent shall publish a timeline, and include a date for the application release, due dates for an LEA to submit required materials, and anticipated timeframes for evaluation to participating programs operated by LEAs through the Board's enterprise grant management system.

R277-718-4. Procedures and Criteria for Awarding Grants.

(1) In accordance with Subsection 53F-5-210(5), the Superintendent shall evaluate LEA program proposals on:

(a) the percentage of students in the program who qualify for free or reduced-price lunch;

(b)(i) evidence that the LEA has dedicated private matching funds to support the LEA's grant funding request; or

(ii) provide assurances that the LEA will obtain private matching funds to support the LEA's grant funding request;

(c) the extent to which the program has participated in the assessment tool;

(d) the program's commitment to implementing the quality observation process and reporting timely results to the Superintendent;

(e) whether the program intends to spend grant funds on activities, purposes, or interventions that have a likelihood of improving student academic performance; and

(f) the extent to which the program has engaged in and implemented a program needs assessment for purposes of identifying gaps that may be addressed by funding.

(2) A program shall receive priority points or additional weighting for a higher percentage of students in the program who qualify for free or reduced-price lunch.

(3) The Superintendent may not distribute grant funds until the LEA has certified that the LEA has obtained the private matching funds in an amount that is equal to or more than the grant funds.

R277-718-5. Grant Recipient Requirements, Accountability, and Reporting.

(1) An LEA that receives funding under the grant program shall target grant funds to expenditures that are likely to have a positive effect on the quality of the program, such as highly-qualified staff, specific professional development or training for staff, or evidence-based curriculum.

(2) LEAs shall submit reimbursement requests to claim grant funds.

(3) An LEA grant recipient shall participate in the quality observation process to assess the quality of the program.

(4) To determine the impact of the program on the academic performance of participating students, the Superintendent shall use statewide assessments.

(5) An LEA grant recipient shall report to the Superintendent:

(a) the average daily attendance of regularly participating students;

(b) the types of interventions that program recipients received on the days they attended the program; and

(c) the amount of services received by participating students, grouped by:

(i) 30 days;

(ii) 30-59 days;

(iii) 60-89 days; and

(iv) more than 90 days.

(6) An LEA grant recipient shall report the data described in Subsection (4) to the Superintendent in:

(a) a mid-year report by Dec 31; and

(b) an end-of-year report by May 31.

(7) LEAs that receive grant funds may be required to provide evidence to the Superintendent that the private matching funds were obtained and expended for the same purposes as the activities supported by these state funds.

(8) LEAs that receive grant funds are subject to fiscal and programmatic monitoring to validate uses of funds and programmatic performance and outcomes annually.

KEY: grant program, application procedures, reporting, assessments

October 16, 2018 **Art X Sec 3**
53E-3-401
53F-5-210

R277. Education, Administration.
R277-724. Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program.
R277-724-1. Definitions.

A. "Child and Adult Care Food Program (CACFP)" means the section of the USOE that administers the initiation, maintenance, and expansion of non-profit food service programs for children in non-residential centers and homes which provide child care. The definition also includes the administration of food service programs for non-residential adult day care.

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

C. "Child care center" means any public or private nonprofit organization, or any proprietary title XX center, licensed or approved to provide nonresidential child care services to enrolled children, primarily of preschool age. Child care centers may participate in the CACFP as independent centers or under the auspices of a sponsoring organization.

D. "Day care home" means an organized nonresidential child care program for children enrolled in a private home, licensed or approved as a family or group day care home and under the auspices of a sponsoring organization.

E. "Facilities" means a sponsored center or a family day care home.

F. "Institution" means an organization with whom the USOE has an agreement to accept final administrative and financial responsibility for CACFP operation.

G. "Recruited facilities" means potential daycare centers or homes that a prospective sponsor seeks to enroll in CACFP participation.

H. "Service area" means the geographic area from which a sponsoring organization draws its client facilities.

I. "Sponsoring organization" means a public or nonprofit private organization which is entirely responsible for the administration of the food program in:

(1) one or more day care homes;

(2) a child care center, outside-school-hours care center, or adult day care center which is a legally distinct entity from the sponsoring organization;

(3) two or more child care centers, outside-school-hours care centers, or adult day care centers are part of the organization; or

(4) any combination of child care centers, adult day care centers, day care homes, and outside-school-hours care centers.

J. "State agency" means the state educational agency or any other State agency that has been designated by the Governor or other appropriate executive or by the legislative authority of the state, and has been approved by the Department to administer the Program within the state.

K. "USOE" means the Utah State Office of Education.

R277-724-2. 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-3-501(3), which authorizes the Board to administer and distribute funds made available through programs of the federal government 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 establish eligibility criteria for new sponsors to recruit participants for child care centers and day care homes in unserved areas.

R277-724-3. Criteria for Recruiting Facilities.

The following criteria shall be met before a sponsor is approved:

A. The recruited facilities are not currently participating or were recently terminated for convenience by another sponsoring organization due to being outside the sponsoring organization's service area; and

B. The recruited facilities have not been terminated for cause, have no unresolved serious deficiency pending with another sponsoring organization and do not owe a refund to another sponsoring organization; and

C. The state agency certifies other sponsoring organizations are unable to accommodate the targeted facilities or the area(s) where it/they are located because:

(1) other sponsoring organizations generate insufficient resources to properly train and monitor facilities; or

(2) supervising additional facilities would threaten currently participating sponsoring organization's viability, capability or accountability.

R277-724-4. New and Renewing Institution Performance Standards.

A. The new or renewing institution shall ensure:

(1) it is financially viable and program funds are spent and accounted for consistent with the requirements of federal law and regulations;

(2) that management practices are in effect to ensure that the institution and participating facilities operate in accordance with federal law and regulations; and

(3) it has internal controls and other management systems in effect to ensure fiscal accountability and to ensure that the CACFP operates in accordance with federal law and regulations.

B. The USOE Child Nutrition Program Section shall regulate and ensure that these performance criteria are met consistent with federal law and regulations.

KEY: facilities, food programs

January 15, 2004	**Art X Sec 3**
Notice of Continuation March 14, 2014	**53E-3-501(3)**
	53E-3-401(4)

R277. Education, Administration.
R277-733. Adult Education Programs.
R277-733-1. 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-10-202 which vests general control and supervision over adult education in the Board;

(c) Subsection 53E-3-501(1), which allows the Board to adopt minimum standards for programs;

(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; and

(e) Section 53F-2-401, which vests the Board with responsibility to provide education to persons in the custody of the Utah Department of Corrections.

(2) The purpose of this rule is to describe curriculum, program standards, allocation formulas, and operation procedures for the adult education program for adult education students both in and out of state custody.

R277-733-2. Incorporation of Utah Adult Education Policies and Procedures Guide by Reference.

(1) The rule incorporates by reference the Utah Adult Education Policies and Procedures Guide, June 2016 Revision, which provides day-to-day operating standards and technical assistance to eligible providers for operation of adult education programs.

(2) A copy of the guide is located at:

(a) https://www.schools.utah.gov/sas/aaed/adulteducation; and

(b) the Utah State Board of Education.

R277-733-3. Definitions.

(1) "Adult" means an individual 18 years of age or over.

(2) "Adult education" means organized educational programs below the collegiate/postsecondary level, other than regular full-time K-12 secondary education programs:

(a) provided by LEAs or other eligible providers;

(b) affording opportunities for individuals having demonstrated both presence and intent to reside within the state of Utah;

(c) provided for out-of-school youth (16 years of age and older) or adults who have or have not graduated from high school; and

(d) provided to improve literacy levels and to further high school level education.

(3)(a) "Adult Basic Education" or "ABE" means a program of instruction at or below the 8.9 academic grade level, which prepares adults for advanced education and training, who lack competency in reading, writing, speaking, problem solving or computation at a level that substantially impairs their ability to find or retain adequate employment that will allow them to become employable, contributing members of society.

(b) ABE is designed to help adults by:

(i) increasing their independence;

(ii) improving their ability to benefit from occupational training;

(iii) increasing opportunities for more productive and profitable employment; and

(iv) making them better able to meet adult responsibilities.

(4) "Adult Education and Family Literacy Act" or "AEFLA" means Title II of the Workforce Innovation Opportunity Act of 2014, which provides the principle source of federal support for:

(a) academic instruction and education services below the post-secondary level that increase an adult education student's ability to read, write and speak in English, and perform mathematics or other activities necessary for the attainment of a secondary diploma or its recognized equivalent; and

(b) transition to post-secondary education, training, and employment.

(5) "Adult High School Completion" or "AHSC" means a program of academic instruction at the 9.0 grade level or above in Board-approved subjects for eligible adult education students who are seeking an Adult Education Secondary Diploma from an adult education program.

(6) "College and Career Readiness Plan" or "CCRP" means a plan developed by a student in consultation with adult education program counselors, teachers, and administrators that:

(a) is initiated at the time of entrance into an adult education program;

(b) identifies a student's skills and objectives;

(c) identifies a career pathway strategy to guide a student's course selection; and

(d) links a student to post-secondary education, training, or employment using a program-defined adult education transition process.

(7) "Desk monitoring" means the monthly review of UTopia data to ensure program integrity.

(8)(a) "Eligible adult education student" means an individual who provides documentation that his primary and permanent residency is in Utah, and:

(i) is 17 years of age or older, and whose high school class has graduated;

(ii) is under 18 years of age and is married;

(iii) has been emancipated or adjudicated as an adult; or

(iv) is an out-of-school youth 16 years of age or older who has not graduated from high school and who:

(A) is basic skills deficient;

(B) does not have a secondary school diploma, its recognized equivalent, or an equivalent level of education; or

(C) is an ELL.

(b) A non-resident may be treated as an eligible adult education student in accordance with an individual agreement between an eligible provider and another state.

(9) "Eligible Provider" may include:

(a) an LEA;

(b) a community-based or faith-based organization;

(c) a voluntary literacy organization;

(d) an institution of higher education;

(e) a public or private non-profit agency;

(f) a library;

(g) a public housing authority;

(h) a non-profit institution not described in Subsections (a) through (g) that has the ability to provide adult education and literacy activities to eligible adult education students.

(i) a consortium or coalition of providers identified in Subsections (a) through (h); or

(j) a partnership between an employer and a provider identified in Subsections (a) through (i).

(10)(a) "Enrollee" means an adult student who has:

(i) 12 or more contact hours in an adult education program during a fiscal program year;

(ii) an academic assessment establishing an Entering Functioning Level; and

(iii) an adult education CCRP with an established goal and a defined funding code.

(b) An enrollee's status is based on the last date that the items set forth in Subsections R277-733-3(10)(a)(i) through (iii) were entered into UTopia.

(11) "English Language Learner" or "ELL" means an individual:

(a) who has limited ability in reading, writing, speaking, or comprehending the English language and whose native language is a language other than English; or

(b) who lives in a family or community where a language

other than English is the dominant language.

(12)(a) "Fee" means any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods.

(b) Admission fees, transportation charges, and similar payments to third parties are fees if the charges are made in connection with an activity or function sponsored by or through an adult education program.

(c) All fees are subject to approval by an eligible provider's governing board.

(13) "High School Equivalency Exam" or "HSE" means a Board approved examination whose modules are aligned with current high school core standards and adult education College and Career Readiness standards.

(14)(a) "Other eligible adult education student" means an individual 16 to 19 years of age whose high school class has not graduated and who is counted in the regular school program, receiving instruction in both a traditional and adult education program.

(b) The Superintendent shall pro-rate and provide a credit to an adult education program for funds generated for an other eligible adult education student, weighted pupil unit (WPU) and collected fees.

(15) "Out-of-school youth" means a student 16 years of age or older who has not graduated from high school and is no longer enrolled in a K-12 program of instruction.

(16) "Teachers of English to Speakers of Other Languages" or "TESOL" means a credential for teachers of ELL students.

(17) "Utah High School Completion Diploma" means a diploma issued by the Board and distributed by a Board approved contractor to an individual who has passed all subject modules of an HSE exam at an HSE testing center.

(18) "UTopia" means the Utah Online Performance Indicators for Adult Education statewide database.

(19)(a) "Waiver release form" means a form signed by an adult education student allowing for release of the student's CCRP and personal data, including social security number and HSE scores, for data matching purposes with partners including:

(i) the Department of Workforce Services;

(ii) higher education institutions;

(iii) the Utah State Office of Rehabilitation; and

(iv) a Board approved HSE contractor.

(b) A signed waiver release allows a student's education records to be shared with other adult education programs or interested agencies for the purpose of skill development, job training, career planning, or other purposes if specified in the waiver release form.

(20) "Weighted pupil unit" or "WPU" means the basic per pupil unit used to calculate the amount of state funds for which a school district is eligible.

R277-733-4. Federal Adult Education Funds.

The Superintendent shall follow the standards and procedures contained in AEFLA and the WIOA state plan adopted by the Board pursuant to AEFLA to administer both federal and state funding of adult education programs.

R277-733-5. Program Standards.

(1) Adult education programs shall comply with state and federal law and administrative regulations and follow the procedures contained in the Utah Adult Education Policies and Procedures Guide.

(2) Adult education programs shall make reasonable efforts to:

(a) market and inform prospective students within their geographic areas of the availability of adult education programs; and

(b) provide enrollment information to prospective students.

(3)(a) Adult education programs may offer adult education services to a qualifying individual whose primary residence is located in communities closely bordering Utah if the student's circumstances are not conducive to commuting to the bordering state's closest adult education program.

(b) An adult education program shall not charge tuition to a student receiving services in accordance with Subsection (3)(a).

(4) Adult education programs shall make reasonable efforts to schedule classes at sites and times that meet the needs of adult education students.

(5)(a) Each eligible adult education student shall have a written CCRP defining the student's goals based upon:

(i) a complete academic assessment;

(ii) prior academic achievement;

(iii) work experience; and

(iv) an established entering functioning level.

(b) A designated program official shall review a student's plan and waiver release form annually with the student.

(6) Adult education staff shall only teach courses identified in R277-733-8.

(7) The Superintendent shall evaluate programs for compliance through:

(a) tri-annual site monitoring visits;

(b) monthly desk monitoring; and

(c) additional monitoring as needed.

(8) Adult education program staff, administrators, teachers, instructors, and counselors shall have appropriate qualifications for their assignments.

(9)(a) An eligible provider may consider a staff member's teaching certificate and endorsement in evaluating the appropriateness of the staff member's assignment.

(b) Notwithstanding Subsection (9)(a) an eligible provider may assign staff members to teach in circumstances not generally covered by their teaching certificate and endorsement under appropriate circumstances, such as placing an elementary teacher to teach adult students who are performing academically at an elementary level in certain subjects.

(c) An individual teaching an adult education high school completion class shall hold a valid Utah elementary or secondary education license and may issue adult education high school completion credits in multiple subjects.

(d) A non-licensed individual providing instruction in ELL, ABE, HSE preparation, or AHSC classes shall instruct under the supervision of a licensed program employee.

(10) A non-licensed individual with a post-secondary degree may only be considered for a teaching position by an eligible provider after approval for participation in the Alternative Route to Licensure program under R277-518 and R277-503-4; or

(11) An eligible provider may consider an individual for employment who has TESOL credentials in lieu of a Utah teaching license solely in an adult education program funded to provide ELL services.

R277-733-6. Fiscal Procedures.

(1) The Superintendent shall allocate state funds for adult education in accordance with Section 53F-2-401.

(2) No eligible LEA shall receive less than its portion of an eight percent base amount of the state appropriation if:

(a) the LEA provided instructional services approved by the Board to eligible adult students during the preceding fiscal year; or

(b) the LEA is preparing to offer services to eligible adult students, provided that the LEA's preparation period does not exceed two years.

(3) Funds appropriated for adult education programs shall be subject to Board accounting, auditing, and budgeting rules

and policies.

(4) An LEA may carry over to the next fiscal year ten percent or $50,000, whichever is less, of state adult education funds allocated to the LEA's adult education programs not expended in the current fiscal year with written approval from the Superintendent.

(5)(a) An LEA shall submit a request to carry over funds for approval by August 1 annually.

(b) The Superintendent shall prepare a revised budget incorporating approved carryover amounts no later than September 1 in the year requested.

(6) The Superintendent may consider excess funds in determining an LEA's allocation for the next fiscal year.

(7) The Superintendent shall recapture fund balances in excess of 10 percent or $50,000 no later than February 1 annually.

(8) The Superintendent shall reallocate funds recaptured in accordance with Subsection (7) to LEA adult education programs through the supplemental award process based on need and effort as determined by the Board consistent with Subsection 53F-2-401(3).

(9)(a) The Superintendent shall develop uniform forms, deadlines, program reporting and accounting procedures, and guidelines to govern state and federally funded adult education programs.

(b) The Superintendent shall update the Utah Adult Education Policies and Procedures Guide annually and make the guide available on the Board adult education website.

(10)(a) The Superintendent shall provide a competitive bidding process for an eligible provider to apply for federal adult education funds.

(b) The Superintendent shall only fund an eligible provider following an award under Subsection (10)(a) on a reimbursement basis.

(c) An eligible provider is subject to all laws and regulations regarding adult education funds, which are applicable to an LEA.

R277-733-7. Adult Education Pupil Accounting.

(1) A district administered adult education program shall receive WPU funding for a student at the rate of 990 clock hours of membership per one weighted pupil for a student who is a resident of a Utah school district and meets the following criteria:

(a) is at least 16 years of age but less than 19 years of age;

(b) has not received a high school diploma or a Utah High School Completion Diploma;

(c) intends to graduate from a K-12 high school; and

(d) attends a CCRP meeting with his school counselor, school administrator or designee, and parent or legal guardian to discuss the appropriateness of the student's participation in adult education; or

(2) A district may additionally receive WPU funding for a student at the rate of 990 clock hours of membership per one weighted pupil uni for a resident student who meets the following criteria:

(a) is 19 years of age or older;

(b) has not received a high school diploma but whose high school class has graduated;

(c) intends to graduate from a K-12 high school; and

(d) has written approval from all parties following consultation with the student's parent or guardian.

(2) Student attendance up to 990 clock hours of membership is equivalent to 1 FTE per year.

(3) The Superintendent shall prorate the clock hours of students enrolled part-time

(4) As an alternative, a district may generate equivalent WPUs for competencies mastered with a district plan approved by the Superintendent.

(5)(a) A student may only be counted in average daily membership once on any day.

(b) If a student's day is part-time in the regular school program and part-time in the adult education program, a district shall report the student's membership on a prorated basis for each program.

(c) A district may not receive funding for a student for more than one regular WPU for any school year.

(6) If an eligible adult education student as specified in R277-733-3(8)(a)(iv) enrolls in an adult education program:

(a) The district may not receive WPU funding for the student's participation in an adult education program;

(b) The student may be eligible for adult education state funding;

(c) The student shall be presented with information prior to or at the time of enrollment in an adult education program that defines the consequences of the student's decision, including the following:

(i) The student may receive an Adult Education Secondary Diploma upon completion of the minimum required Carnegie units of credit as defined by the adult education program;

(ii) The student may earn a Utah High School Completion Diploma upon successful passing of an HSE exam; or

(iii) The student may, at the discretion of the district, return to his regular high 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, provided that the student:

(A) is released from the adult education program;

(B) has not completed the requirements necessary for an Adult Education Secondary Diploma; and

(C) has not successfully passed an HSE exam and has not received a Utah High School Completion Diploma;

(d) The student may not return to a k-12 high school after receiving an Adult Education Secondary Diploma;

(e) The student is not eligible to return to a k-12 high school after receiving a Utah High School Completion Diploma unless it is required for the provision of a free appropriate public education (FAPE) under the IDEA.

(f) A district shall report a student who has successfully completed an Adult Education Secondary Diploma or a Utah High School Completion Diploma as a graduate for k-12 graduation (AYP) outcomes.

(g) The student may take an HSE exam in accordance with the provisions of R277-702.

R277-733-8. Program, Curriculum, Outcomes and Student Mastery.

(1) The Utah Adult Education Program shall offer courses consistent with the Elementary and Secondary General Core under R277-700.

(2) The core standards may be modified or adjusted to meet the individual needs of an adult education student.

(3) An LEA shall develop written course descriptions for AHSC required and elective courses for all adult education program classes taught, consistent with the core standards and Utah adult education college and career readiness standards, as provided by the Superintendent.

(4) The Superintendent, in cooperation with eligible providers, shall develop written course descriptions for HSE exam preparation, ELL and ABE courses based on Utah's core standards, modified for adult learners.

(5) Course descriptions shall stress content mastery rather than completion of predetermined seat time in a classroom.

(6) Adult high school completion education shall include the following prerequisite courses:

(a) ELL competency AEFLA levels one through six; or

(b) ABE competency AEFLA levels one through four.

(7) AHSC courses for students seeking an Adult Education

Secondary Diploma shall meet federal AEFLA AHSC Levels I and II competency requirements with a minimum completion of 24 credits consistent with cores standards and adult education college and career readiness standards under the direction of a Utah licensed teacher as provided in the Utah Adult Education Policies and Procedures Guide.

(8) The Superintendent and eligible providers shall disseminate clear information regarding revised adult education graduation requirements.

(9) An adult education student receiving education services in a state prison or jail education program may graduate with an Adult Education Secondary Diploma upon completion of the state required 24.0 units of credit required under R277-700 and:

(a) completed credits;

(b) demonstrated course competency; or

(c) a Utah High School Completion Diploma with a successful passing score on an HSE exam consistent with the student's adult education CCRP.

(10) An eligible provider may modify Adult Education Secondary Diploma graduation requirements to meet unique educational needs of an adult student with:

(a) documented disabilities through an IEP from age 16 until the student's 22nd birthday; or

(b) an adult education CCRP.

(11) A student's IEP or adult education CCRP shall document the nature and extent of modifications, substitutions, or exemptions made to accommodate the student's disabilities.

(12) Modified graduation requirements for an individual student shall:

(a) be consistent with the student's IEP or CCRP;

(b) be maintained in the student's adult education files; and

(c) maintain the integrity and rigor expected for AHSC graduation.

(13) An LEA shall establish policies allowing or disallowing adult education student participation in graduation activities or ceremonies.

(14) An adult education student may only receive an Adult Education Secondary Diploma earned through a Utah adult education program accredited through a Board-approved organization.

(15) An adult education program shall accept credits and grades awarded to a student without alteration from other accredited state-recognized adult education programs or eligible providers approved by the Superintendent.

(16) An adult education program may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted from other eligible providers.

(17) An LEA adult education program is the final decision-making authority for the awarding of credit and grades from non-accredited sources.

(18) An adult education program shall provide instruction that allows a student to transition between sites in a seamless manner.

(19) An adult education program shall offer an adult education student seeking a Utah High School Completion Diploma a course of academic instruction designed to prepare the student to take an HSE exam.

(20) The Superintendent shall award a Utah High School Completion Diploma if a student passes an HSE exam.

(21) Notwithstanding receipt of the Utah High School Completion Diploma a student may still be entitled to a free appropriate public education under IDEA requirements.

(22) Following completion of requirements for a Utah Adult Education Secondary Diploma or a Utah High School Completion Diploma, an adult education student may only continue in an adult education program to improve their basic literacy skills if:

(a) the student's academic skills are less than 9.0 grade level in an academic area of reading, math or English;

(b) the student lacks sufficient mastery of basic educational skills to enable the student to function effectively in society; and

(c) the focus of the continued instruction is limited solely to literacy in reading, math or English for a maximum of 120 instructional contact hours.

R277-733-9. Adult Education Programs--Tuition and Fees.

(1) Any adult may enroll in an adult education class consistent with Section 53E-10-205.

(2) An eligible provider may charge tuition and fees for ABE, HSE exam preparation, AHSC, or ELL courses in an amount not to exceed $100 annually per student based on the student's ability to pay as determined by federal free and reduced lunch guidelines under the Richard B. Russell National School Lunch Act, 42 USC Section 1751, et seq.

(3) A school board or board of trustees of an eligible provider shall determine reasonable and necessary student fees and tuition on an annual basis.

(4) An eligible provider shall provide potential adult education program students adequate notice of tuition and fees through public posting.

(5) An eligible provider shall specifically use collected fees and tuition to provide additional adult education and literacy services that the provider would otherwise be unable to provide.

(6) An eligible provider receiving state or federal adult education funds shall provide annual written assurances on a form approved by the Superintendent that all fees and tuition collected and submitted for accounting purposes are:

(a) returned or delegated with the exception of indirect costs to the local adult education program;

(b) used solely and specifically for adult education programming; and

(c) not withheld and maintained in a general maintenance and operation fund.

(7)(a) An eligible provider shall spend all collected fees and tuition generated from the previous fiscal year in the adult education program in the ensuing program year.

(b) A district may not use funds identified in Subsection (7)(a) in calculating carryover fund balance amounts.

(8) An eligible provider may not count collected fees and tuition toward meeting federal matching, cost sharing, or maintenance of effort requirements related to the program's award.

(9) Annually, eligible providers shall report to the Superintendent all fees and tuition collected from students associated with each funding source.

(10) An eligible provider shall not commingle or report fees and tuition collected from adult education students with community education funds or any other public education fund.

R277-733-10. Allocation of Adult Education Funds.

(1) The Superintendent shall distribute adult education state funds to an LEA offering adult education programs consistent with percentages defined in the Utah Adult Education Policies and Procedures Guide.

(2)(a) The Superintendent shall distribute supplemental support to an LEA adult education program with no carryover funds, which receives less than one percent of the state allocation as indicated on the state allocation table.

(b) The Superintendent shall accept and process applications for supplemental funds annually between October 15 and October 31.

(c) An LEA receiving supplemental support shall use the awarded funds for special program needs or professional development, as determined by the Superintendent's evaluation

of the LEA's written request and need.

(d) An LEA may apply for the balance of supplemental funds for special program needs or professional development between November 1 and March 1 annually.

(e) Following review of a written request submitted pursuant to Subsection (d), the Superintendent shall distribute funds based on need.

(f) The Superintendent shall add recaptured LEA funds that are greater than allowable carryover amounts to the available supplemental funds awarded to adult education programs based on the criteria defined in Subsection 2(a) through (e).

(3)(a) Adult education federal AEFLA funds shall be distributed based on a competitive application.

(b) The Superintendent shall base second or subsequent year AEFLA funding on performance criteria established in the Utah Adult Education Policies and Procedures Guide.

(4) The Superintendent may recommend that the Board withhold state or federal funds for noncompliance with:

(a) Board rule;

(b) adult education state policy and procedures;

(c) associated reporting timelines; and

(d) program monitoring outcomes, as defined by the Board, including:

(i) lack of program improvement; and

(ii) unsuccessful student outcomes.

R277-733-11. Adult Education Records and Audits.

(1) An LEA shall maintain official records regarding an eligible adult education student in accordance with state retention schedules SD17-25 and SD 17-32.

(2) An eligible provider shall maintain records for each student to validate student outcomes annually in accordance with the Utah Adult Education Policies and Procedures Guide.

(3) To ensure valid and accurate student data, all programs accepting state or federal adult education funds, or both, shall enter and maintain required student data in the UTopia data system.

(4) An eligible provider shall annually retain an independent auditor to:

(a) audit student accounting records;

(b) verify UTopia data entries; and

(c) validate the cash controls over collection of student fees.

(5) An auditor retained pursuant to Subsection (4) shall submit a written report by September 15 annually to:

(a) the eligible provider's governing board or board of trustees;

(b) the Superintendent; and

(c) the local adult education program director, if appropriate.

(6) In the event of an audit finding of non-compliance with state or federal law, regulation, or policy, a program shall prepare and submit to the Superintendent a written corrective action plan for each audit finding by October 15 annually.

(7) The Superintendent shall monitor and assist a program in the resolution of a corrective action plan.

(8) The Superintendent may recommend that the Board terminate a program's state or federal funding for failure to resolve audit findings in accordance with R277-114.

(9) Independent audit reporting dates, forms, and procedures are available in the state of Utah Legal Compliance Audit Guide provided to an eligible provider by the Superintendent in cooperation with the State Auditor's Office and published under the heading of APPC-5.

(10) The Superintendent may review for cause an eligible provider's records and practices for compliance with the law and this rule.

R277-733-12. State Workforce Development Board.

(1) The Superintendent shall represent adult education programs on the State Workforce Development Board as a voting member, in accordance with WIOA.

(2) The Superintendent may assign Board staff to State Workforce Development Board WIOA committees to the purpose of implementation of the State's WIOA Unified Plan.

R277-733-13. Oversight, Monitoring, Evaluation, and Reports.

The Board may designate no more than two percent of the total legislative appropriation for adult education services to be used specifically by the Superintendent for oversight, monitoring, and evaluation of adult education programs and their compliance with law and regulation.

KEY: adult education

August 7, 2017	**Art X Sec 3**
Notice of Continuation June 6, 2017	**53E-10-202**
	53E-3-501(1)
	53E-3-401(4)
	53F-2-401
	53F-2-401
	53E-10-205

R277. Education, Administration.
R277-735. Corrections Education Programs.
R277-735-1. 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-2-401, which makes the Board, along with the Utah Department of Corrections, responsible for the education of inmates in custody; 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 specify operation standards and procedures for inmates in corrections education programs that are the responsibility of the public school system.

R277-735-2. Incorporation of Utah Adult Education Policies and Procedures Guide by Reference.

(1) The rule incorporates by reference the Utah Adult Education Policies and Procedures Guide, June 2016 Revision, which provides day-to-day operating standards and technical assistance to eligible providers for operation of adult education programs.

(2) A copy of the guide is located at:

(a) https://www.schools.utah.gov/sas/aaed/adulteducation; and

(b) the Utah State Board of Education.

R277-735-3. Definitions.

(1) "Custody" means the status of being legally in the control of another adult person or a public agency.

(2) "Education Contracts funds" means funds appropriated annually by the Legislature to be used partly for corrections education.

(3) "FERPA" means the Family Educational Rights and Privacy Act, 20 USC 1232g, and its implementing regulations.

(4) "Inmate" means an offender who is incarcerated in state or county correctional facilities located throughout the state.

(5) "Utah Online Performance Indicators for Adult Education" or "UTopia" means a statewide database for tracking adult education student progress and outcomes.

R277-735-4. Procedures for Providing Services.

(1) The Board may contract to provide educational services for inmates with:

(a) local school boards;

(b) state post-secondary educational institutions;

(c) other state agencies; or

(d) private providers recommended by a local school board.

(2) A contract made in accordance with Subsection (1) shall be in writing and shall provide for:

(a) services to students in an appropriate environment for student behavior and educational performance;

(b) compliance with relevant Board standards;

(c) program monitoring by the Superintendent in accordance with R277-733; and

(d) coordination of services with non-custodial programs to enable an inmate in custody to continue the inmate's public school education with minimal disruption following discharge.

(3) A school district may sub-contract with local educational service providers for the provision of educational services to students in custody.

(4) Custodial status alone does not qualify an individual for services under the IDEA.

(5) When a student inmate is transferred to a new program, the sending program shall update and finalize all school records in UTopia releasing the student's records as soon as possible after receiving notice of the transfer.

(6) An educational service provider shall only disclose educational records of a student inmate, before or after release from custody, consistent with (FERPA).

(7) Corrections education programs shall adhere to the same overarching program standards and practices defined for all adult education programs, consistent with R277-733, unless otherwise noted herein.

R277-735-5. Fiscal Procedures.

(1) An inmate receiving educational services by or through a school district shall be a student of that school district for funding purposes.

(2) The Superintendent shall allocate state corrections education funds to school districts on the basis of annual applications.

(3) A program receiving funds approved for a corrections education project shall only expend funds for the purposes described in the respective funding application.

(4) Education Contracts funds used for corrections education shall be subject to Board accounting, auditing and budgeting rules and policies.

(5) Ten percent or $50,000, whichever is less, of state funds designated for corrections education not expended in the current fiscal year may be carried over and spent by a school district in the next fiscal year with written approval from the Superintendent.

(6) The Superintendent shall establish a timeline for submission and approval of school district budgets and carry over requests.

(7)(a) The Superintendent may consider excess funds in determining a school district's allocation for the next fiscal year.

(b) The Superintendent shall recapture fund balances in excess of 10 percent or $50,000 annually no later than February 1 and reallocate funds to school district corrections education programs through the supplemental award process based on need and effort consistent with R277-733.

R277-735-6. Allocation of Education Contracts Funds Designated for Corrections Education.

(1) The Superintendent may not allocate more than four percent of the total legislative education contracts funding appropriated for adult corrections education administrative services.

(2) The Superintendent shall use funds allocated in accordance with Subsection (1) for oversight, monitoring, and evaluation of corrections adult education program compliance with law and this rule.

(3) The Superintendent shall annually calculate:

(a) the total number of incarcerated offenders in the custody of the Utah Department of Corrections;

(b) the percentage of incarcerated offenders housed in county jails; and

(c) the percentage of incarcerated offenders housed at prison sites.

(4) The Superintendent shall use the calculations made under Subsection (3) to determine the allocation of education contracts funds to school districts.

(5) An eligible school district shall receive a base amount of $10,000 for each correctional facility in which they provide services.

(6) The Superintendent shall prorate the balance of the education contracts funds allocation to school districts based upon adult education UTopia data reporting of the average number of state inmates receiving educational services from August 1 through March 1 of the prior school year.

R277-735-7. Program, Curriculum, Outcomes and Student Mastery.

(1) Corrections education programs shall provide programs that allow students to transition between correctional sites in a seamless manner.

(2)(a) An adult education student receiving education services in a state correctional facility education program may graduate with a school district adult education secondary diploma upon completion of the state required minimum units of credit under R277-700.

(b) A student in custody may meet graduation requirements through:

(i) completed credits; or

(ii) demonstrated course competency consistent with a student's plan for college and career readiness in accordance with R277-733.

(3) An adult student in custody seeking an adult high school diploma shall have the minimum credits defined in R277-705.

(4) A district shall employ a qualified Utah licensed educator to teach corrections education courses.

R277-735-8. Confidentiality.

(1) A transcript or diploma prepared for an inmate in custody shall:

(a) include the name of the contracted educational agency which also provides service to non-custodial offenders; and

(b) not reference the inmate's custodial status.

(2)(a) A district or corrections education provider shall keep an inmate's education records which refer to custodial status, inmate court records, and related matters separate from permanent school records.

(b) A district shall destroy or seal an inmate's education records upon order of a court of competent jurisdiction.

(3) A district or corrections education provider may only provide access to education records in accordance with FERPA.

R277-735-9. Adult Education Standards.

Corrections adult education programs shall meet program standards defined in R277-733 and the Utah Adult Education Policies and Procedures Guide.

KEY: public education, custody, inmates
August 7, 2017 **Art X Sec 3**
Notice of Continuation June 6, 2017 **53F-2-401**
53E-3-401(4)

R305. Environmental Quality, Administration.
R305-7. Administrative Procedures.
R305-7-101. Scope of Rule and Purpose of Parts.

(1) This rule governs all adjudicative procedures conducted under the authority of the Environmental Quality Code, Utah Code Ann. Title 19. This rule does not govern the proceedings that result in an initial determination by the Director, including the issuance of the initial determination itself.

(2)(a) Part 1 of this Rule (R305-7-101 through 113) applies to all adjudications before the Department. It addresses general and preliminary matters.

(b) Part 2 of this Rule (R305-7-200 through 217) applies to special adjudicative proceedings. These procedures are governed by Section 19-1-301.5.

(c) Part 3 of this Rule (R305-7-301 through 319) applies to adjudicative procedures that are not special adjudicative proceedings. These procedures are governed by Section 19-1-301.

(e) Part 4 of this Rule (R305-7-401 through 403) addresses matters initiated by notices of agency action.

(d) Part 5 of this Rule (R305-7-501 through 503) addresses declaratory orders and emergency adjudication.

(e) Part 6 of this Rule (R305-7-601 through 623) addresses matters relevant to specific statutes.

R305-7-102. Definitions.

(1) The following definitions apply to this Rule. The definitions in Part 6 of this Rule, e.g., the definition of "Director," also apply for matters governed by the statutory provisions specified in that Part. If the definition in Part 6 differs from the definition in Part 1, the definition in Part 6 controls.

(a) "Administrative Law Judge" or ALJ means the person appointed under Section 19-1-301(5) or Section 19-1-301.5(5) to conduct an adjudicative proceeding.

(b) "Administrative Proceedings Records Officer" means a person who receives a record copy of submissions on behalf of the Executive Director, as specified in R305-7-104.

(c) "Administrative Record," for purposes of Part 2 of this Rule, means the record described in Section 19-1-301.5(8)(b) and upon which a special adjudicative proceeding is conducted. See also R305-7-209.

(d) "Days" means calendar days unless otherwise specified. See also R305-7-105.

(e) "Designated Address" means the most recent address any person has filed with a Director in accordance with law.

(f) "Director" means the director of one of the divisions listed in Section 19-1-105(1)(a). The Director is defined, for each statute administered by the Department, in Part 6 of this Rule.

(g) "Executive Director" means the Executive Director of the Department of Environmental Quality.

(h) "Initial Order" means an order that is not a Permit Order, that is issued by the Director and that is the final step in the portion of a proceeding that is exempt from the requirements of UAPA as provided in Section 63G-4-102(2)(k).

(i) "Notice of Violation" means a notice of violation issued by the Director that is exempt from the requirements of UAPA under Section 63G-4-102(2)(k).

(j) "Part" means the sections of this Rule that are grouped together by subject matter, e.g., Sections R305-7-501 through 503 are Part 5 of this Rule.

(k) "Party" is defined in R-305-7-207 for special adjudicative proceedings, and in R305-7-305 for other proceedings.

(l) "Permit" means any of the following:

(i) a permit;

(ii) a plan;

(iii) a license;

(iv) an approval order; or

(v) another administrative authorization made by a Director, including a financial assurance determination as defined by Section 19-1-301.5(1)(c).

(m)(i) "Permit order" means an order issued by the Director that:

(A) approves a permit;

(B) renews a permit;

(C) denies a permit;

(D) modifies or amends a permit; or

(E) revokes and reissues a permit.

(ii) "Permit order" does not include an order terminating a permit.

(n) "Permit review adjudicative proceeding" and "special adjudicative proceedings" and "permit special proceedings" mean an adjudicative proceeding to resolve a challenge to a Permit Order including a financial assurance determination as defined by Section 19-1-301.5 (1)(c).

(o) "Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. "Person" also includes, as appropriate to the matter, other entities as provided in definitions in the statutes specified in the Department of Environmental Quality Code, Title 19, and in rules promulgated thereunder.

(p) "Rule" means this Rule R305-7, Administrative Procedures for the Department of Environmental Quality, unless otherwise specified.

(q) "UAPA" means the Utah Administrative Procedures Act, Utah Code Ann. Title 63G, Chapter 4.

(r) "U.S. Postal Service Certified Mail" is a form of registered mail. It provides a U.S. Postal Service proof of mailing via a receipt to the sender that the mailing was delivered or that a delivery attempt was made. A receipt may be provided in either paper or electronic form. In either event, the receipt is generated by the U.S. Postal Service. A return receipt acknowledged by the recipient (Certified Mail with Return Receipt Requested) is also permissible but is not required by this Rule. See UAC R305-7-302(3).

(2)(a) Ordinarily, administrative proceedings under the Environmental Quality Code are decided by the Executive Director based on a proceeding conducted by and recommended decision prepared by an Administrative Law Judge. In the event governing law specifies that another person or entity conduct a proceeding in the place of an Administrative Law Judge, the term "Administrative Law Judge" shall mean the person or entity serving in that function. In the event governing law specifies that another person or entity make final determinations regarding dispositive actions, the term "Executive Director" shall mean the person or entity who makes that final decision.

(b) Nothing in this provision R305-7-102(2) authorizes the appointment of a person or entity other than an administrative law judge to conduct an adjudicative proceeding. Nothing in this provision R305-7-102(2) authorizes the appointment of a person or entity other than the Executive Director to make a final determination regarding an adjudicative proceeding.

R305-7-103. Form of Submissions.

(1) All submissions, whether on paper copy or electronic, shall use 8-1/2 by 11 inch pages, be double-spaced, with each page numbered, and have one inch margins and 12 point font. Paper copies of documents submitted under this Rule shall ordinarily be printed on white paper; double-sided printing is encouraged but not required.

(2) Requests for Agency Action, Notices of Agency Action, and Petitions for Review shall include numbered paragraphs.

(3) The first page of every filing shall contain a caption

that gives the name and file number of the proceeding, the name of the ALJ if one has been appointed, and the filing date.

(4) Requirements for motions and briefs for special adjudicative proceedings are specified in R305-7-211 and R305-7-213. Requirements for motions for other proceedings are specified in R305-7-312.

R305-7-104. Filing and Service of Notices, Orders, Motions, and Other Papers.

(1) (a) The rules governing service of Initial Orders and Notices of Violation are provided in R305-7-302.

(b) Filing and service of all papers in adjudicative proceedings shall be made by email except as otherwise provided in this R305-7-104 and in R305-7-309(2)(b), R305-7-309(7)(b)(ii), and R305-7-313. Adjudicative proceedings shall not be initiated by email. Initiation of adjudicative proceedings through traditional (paper) filing is governed by subsection 5, below.

(c) In the event the ALJ determines that it is inappropriate in a specific case to file and serve all papers by email, the requirements of R305-7-104(4) will govern. Those requirements may be modified by the ALJ.

(d) The provisions of R305-7-104(2) will also apply regardless of whether filing and service are done by email (R305-7-104(3)) or by traditional service methods (R305-7-104(4)).

(e) A party seeking to have filing and service requirements governed by R305-7-104(4), such as a person who does not have access to email, shall file and serve that request as provided in R305-7-104(4). Once a request to proceed under R305-7-104(4) is filed and served, the provisions of that section shall apply to all future filing and service unless otherwise ordered by the ALJ.

(2) General Provisions Governing Filing and Service.

(a) Every submission shall be filed with:

(i) the ALJ or, if no ALJ has been appointed, the Director; and

(ii) the Administrative Proceedings Records Officer.

(b) In addition, every submission shall be served upon:

(i) the Director, if a submission is not filed with the Director under paragraph (2)(a)(i);

(ii) the assistant attorney general representing the Director;

(iii) the permittee or the person who was the recipient of the Permit Order, or other order or notice of violation being challenged;

(iv) any other party.

(c) A person, other than the Director, who is represented by an attorney or other representative, as provided in R305-7-106, shall be served through the attorney or other representative.

(d) Every submission shall include a certificate of service that shows the date and manner of filing with and service on the persons identified in R305-7-104(2)(a) and (b).

(e) Service on a regulated person at the person's Designated Address shall be deemed to be service on that person.

(3) Provisions governing electronic filing and service.

(a) A submission following the initiation of an adjudicative proceeding shall be filed with the Administrative Proceedings Records Officer by emailing it to DEQAPRO@utah.gov. Initiation of adjudicative proceedings is governed by subsection (5).

(b) Filing or service on all other parties shall be by email at addresses provided by those persons. If the person filing or serving the submission is unable, after due diligence, to determine an email address for a party, the person shall file or provide service by traditional means, as provided in R305-7-104(4).

(c) (i) A text document served by email shall be submitted as a searchable PDF document.

(ii) A person filing a submission may electronically file and serve a document without a signature if the person indicates that the document was signed (e.g., "signed by (name)" or "/s/ (name)").

(d) The ALJ may order any other submission to be provided in a searchable format.

(e) Large emails (5 Mb or more) may not be accepted by some email systems. It shall be the responsibility of a person sending a large email to ensure that it has been received by all parties, e.g., by telephoning or by sending a separate notification email and requesting a response.

(f) Photographic or other illustration documents filed and served by email shall be submitted as:

(i) a PDF document; or

(ii) a JPEG document.

(g) Documents that are difficult to file and serve by email because of their size or form may be filed and served on a CD, DVD, USB flash drive or other commonly used digital storage medium. A document may also be provided in paper form if it is impracticable to copy the document electronically. Filing and service of such documents shall be as provided in R305-7-104(4).

(h) A party shall provide a paper copy of any document, including signed documents, upon request by the ALJ.

(4) Provisions governing traditional filing and service.

(a) Filing and service shall be made:

(i) by United States mail, postage pre-paid;

(ii) by hand-delivery;

(iii) by overnight courier delivery; or

(iv) by the Utah State Building Mail system, if the sender and receiver are both state employees.

(b) Documents to be filed with or served on the Director shall be filed and served at the address specified in Part 6.

(c) Documents to be filed with the Administrative Proceedings Records Officer shall be submitted to one of these addresses:

(i) By U.S. Mail: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, PO Box 140873, Salt Lake City Utah 84114-0873; or

(ii) By hand or commercial delivery: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, 195 North 1950 West, Second Floor, Salt Lake City Utah 84116.

(d) (i) Except as provided in R305-7-104(5)(b), a document that is filed or served by U.S Mail or overnight delivery service shall be considered filed or served on the date it is mailed or provided to the overnight delivery service. A document that is filed or served by Utah State Building Mail shall be considered filed or served on the date it is placed in a Utah State Building Mail bin.

(5)(a) Email does not constitute filing and is not adequate to initiate an adjudicative proceeding under this Rule, Section 19-1-301, or a special adjudicative proceeding under Section 19-1-301.5. A paper, signed original of any Request for Agency Action, Petition for Review, Notice of Agency Action, or Petition to Intervene shall be filed traditionally and served as provided in R305-7-104(2) and (4).

(b) To be timely, a Request for Agency Action, Petition for Review, or a Petition to Intervene must be received by the Director and the Administrative Proceedings Records Officer as provided in:

(i) R305-7-203(5) and R305-7-205 (for a Petition for Review, filed and served in a special adjudicative proceeding);

(ii) R305-7-303(5) (for a Request for Agency Action filed and served in a proceeding other than a special adjudicative proceeding);

(iii) R305-7-204(2) and R305-7-205 (for a Petition to Intervene filed and served in a special adjudicative proceeding); and

(iv) R305-7-304 (which incorporates the requirements of R305-7-204(2)) for a Petition to Intervene filed and served in a proceeding other than a special adjudicative proceeding).

R305-7-105. Computation and Extensions of Time.

(1) A business day is any day other than a Saturday, Sunday or legal State of Utah holiday.

(2) As provided in R305-7-102, "days" means calendar days unless otherwise specified.

(3) Computing time.

(a) If a period is in calendar days:

(i) exclude the day of the event that triggers the period;

(ii) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(iii) include the last day of the period, but if the last day is a Saturday, Sunday, or legal State of Utah holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal State of Utah holiday.

(b) If a period is in business days:

(i) exclude the day of the event that triggers the period; and

(ii) count every business day.

(c) If a document is not filed or served by email, any time for responding to the document shall be extended by three business days. This provision does not apply to a Request for Agency Action, Petition for Review or a Petition to Intervene. See R305-7-104(5).

(4) Date of issuance.

The date of issuance of a Permit Order, a Notice of Agency Action or other order is the date the document is signed and dated.

(5) Extensions of Time.

(a) To the extent permitted by Section 19-1-301.5, the ALJ may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R305-7-308. See Section 19-1-301.5(8).

(b) To the extent permitted by Section 19-1-301.5, the ALJ may postpone a deadline or, as applicable, a scheduled conference, oral argument or hearing, upon motion from the parties, or upon the ALJ's own motion. See Section 19-1-301.5(8).

(c) Notwithstanding any other provision in this section, R305-7-108(2) governs the ALJ's authority to extend time to file a Request for Agency Action, Petition for Review, or Petition to Intervene. See also the provisions cited in R305-7-108(2).

R305-7-106. Appearances and Representation.

(1) A party may be represented:

(a) by an individual if the individual is the party; or

(b) by a designated officer or other designated employee if the party is a person other than an individual.

(2) Any party may be represented by legal counsel. An attorney who is not currently a member in good standing of the Utah State Bar must present a written or oral motion for admission pro hac vice made by an active member in good standing of the Utah State Bar. Communication with and service on local counsel shall be deemed to be communication with and service on the party so represented.

R305-7-107. Proceeding Conducted by Teleconference or Other Electronic Means; Records of Hearings.

(1) All parties shall be present in person, or through an authorized representative (see R305-7-106), at an evidentiary hearing, if applicable.

(2) A party may participate in oral argument on a dispositive motion or oral argument on the merits of a special adjudicative proceeding by teleconference or other electronic means if:

(a) all other parties stipulate to participation by teleconference or other electronic means; and

(b) the ALJ approves the stipulation.

(3) A party may participate in any other hearing or conference on a dispositive motion or a hearing on the merits of a permit review adjudicative proceeding by teleconference or other electronic means if all other parties stipulate to participation by teleconference or other electronic means.

(4)(a) Hearings in all adjudicative proceedings that are subject to review by the Executive Director shall be recorded in order to preserve the record.

(b) Hearings that are not subject to review by the Executive Director, such as status and scheduling conferences, need not be recorded. In such cases, the notice of hearing will indicate that the hearing is not scheduled to be of record. If a party objects, a record of the hearing will be made in accordance with subpart (c).

(c) The Director is responsible for recording hearings of record, using audio recording equipment. Audio files of such hearings will become part of the adjudicative record.

(d) Any party may request that a court reporter be employed for the hearing, which request shall be granted by the ALJ. Unless otherwise stipulated by the parties, the requesting party shall bear the cost associated with the use of a court reporter. Any such requests shall be submitted to the ALJ at least 10 business days before the scheduled hearing. In the event that a court reporter is employed, the transcript of proceedings will become a public record and part of the adjudicative record of the proceeding. As a result, the court reporter shall not be allowed to claim any copyright on the transcript. The party engaging the court reporter will be responsible for obtaining a full release of the transcript.

R305-7-108. Modifying Requirements of Rules.

(1) Except as provided in R305-7-108(2), the requirements of this Rule may be modified by order of the ALJ for good cause, provided the modification is not inconsistent with applicable statutory provisions.

(2) The following requirements may not be modified:

(a) the requirements for timely filing a Petition for Review under R305-7-203(5) and 205 for a special adjudicative proceeding;

(b) the requirements for timely filing a Request for Agency Action under R305-7-303(5) for a proceeding other than a special adjudicative proceeding;

(c) the requirements for timely filing a Petition to Intervene under R305-7-204(2) and 205 for a special adjudicative proceeding; and

(d) the requirements for timely filing a Petition to Intervene under R305-7-304 (which incorporates the requirements of R305-7-204(2)) for a proceeding other than a special adjudicative proceeding.

R305-7-109. Default.

(1) The provision controlling default under UAPA, Section 63G-4-209, governs default under special adjudicative proceedings as well as proceedings under UAPA, including enforcement proceedings. However, a petitioner in a special adjudicative proceeding is not allowed to file a Request for Agency Action. Instead, a petitioner in a special adjudicative proceeding must file a Petition for Review. Therefore, if a petitioner in a special adjudicative proceeding improperly files a Request for Agency Action a respondent is not required to answer it. In addition, a respondent in a special adjudicative proceeding is not required to file a response to a Petition for Review under Section 63G-4-209(1)(c). However, a party in a special adjudicative proceeding who does not file a brief as required Section 19-1-301.5(8) may be held in default. See Section 19-1-301.5(10)(c).

(2) A default order shall include a statement of the

grounds for default and shall be filed with the Administrative Proceedings Records Officer and shall be served on all parties.

(3) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the ALJ.

R305-7-110. Limitation on Authority under Rule.

Nothing in this Rule constitutes a grant of authority for any person other than the recipient to challenge a Notice of Violation or to initiate an action to challenge or require a Director's enforcement either generally or in a specific situation. See UAPA, Sections 63G-4-102(8) and 63G-4-201(3).

R305-7-111. No Limitation on Authority to Bring Action.

(1) Nothing in this Rule shall be read as a limitation on a Director's statutory authority to bring an emergency proceeding or a judicial proceeding under either UAPA, Section 63G-4-502, or under the Department of Environmental Quality Code, Utah Code Ann. Title 19. It shall also not be read as a limitation on the procedures a Director may use for an emergency proceeding under those authorities.

(2) Failure in this Rule to provide administrative procedures for an administrative action that is authorized by statute shall not be read as a limitation of a Director's authority to bring that action.

R305-7-112. Procedures Not Addressed.

In the event there are situations for which procedures are not prescribed by this Rule, the ALJ shall, for a specific case, identify analogous procedures or other procedures that will apply.

R305-7-113. Applicability of UAPA.

(1) Special adjudicative proceedings are exempt from UAPA except as specifically provided in Section 19-1-301.5. See Section 19-1-301.5(3).

(2) With respect to all other orders:

(a) Initial Orders and Notices of Violation issued by the Director are exempt from the requirements of UAPA, as provided in Section 63G-4-102(2)(k).

(b) A proceeding to challenge an Initial Order or a Notice of Violation is subject to the requirements of UAPA, except as modified pursuant to this Rule.

(3) Neither UAPA nor this Rule applies to requests for government records or requests for confidentiality of government records. Those matters are governed by the Utah Government Records Access and Management Act, Sections 63G-2-101 through 901, and by Section 19-1-306.

R305-7-114. Prosecution of Actions; Dismissal for Failure to Prosecute.

(1) The party seeking relief is responsible for prosecuting administrative proceedings under this Rule.

(2) Unless the parties otherwise agree, if no request for appointment of an ALJ under R305-7-206(2) has been filed within three months after the filing date of a Request for Agency Action or Petition for Review, the Executive Director, a party, or a putative party to the adjudicative proceeding (e.g., the permittee or licensee) may serve a written notification to the parties stating that, absent a showing of good cause by a date specified in the notification, the Executive Director shall dismiss the adjudication for lack of prosecution. A Director may also file a motion to dismiss for failure to prosecute under this subsection to the Executive Director. In either case, unless good cause is demonstrated, the Executive Director shall dismiss such Request for Agency Action or Petition for Review.

(3) In any adjudicative proceeding in any matter governed by this Rule where an ALJ has been appointed, the Director or other party or putative party to the adjudicative proceeding (e.g., the permittee or licensee) may file a motion to dismiss for failure to prosecute. Unless, after notice, the party seeking relief shows good cause for delay, the ALJ shall enter an order recommending that the Executive Director dismiss the proceeding for lack of prosecution.

R305-7-200. Retrospective Construction and Interpretation.

(1) SB 282 and SB 173 (Gen. Session 2015) modified Section 19-1-301.5 permit review adjudicative procedures effective May 12, 2015. Because the revisions are procedural, they shall be accorded retrospective construction in the sense that they will be applied to pending actions and proceedings, as well as to future actions but will not be so applied as to defeat procedural steps completed before the effective date of May 12, 2015.

(2) Because the 2018 amendments to this Rule are procedural in nature, they shall apply to all matters pending before the Executive Director, unless good cause exists to apply a former version of the Rule.

R305-7-201. Scope of Rule; Purpose of Part.

Part 2 of this Rule (R305-7-201 through 217) specifies procedures to be used in a special adjudicative proceeding, as authorized under Section 19-1-301.5.

R305-7-202. Notice and Comment and Exhaustion of Remedies.

(1) As provided in 19-1-301.5(4), if a public comment period is provided during the permit application process, a person who challenges a Permit Order, including the permit applicant, may only raise an issue or argument during the special adjudicative proceeding that:

(a) the person raised during the public comment period; and

(b) was supported with sufficient information or documentation to enable the Director to fully consider the substance and significance of the issue.

(2) Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the Administrative Record in the same proceeding, or consist of state or federal statutes, regulations or rules, EPA documents of general applicability, or other generally available reference materials.

(3) The relevance of and the relevant portions of any supporting materials included with or incorporated by reference in comments shall be described with reasonable specificity.

(4) In preparing a comment response document, the Director may request that the permit applicant provide information in response to comments received during the public comment period.

R305-7-203. Petitions for Review.

(1) Permit orders may be contested by filing and serving a written Petition for Review as provided in R305-7-104(5).

(2) Any Petition for Review shall meet all of the requirements of UAPA, Section 63G-4-201(3)(a) and (3)(b), and the requirements of Section 19-1-301.5. See Section 19-1-301.5(6)(d).

(3) A Petition for Review shall be in writing, shall be signed by the person making the Petition for Review, or by that person's representative, and shall include:

(a) the names and addresses of all persons to whom a copy of the Petition for Review is being sent;

(b) the Director's file number or other reference number, if known;

(c) the date that the Petition for Review was mailed;

(d) a statement of the legal authority and jurisdiction under which review is requested;

(e) a statement of petitioner's position, including as applicable:

(i) the legal authority under which the Petition for Review is requested;

(ii) the legal authority under which the Executive Director has jurisdiction to review the Petition for Review;

(iii) each of the petitioner's arguments in support of the petitioner's requested relief;

(iv) an explanation of how each argument described in Section 19-1-301.5(6)(d)(v)(D) was preserved;

(v) a detailed description of any permit condition to which the petitioner is objecting;

(vi) any modification or addition to a permit that the petitioner is requesting;

(vii) a demonstration that the Director's permit decision is based on a finding of fact or conclusion of law that is clearly erroneous;

(viii) if the Director addressed a finding of fact or conclusion of law described in Section 19-1-301.5(6)(d)(v)(G) in a response to public comment, a citation to the comment and response that relates to the finding of fact or conclusion of law and an explanation of why the Director's response was clearly erroneous or otherwise warrants review; and

(ix) a claim for relief.

(4) It is not sufficient under Section 63G-4-201(3) to file and serve a general statement of disagreement, a reservation of rights to serve a Petition for Review, or a request to have the matter heard.

(5) To be timely, a Petition for Review to contest a Permit Order shall be, within 30 days of the date the Permit Order being challenged was issued:

(a) received for filing by the Administrative Proceedings Records Officer at the address specified in R305-7-104(4)(c) of this Rule;

(b) received by the Director at the address specified in Part 6; and

(c) served as provided in R305-7-104(2), (4) and (5).

(6) Failure to file a Petition for Review within the period specified in R305-7-104(5) waives any right to contest the permit order or to seek judicial review.

R305-7-204. Intervention.

(1) A person who seeks to intervene in a special adjudicative proceeding under this section shall file and serve:

(a) a Petition to Intervene that:

(i) meets the requirements of Section 63G-4-207(1); and

(ii) demonstrates that the person is entitled to intervention under Section 19-1-301.5(7)(c)(ii); and

(b) a timely Petition for Review.

(2) To be timely, a Petition to Intervene shall, within 30 days after the day on which the Permit Order being challenged was issued, be:

(a) received by the Administrative Proceedings Records Officer at the address specified in R305-7-104(4)(c) of this Rule;

(b) received by the Director at the address specified in Part 6;

(c) served on all other parties as provided in R305-7-104(4).

R305-7-205. Extensions of Time for Filing Petitions for Review and Petitions to Intervene.

The time for filing a Petition for Review or a Petition to Intervene may be extended only by stipulation of the parties and only if such stipulation is received for filing before the expiration of the time for filing the Petition for Review or Petition to Intervene. If a person seeking an extension of time to file a Petition for Review or a Petition to Intervene is a prospective interventor, the time for filing a Petition for Review or Petition to Intervene may be extended only by stipulation of the parties and the prospective intervenor, and only if such stipulation is received for filing before the expiration of the time for filing the Petition for Review or Petition to Intervene.

R305-7-206. Proceedings After a Petition for Review is Filed.

(1) After a Petition for Review has been filed, the parties are encouraged to meet to attempt to resolve the matter.

(2)(a) Any party may at any time file a request for appointment of an ALJ. An ALJ will not ordinarily be appointed until requested by a party, although the Executive Director may appoint an ALJ at any time.

(b) A request for appointment of an ALJ shall be filed as provided in R305-7-104(2)(a), and served as provided in R305-7-104(2)(b).

(3) After an ALJ is appointed, the ALJ shall review and respond to the Petition for Review in accordance with Subsections 63G-4-201(3)(d) and (e).

(4) Unless the parties stipulate or the ALJ orders otherwise following a motion, the Director shall file and serve the Administrative Record, as provided in R305-7-209, within 40 days after the day on which the Executive Director issues a notice of appointment of an administrative law judge.

(5) The schedule and page limits for briefing on the merits specified in Subsection 19-1-301.5(8)(a) shall apply except as otherwise stipulated by the parties and coordinated with the ALJ in accordance with R305-7-208(6).

(6) Dispositive Motions. The schedule for submission of dispositive motions specified in Subsection 19-1-301.5(8)(a) shall apply unless otherwise stipulated by the parties. However, without stipulation or order, dispositive motions may be submitted in advance of the schedule specified in Subsection 19-1-301.5(8)(a). Any issue or argument that could be raised in a dispositive motion is not waived by failure to file such a motion, but may be raised during the briefing on the merits. See R305-7-212.

(7) Subsection 19-1-301.5(13) is explained as follows. For each issue or argument that is not dismissed or otherwise resolved under Subsection 19-1-301.5(11)(b) or (12), the ALJ shall:

(a) provide the parties an opportunity for briefing and oral argument in accordance with Subsection 19-1-301.5(8);

(b) conduct a review of the Director's order or determination, based on the record as described in Subsection 19-1-301.5(9)(b)(c), and (10)(e); and

(c) within 60 days after the day on which oral argument takes place, or, if there is no oral argument, within 60 days after the day on which the reply brief is due, the ALJ shall submit to the Executive Director a proposed dispositive action, that includes:

(i) written findings of fact;

(ii) written conclusions of law; and

(iii) a recommended order.

R305-7-207. Parties.

(1) The following are parties to a special adjudicative proceeding:

(a) the Director who issued the Permit Order being challenged in the special adjudicative proceeding;

(b)(i) the permittee; or

(ii) the person who applied for the permit, if the permit was denied; and

(c) a person granted intervention by the ALJ.

(2) A person who has filed a Petition to Intervene that has not been denied is not a party, but will be treated as a party for purposes of this Rule (e.g., for purposes of service, making motions and settlement) unless otherwise ordered by the ALJ.

R305-7-208. Conferences, Proceedings and Order.

(1) The ALJ may hold one or more conferences for the purposes of:

(a) identifying and, if possible, narrowing the issues that will be considered;

(b) determining whether an issue will be considered through a dispositive motion or during the briefing on the merits;

(c) establishing schedules for the filing of motions and briefs;

(d) considering stipulations of fact or law; and

(e) considering any other matters.

(2) The ALJ shall promptly issue an order memorializing any determinations made about the matters considered in a conference.

(3) The ALJ may at any time order a party to make a more clear statement of the issues the party intends to raise.

(4) The ALJ may:

(a) require the parties to submit proposed schedules for the proceeding; and

(b) to the extent allowed by Section 19-1-301.5 and R305-7-208(6), change deadlines and page limits for submissions established by this Rule.

(5) The parties may request the ALJ hold a conference for the purpose of addressing the matters described in R305-7-208(1).

(6) Stipulated Scheduling Orders. The ALJ shall issue scheduling orders following Section 19-1-301.5 for the administrative record, briefing and page limits, and dispositive motions that shall apply unless the parties file stipulations for alternative scheduling and page limitations. The ALJ shall promptly adopt such timely filed stipulations in applicable scheduling orders unless the ALJ is not available on the stipulated hearing date or questions the necessity of the stipulated brief lengths.

(a) Stipulated Hearing Date. If the ALJ is not available on the stipulated hearing date, the ALJ shall confer with the parties to determine a mutually acceptable date and shall specify the mutually acceptable date in applicable scheduling orders.

(b) Stipulated Over-Length Briefs. If the ALJ questions the necessity of the stipulated over-length briefs, the ALJ may require the parties to state with specificity the issues to be briefed, the number of additional pages requested, and the good cause for allowing over-length briefs. The ALJ may promptly refuse to adopt or may promptly modify through order the parties' stipulation for over-length briefs if the parties fail to show good cause.

R305-7-209. Administrative Record.

(1) To the extent they relate to the issues and arguments raised in the Petition for Review, the Administrative Record shall consist of the following items, if they exist:

(a) the permit application, draft permit, and final permit;

(b) each statement of basis, fact sheet, engineering review, or other substantive explanation designated by the Director as part of the basis for the decision relating to the Permit Order;

(c) the notice and record of each public comment period;

(d) the notice and record of each public hearing, including oral comments made during the public hearing;

(e) written comments submitted during the public comment period;

(f) responses to comments that are designated by the Director as part of the basis for the decision relating to the Permit Order;

(g) any information that is:

(i) requested by and submitted to the Director; and

(ii) designated by the Director as part of the basis for the decision relating to the Permit Order;

(h) any additional information specified by rule;

(i) any additional documents agreed to by the parties; and

(j) information supplementing the record under Section 19-1-301.5(9)(c) or R305-7-210.

(2) If there has been no notice and comment period for a Permit Order, information that is submitted with the Petition for Review shall be deemed to be part of the Administrative Record as shall information submitted in any response to the Petition for Review.

(3)(a) The Director shall prepare the record by compiling it in chronological order, numbering each page and preparing an index.

(b) The Director shall, within 40 days of service of the Notice of Appointment, or as otherwise provided in R305-7-206;

(i) file and serve an electronic copy of the record in accordance with the requirements of R305-7-104; or

(ii) make a paper copy of the record available for review during normal working hours, and file and serve a copy of the record's index as provided in R305-7-104.

(4) Any challenges to the Administrative Record shall be made by motion within 10 business days of the date the record or index is served under paragraph (3)(b).

R305-7-210. Response to Supplemental Information.

If the Administrative Record is supplemented with additional information as described in R305-7-209(1)(i) or (j), the other parties may, in response, serve and file additional information specific to the supplemental information, which shall also be part of the Administrative Record. The additional information may not raise any new matters not raised in the supplemental information.

R305-7-211. Motions.

(1) A motion shall be made in writing, and shall include the grounds upon which it is based and the relief or order sought. A separate memorandum in support of the motion is not required.

(2) Any response to a motion shall be filed within 21 days of service of the motion.

(3) Any reply to a response to a motion may be filed within 10 days of service of the response. A reply shall be limited to matters raised in the response.

(4) A motion may not exceed 20 pages. If a separate memorandum in support of a motion is filed, the motion and memorandum together shall not exceed 20 pages. A response may not exceed 15 pages. A reply may not exceed ten pages.

(5) Deadlines and page limits may be modified by order of the ALJ.

(6) Any determination by the ALJ that is dispositive shall be forwarded to the Executive Director in the form of a recommended decision.

(7) See also R305-7-206(6) and R305-7-212 regarding issues and arguments not raised by motion.

R305-7-212. Challenges to a Petition to Intervene or to Failure to Preserve an Issue.

(1) A challenge to a Petition to Intervene under Section 19-1-301.5(7) or to a party's failure to preserve an issue under Section 19-1-301.5(4) and (6)(c) may be made by motion or may be made in the parties' briefs on the merits.

(2) If a challenge under paragraph (1) relies on a significant portion of the evidence or arguments that must be considered to make a determination on the merits, the party making the challenge under paragraph (1) is encouraged to do so in the brief on the merits.

(3) The ALJ may defer ruling on a motion under paragraph (1) until the ALJ makes a decision on the merits of the case if the ALJ finds that the motion relies on a significant portion of the evidence or arguments that must be considered to make a

determination on the merits.

R305-7-213. Procedures for Determination on the Merits.

(1) Requirements for briefs on the merits in a special adjudicative proceeding are as follows:

(a) The schedule and page limits specified in Section 19-1-301.5(8)(a) shall apply except as otherwise stipulated by the parties and ordered by the ALJ in accordance with R305-7-208;

(b) Any page incorporated by reference from the administrative or adjudicative record shall count toward a page limitation;

(c) The table of contents, table of citations, and any addendum containing statutes, rules, regulations or portions of the administrative record cited do not count toward the page limitation;

(d) All statements of fact shall be supported by references to the pages in the administrative record in which the evidence is identified;

(e) Matters addressed in the petition but not in the opening brief shall be waived;

(f) Matters not addressed in the petition may not be raised in the opening brief.

(2) A reply or a surreply brief may not raise any issue that was not raised in the responsive brief or the reply, respectively.

(3) Briefs must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, or immaterial matters. A brief not meeting these criteria may fail to meet that party's burden of persuasion.

(4) In cases involving more than one petitioner or respondent, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(5) The ALJ shall provide an opportunity for oral argument, which shall be a hearing of record under R305-7-107(4).

(6) The parties may submit comments on the ALJ's recommended decision to the Executive Director. Comments shall not exceed 15 pages, and shall be submitted within ten business days of the service of the recommended decision. A party may file a response to another party's comments, not to exceed five pages, within five business days of the date of the service of the comments.

R305-7-214. Review and Determinations.

(1) The procedures and standards for resolving a permit review challenge are specified in Section 19-1-301.5; see in particular paragraphs (9) through (15).

(2) The standard of review for the Director's factual, technical, and scientific determinations specified in Section 19-1-301.5(14)(b) and (15)(c)(ii) is explained as follows:

(a) The petitioner has the burden of proof;

(b) Marshaling the evidence is a natural extension of the petitioner's burden of proof;

(c) For each factual, technical, and scientific determination challenged by petitioner, the petitioner is required to marshal and acknowledge the evidence in the record that supports the Director's determination. Such determination shall be overturned as clearly erroneous only if the petitioner has proven, after marshaling, that the Director's determination is not supported. See Subsections 19-1-301.5(6)(d)(v)(G) and (H) and 19-1-301.5(14); and

(d) If the petitioner fails to marshal, there is a presumption that the Director's factual, technical, and scientific determination is not clearly erroneous.

(3) The standard of review for non-factual determinations provided in Section 19-1-301.5(15)(c)(i) recognizes that the Director has been granted substantial discretion to interpret the division's governing statutes and rules.

R305-7-215. Interlocutory Orders.

(1) Interlocutory review (review by the Executive Director before a final recommendation made by the ALJ) is not favored. Ordinarily, a party may challenge an order issued by the ALJ only after the ALJ has made a final recommended decision.

(2) A party may file, in accordance with R307-7-104, a motion for interlocutory review of a non-final ALJ order only if a ruling that is alleged to be in error could not be corrected through a challenge to the final recommended decision (e.g., a ruling denying privileged status to records), or where early resolution of a material issue may materially advance the termination of the proceeding.

(3) The Executive Director's determination to consider a motion for an interlocutory review is discretionary.

R305-7-216. Settlement.

The parties may agree to settle all or any portion of an action at any time during an administrative proceeding through a settlement agreement, an administrative settlement order, or a proposed judicial consent decree. Upon notice by the Director that there is a proposed settlement that will be subject to a public comment period, the ALJ shall suspend the administrative proceeding, in whole or in part, until notified by the Director or another party that the suspension should be lifted. The ALJ may order an update on the status of the settlement.

R305-7-217. Stays.

The procedure and standard for obtaining a stay is specified in Section 19-1-301.5(15).

R305-7-301. Scope of Rule; Purpose of Part.

Part 3 of this Rule (R305-7-301 through 319) specifies procedures to be used in adjudicative proceedings that are not permit review adjudicative proceedings, as authorized by Section 19-1-301. For the most part, proceedings under Part 3 of this Rule will be enforcement proceedings and proceedings to terminate permits.

R305-7-302. Issuance and Service of Initial Orders and Notices of Violation.

(1) Unless otherwise stated, an Initial Order or a Notice of Violation is effective upon issuance and, even if it is contested, remains effective unless a stay is issued or the Initial Order or a Notice of Violation is rescinded, vacated or otherwise terminated.

(2) The date of issuance of an Initial Order or a Notice of Violation is the date the Initial Order or a Notice of Violation is signed and dated.

(3) Unless otherwise provided by law, Notices of Violation and Initial Orders shall be served through U.S. Postal Service Certified Mail, postage prepaid, addressed to the respondent's Designated Address. If there is no Designated Address for a respondent, service may be made through U.S. Postal Service Certified Mail, postage prepaid, addressed to the respondent's legal registered agent or, if the respondent is an individual, addressed to the respondent's dwelling or place of business. Notices of Violation and Initial Orders may also be served personally (by hand-delivery) or by Certified Mail with Return Receipt requested. Service of Initial Orders and Notices of Violation may also be made in the same manner as a summons in accordance with Rule 4 of the Utah Rules of Civil Procedure.

(4) Service of Notices of Violation and Initial Orders shall be made no more than three days after the date of issuance. If service is made more than three days after the date of issuance, the dates provided in R305-7-303 shall be extended by the same

number of days that are in excess of three days.

(5) For purposes of this Rule, service is effective upon mailing, provided that the U.S. Postal Service Certified Mail receipt shows that the mailing was delivered. If the mailing is returned or if delivery is attempted but not made, service via U.S. Postal Service Certified Mail will not be deemed to be effective.

R305-7-303. Requests for Agency Action and Contesting an Initial Order or Notice of Violation; Finality.

(1) A Notice of Violation or an Initial Order may be contested by filing and serving a written Request for Agency Action as provided in R305-7-104(5).

(2) Any Request for Agency Action is governed by and shall meet all of the requirements of UAPA, Section 63G-4-201(3)(a) and (3)(b).

(3) As provided in Section 63G-4-201(3)(a), a Request for Agency Action shall be in writing and signed by the person making the Request for Agency Action, or by that person's representative, and shall include:

(a) the names and addresses of all persons to whom a copy of the Request for Agency Action is being sent;

(b) the agency's file number or other reference number, if known;

(c) the date that the Request for Agency Action was mailed;

(d) a statement of the legal authority and jurisdiction under which agency action is requested;

(e) a statement of the relief or action sought from the agency;

(f) a statement of the facts and reasons forming the basis for relief or agency action; and

(4) A Request for Agency Action shall include the requestor's name, address and email address, if any.

(5) To be timely, a paper copy of a Request for Agency Action to contest an Initial Order or a Notice of Violation shall be received for filing by the Director and the Administrative Proceedings Records Officer as specified in R305-7-104(2), (4) and (5) within 30 days of the date the Initial Order or a Notice of Violation was issued. This time may be extended only by stipulation of the parties and only if such stipulation is received for filing before the expiration of the time for filing the Request for Agency Action. The requester shall also send an electronic copy (searchable pdf) of the Request for Agency Action to deqapro@utah.gov.

(6) If a Request for Agency Action is made by a person other than the recipient of an Initial Order, the Request for Agency Action shall also include a Petition to Intervene that meets the requirements of Section 63G-4-207 and R305-7-304. See R305-7-110, however (limitations on the ability of third persons to challenge enforcement proceedings).

(7) (a) It is not sufficient under Section 63G-4-201(3)(a) or this rule to file a general statement of disagreement, a reservation of rights to file a Request for Agency Action, or a request to have the matter heard.

(b) If a person files a document challenging a notice of violation or an order under this Part 3 that does not meet the requirements of this rule, a party may file a dispositive motion addressing that inadequacy. The notice of violation or order will be final if the Executive Director approves or approves with modifications the ALJ's recommended order of dismissal.

(8) A Notice of Violation or Initial Order will become final, for purposes of enforcement under Section 63G-4-501(1), upon the expiration of 30 days from the date of issuance, unless a Request for Agency Action is received as provided above. Failure to file a Request for Agency Action within the period specified above waives any right to contest the Initial Order or to seek judicial review.

R305-7-304. Intervention.

Proceedings that are not permit review adjudicative proceedings will not ordinarily be subject to intervention. See R305-7-110 regarding intervention in enforcement proceedings. In the event intervention is appropriate under the specific facts of the case, the procedures for intervention specified in Part 2, including the deadlines for filing intervention specified in R305-7-204(2), shall govern. This time may be extended only by stipulation of the parties and the prospective intervenor and only if such stipulation is received for filing before the expiration of the time for filing the Petition to Intervene. The status and treatment of prospective intervenors in R305-7-207(2), shall also govern.

R305-7-305. Parties.

The following persons are parties to an adjudicative proceeding to resolve a challenge to an Initial Order or Notice of Violation:

(1) the person to whom the Initial Order or Notice of Violation was directed;

(2) the Director who issued an Initial Order or Notice of Violation; and

(3) any person to whom the ALJ has granted intervention under R305-7-304.

R305-7-306. Proceedings After a Request for Agency Action is Filed.

(1) After a Request for Agency Action has been filed, the parties are encouraged to meet to attempt to resolve the matter.

(2) No response to a Request for Agency Action under Section 63G-4-204 is required, but the Director may elect to file a response. No reply to the Director's response is permitted.

(3)(a) Any party may at any time file a request for appointment of an ALJ. An ALJ will not ordinarily be appointed until requested by a party, although the Executive Director may appoint an ALJ at any time.

(b) A request for appointment of an ALJ shall be filed as provided in R305-7-104(2)(a), and served as provided in R305-7-104(2)(b).

(4) The parties are encouraged to meet and confer regarding the nature and scope of discovery, scheduling, and other pre-hearing matters and to file, within 10 days of the appointment of the ALJ, a Joint Status Report that addresses the following subjects: (a) a brief statement of the case; (b) an indication as to the parties' position as to the need for further proceedings and, if such further proceedings are needed, the anticipated scope of such proceedings; (c) whether reasonable formal discovery is warranted as provided in R305-7-310, and, if such formal discovery is warranted, the general nature and scope of the requested discovery. If the parties are not able to reach agreement on a Joint Status Report, the Director shall file and serve, within 10 days after the appointment of an ALJ, a Status Report that includes the subjects described above. Within 10 days after service of the Director's Status Report, the other party or parties may file and serve a response to the Director's Status Report.

(5) Within 10 days after receipt of the Joint Status Report or the Response to the Director's Status Report, pursuant to subpart (4) or such other time deemed reasonable by the ALJ, the ALJ shall issue a Notice of Further Proceedings in accordance with Section 63G-4-201(3)(d) and (e). Unless otherwise ordered by the ALJ for good cause (such as a situation involving the need for emergency relief), until the ALJ has issued a Notice of Further Proceedings, no responses to motions filed before that date are due. If motions are pending in the matter, the Notice of Further Proceedings shall set the schedule for briefing and, if warranted, hearing and resolution of such pending motions.

R305-7-307. Designation of Proceedings as Formal or Informal; Procedures for Informal Proceedings.

(1) All proceedings to contest an order that is not a Permit Order, including proceedings to challenge a Notice of Violation or compliance order, shall be conducted as formal proceedings except as specifically provided in Part 6 of this Rule.

(2) The ALJ in accordance with Section 63G-4-202(3) may convert proceedings that are designated to be formal to informal and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced. A decision to use informal procedures must be approved by the Executive Director.

(a) Procedures for Informal Proceedings are governed by Section 63G-4-203 and, except as provided in R305-7-307(2)(d), this Rule.

(b) No hearing or other conference is required for an informal proceeding. If a hearing is held, the parties shall be permitted to testify, present evidence and comment on issues. A hearing may be conducted as a meeting rather than using trial-type procedures.

(c) Discovery and intervention are not available in an informal proceeding. The ALJ may issue a subpoena or other order to compel the production of necessary evidence.

(d) The procedures specified in R305-7-310, 313, 314 and 315 do not apply to informal procedures.

R305-7-308. Conferences, Proceedings and Order.

(1) The ALJ may hold one or more conferences for the purposes of:

(a) identifying and, if possible, narrowing the issues that will be considered;

(b) determining whether an issue will be considered at a dispositive motion hearing or an evidentiary hearing;

(c) establishing schedules for disclosures, exchange of witness lists, and the filing of motions, testimony and pre-hearing memoranda;

(d) determining the status of the litigation;

(e) considering stipulations of fact or law; and

(f) considering any other pre-hearing matters.

(2) The ALJ shall issue an order memorializing any determinations made about the matters considered in a conference.

(3) The ALJ may at any time order a party to make a more clear statement of the issues the party intends to raise at a hearing.

(4) The ALJ may:

(a) require the parties to submit proposed schedules for the proceeding; and

(b) change deadlines and page limits for submissions established by this Rule.

(5) Any party may request the ALJ conduct a hearing for the purpose of addressing the matters described in R305-7-308(1).

R305-7-309. Agency Record.

(1) The final agency record shall consist of an Initial Record and an Adjudicative Record.

(2)(a) The Initial Record shall be prepared by the Director and shall consist of background documents for the matter that shall be deemed to be authenticated for purposes of the hearing and motions, and may be introduced as evidence by any party. The Initial Record is not intended to take the place of discovery or of the proffer by parties of documentary evidence.

(b) The Initial Record shall be indexed and compiled in chronological order. Each page of the Initial Record shall be numbered for ease of reference. An electronic copy of the Initial Record shall be filed with the ALJ. An electronic copy of the Initial Record shall be filed and served as provided in R305-7-104(3). Electronic records shall meet the requirements for electronic filing and service in R305-7-104(3).

(3) The Initial Record document index shall include, to the extent they exist and are relevant to the issues raised in the Request for Agency Action, any documentation designated by the Director as part of the basis for issuing the Notice of Violation or Initial Order.

(4) Documents other than those specified in R305-7-309(3) may be included in the Initial Record only upon the agreement of the parties. Documents that the parties cannot agree upon may be submitted in the course of the proceeding. Failure of a party to object to inclusion of a document in the Initial Record shall be deemed to be agreement to its inclusion in the initial record and to its authenticity.

(5) If many of the documents or large parts of the documents that would ordinarily constitute the Initial Record are irrelevant to the issues raised in the proceeding, the Director may propose a more limited Initial Record. If a matter involves a multi-volume document, for example, the Director may propose to exclude the parts of the permit that are unrelated, e.g., emergency response requirements if the dispute is about waste sampling.

(6) Results of analyses of samples documented in the Initial Record are deemed to be accurate unless specifically objected to no later than 15 days before the date the Director's preliminary witness lists are due.

(7) Procedure for preparing the Initial Record.

(a) Unless the ALJ directs otherwise or the parties otherwise agree, the Director shall compile and provide a draft index of documents in the Initial Record to the other parties no sooner than 60 days after entry of the Notice of Further Proceedings. The Director shall allow reasonable time for the other parties to comment on the draft index.

(b) After consideration of the comments, the Director shall prepare the Initial Record by compiling it in chronological order, numbering each page and preparing an index. The Director shall:

(i) file and serve an electronic copy of the record in accordance with the requirements of R305-7-104(3); or

(ii) make a paper copy of the record available for review during normal working hours, and file and serve a copy of the record's index as provided in R305-7-104.

(8) Any challenges to the Initial Record shall be made by motion within 10 business days of the date the record or index is served under paragraph (7)(b).

(9) The Adjudicatory Record consists of all documents filed or issued in the proceeding beginning with the contested Notice of Violation and/or Initial Order, followed by the Request for Agency Action.

R305-7-310. Disclosures and Discovery.

(1) The ALJ shall allow reasonable formal discovery if requested by any party. The ALJ may limit the scope of formal discovery for the reasons stated in Rules 26 and 37(a)(7) of the Utah Rules of Civil Procedure. The ALJ may also enter an order imposing sanctions provided in Rule 37(b) of the Utah Rules of Civil Procedure, except that the ALJ has no power of contempt and may not impose financial sanctions under Rule 37. By stipulation or upon motion, the ALJ may enter a protective order imposing protections and limitations governing records of information produced in the adjudicative proceeding. The ALJ is encouraged to use a form of Standard Protective Order typically used in Utah state or federal court proceedings.

(2)(a) Except as otherwise provided in this Section R305-7-310, the time periods, limitations and other requirements for discovery in the Utah Rules of Civil Procedure shall apply unless otherwise ordered by the ALJ after consideration of the specific formal discovery proposed.

(b) Initial disclosures shall be required as provided in Utah Rules of Civil Procedure Rule 26(a)(1)(B) through (D), except

that the Director's preparation of the Initial Record as provided in R305-7-309 will be deemed to be adequate to satisfy the Director's duty to provide initial disclosure of records under Rule 26. Unless otherwise ordered by the ALJ, initial disclosures must be filed within twenty-eight (28) days of the date of service of the Director's Initial Disclosures.

(3) If applicable, expert disclosures, as defined under Rule 26, Utah Rules of Civil Procedure, will also be required in connection with an evidentiary hearing on the merits. The due dates as provided in Rule 26 shall apply, unless otherwise ordered by the ALJ.

(4) Prehearing disclosures and related matters will be governed by R305-7-313, or by order of the ALJ, and not by Rule 26, Utah Rules of Civil Procedure.

R305-7-311. Subpoenas.

(1) A party requesting an administrative subpoena must prepare it and submit it to the Administrative Proceedings Records Officer for the signature of the ALJ. Each administrative subpoena form shall have the following statement prominently displayed on the form: This Administrative Subpoena is issued under the authority of the Utah Administrative Procedures Act, Section 63G-4-205(2). If you believe that this subpoena is inappropriate, you may object. The standards of Rule 45 of the Utah Rules of Civil Procedure will be used to determine whether a subpoena is appropriate. File any objection with insert name and email address of ALJ. See also Utah Admin. Code R305-7-311.

(2) Service of the subpoena shall be made by the party requesting it in a manner consistent with Rule 45(b) of the Utah Rules of Civil Procedure.

(3) A party or other person served with a subpoena may file an objection for the reasons specified in the Utah Rules of Civil Procedure, Rule 45. In response, the party that served the subpoena may file a Motion to Compel. The ALJ shall consider the Motion to Compel and require compliance with the existing subpoena, issue a new subpoena on specified conditions, or quash the subpoena.

R305-7-312. Motions.

(1) Motions may be made in writing at or before a hearing, or orally during a hearing. Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of motions that are not made orally shall be filed and served in accordance with R305-7-104. A separate memorandum in support of the motion is not required.

(2) A response to a motion, if any, shall be filed within 21 days of service of the motion.

(3) A reply, if any, may be filed within 10 days of service of the response. A reply shall be limited to matters raised in the response.

(4) A motion may not exceed 20 pages. If a separate memorandum in support of a motion is filed, the motion and memorandum together shall not exceed 20 pages. A response may not exceed 15 pages. A reply may not exceed 10 pages.

(5) Deadlines and page limits may be modified by order of the ALJ.

(6) When appropriate, parties are encouraged to file dispositive motions, such as a Motion for Judgment on the Pleadings, a Motion to Dismiss or a Motion for Summary Judgment. Parties are encouraged to file dispositive motions no later than 45 days prior to the scheduled hearing. Dispositive motions shall be prepared in accordance with requirements of Rule 12 or Rule 56 of the Utah Rules of Civil Procedure, as appropriate.

R305-7-313. Pre-hearing Briefs and other Pre-hearing Submissions.

(1) At least 30 days before a scheduled hearing on the merits, the parties shall exchange proposed exhibits and thereafter shall meet to attempt to stipulate to the admission of exhibits.

(2) At least 14 days before a scheduled hearing on the merits, the parties shall jointly file any stipulation regarding admission of exhibits and shall file copies of all of its exhibits that are subject to a stipulation. Electronic copies of the exhibits, as described in R305-7-104(3), shall be filed with the ALJ and the Administrative Proceedings Records Officer, and served on all other parties. Electronic and paper copies of the exhibits shall be served on the Administrative Proceedings Records Officer.

(3) Unless otherwise ordered by the ALJ, each party may, but is not required to file, at least 14 days before a scheduled hearing on the merits:

(a) A pre-hearing brief, limited to 25 pages, not including exhibits or any statement of facts; and

(b) Any motions related to the way the hearing will be conducted, or to the admission of exhibits and other evidence that will be presented at the hearing.

(4) A party may object to an exhibit when it is introduced in a hearing, except that no party may object to:

(a) the authenticity of a record included in the Initial Record;

(b) the accuracy of analytical analysis of samples documented in the Initial Record, except as provided in R305-7-309(6).

(5)(a) Any party may file testimony and evidence using pre-filed testimony of a witness, unless otherwise ordered by the ALJ.

(b) For lengthy or complex proceedings, pre-filed testimony is preferred and may be required by the ALJ.

(c) Pre-filed testimony shall be submitted at least 13 business days before a scheduled hearing.

R305-7-314. Hearings.

(1) The ALJ shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements while affording to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence. The ALJ shall also establish the order of presentation at the hearing.

(2) The provisions of R305-7-107(4) govern recordings and transcripts of hearings.

(3) Evidence.

(a) Every party to an adjudicative proceeding has the right to introduce evidence, subject to Section 63G-4-206 and the Utah Rules of Evidence, to the extent those rules are not inconsistent with Section 63G-4-206 or this Rule. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(i) The ALJ may admit any reliable evidence possessing probative value that would be accepted by a reasonably prudent person in the conduct of his affairs.

(ii) The ALJ may admit hearsay evidence. However, no finding of fact may be based solely on hearsay evidence unless that evidence is admissible under Section 63G-4-206 and, to the extent it is not inconsistent with that section, the Utah Rules of Evidence.

(iii) If a party attempts to introduce evidence into a hearing, and it is excluded, the party may proffer the excluded testimony or evidence to allow any reviewing authority to pass on the correctness of the ruling of exclusion.

(b) Except as provided in R305-7-314(3)(d), all witnesses who have provided pre-filed testimony shall be present at the hearing unless:

(i) otherwise agreed to by the parties; and

(ii) ordered by the ALJ.

(c) A witness for whom pre-filed testimony has been submitted shall be allowed to give a brief summary of that testimony, and shall then be made available for cross-examination.

(d) Except as otherwise agreed to by the parties and ordered by the ALJ, the pre-filed testimony of any witness who is not present at the hearing will be treated as other hearsay evidence as provided in Utah Code Ann. Subsections 63G-4-206(1)(c) and 63G-4-208(3).

(e) Oral testimony at a formal hearing will be sworn. The oath will be administered by the reporter or the ALJ. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

R305-7-315. Post-hearing Findings and Conclusions.

Unless otherwise ordered by the ALJ, not later than 14 days after a hearing, each party may, but is not required to submit proposed findings of fact, identifying with specificity supporting evidence in the record, and proposed conclusions of law.

R305-7-316. Executive Director's Decision on the Merits.

(1) The parties may submit comments on the ALJ's recommended decision to the Executive Director. Comments shall not exceed 15 pages, and shall be submitted within ten business days of the service of the recommended decision. A party may file a response to another party's comments, not to exceed five pages, within five business days of the date of the service of the comments.

(2) The Executive Director shall issue an order that meets the requirements of Section 63G-4-208.

R305-7-317. Interlocutory Orders.

(1) Interlocutory review is not favored. Ordinarily, a party may challenge an order issued by the ALJ only after the ALJ has made a final recommended decision.

(2) A party may file, in accordance with R305-7-104, a motion for interlocutory review of a non-final ALJ order only if a ruling that is alleged to be in error could not be corrected through a challenge to the final recommended decision (e.g., a ruling denying privileged status to records), where early resolution of a material issue may materially advance the termination of the proceeding, where multiple evidentiary hearings may be avoided through resolution of issues through an interlocutory appeal, or where the interests of judicial economy are otherwise served.

(3) The Executive Director's determination to consider a motion for an interlocutory review is discretionary.

R305-7-318. Stays of Orders Pending Hearing.

(1) The filing of a Request for Agency Action does not stay a director's enforcement orders. A party seeking a stay of an Initial Order during an adjudicative proceeding may file a motion with the ALJ.

(a) An ALJ shall grant a stay if the party seeking the stay demonstrates all of the following elements:

(i) The party seeking the stay will suffer irreparable harm unless the stay is issued;

(ii) The threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(iii) The stay, if issued, would not be adverse to the public interest; and

(iv) There is a substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.

(2) The potential imposition of civil penalties does not constitute "harm" or "injury" within the meaning of this Rule. The standards specified in R305-7-318(1)(a) shall apply to any interlocutory review of an order regarding a requested stay of an Initial Order.

(3) Stay of Executive Director's Order Pending Judicial Review.

(a) A party seeking a stay of a final order by the Executive Director may file a motion with the Executive Director.

(b) The standards specified in R305-7-318(1)(a) shall apply to any such request.

R305-7-319. Settlement.

The parties may agree to settle all or any portion of an action at any time during an administrative proceeding through a settlement agreement, an administrative settlement order, or a proposed judicial consent decree. Upon notice by the Director that there is a proposed settlement that will be subject to a public comment period, the ALJ shall suspend the administrative proceeding, in whole or in part, until notified by the Director or another party that the suspension should be lifted. The ALJ may order an update on the status of the settlement.

R305-7-401. Purpose of Part.

Part 4 of this Rule (R305-7-401 through 403) governs proceedings initiated by a Director through a Notice of Agency Action.

R305-7-402. Notices of Agency Action to Impose a Penalty.

Before issuing a Notice of Agency Action assessing penalties, the Director shall provide at least 30 days' notice of the proposed penalty, and shall provide the recipient with an opportunity to comment on the proposed penalty.

R305-7-403. Procedures following a Notice of Agency Action.

If the recipient of a Notice of Agency Action filed by a Director does not file a written response within 30 days of the date the Notice of Agency Action is issued, the Director may issue a final order under Section 63G-4-209(1)(c) and R305-7-109. If the recipient does file a timely written response, an ALJ will conduct a formal proceeding on the matter using, as appropriate, the procedures specified in UAPA and Parts 1, 2 (for Permit Orders), 3 (for all other orders) and 6 of this Rule.

R305-7-501. Purpose of Part.

Part 5 of this Rule (R305-7-501 through 503) governs requests for declaratory and emergency actions.

R305-7-502. Declaratory Orders.

(1) Any Request for a Declaratory Order shall be addressed first to the Director specified in Part 6 of this Rule,

(2) Any person who seeks to obtain a declaratory order shall file a Request for Declaratory Order that meets these requirements. The request shall:

(a) Clearly designate the Request for Agency Action as one requesting a declaratory order;

(b) Identify the statute, department or division rule or order to be reviewed;

(c) Describe in detail the situation or circumstances in which the applicability of the statute, rule or order is to be reviewed;

(d) Describe the Requestor's reason or need for the order;

(e) Set out a proposed order;

(f) As appropriate, address with specificity each of the circumstances described in R305-7-502(4) and demonstrate that the condition does not apply.

(3) Failure to submit a complete Request for Declaratory Order is grounds for denying the Request.

(4) The following classes of circumstances are exempt

from declaratory order, as provided in Section 63G-4-503(3)(b):

(a) Circumstances in which a declaratory order would substantially prejudice the rights of a person who would be a necessary party under the Utah Rules of Civil Procedure, unless the Petitioner has that person's consent in writing;

(b) Circumstances in which the person requesting the declaratory order does not have standing;

(c) Circumstances in which informal agency opinion or other agency action is sufficient to meet the need described in the Petition;

(d) Circumstances in which questions have already been adequately addressed by the agency in an order or in informal advice;

(e) Circumstances that raise questions that are clear and do not warrant an order;

(f) Circumstances that are more properly addressed by a statutory change or rulemaking proceedings;

(g) Circumstances that arise out of pending or anticipated litigation in a civil, criminal or administrative forum and that are more properly addressed by that forum;

(h) Circumstances under which the critical facts are not clear and may be altered by subsequent events, or the issues are otherwise not yet ripe for consideration;

(i) Circumstances under which the person making the request is unable to show that real risk to that person will be confronted if the intended course of conduct is taken; and

(j) Circumstances involving use of the agency's emergency authority.

(5) If no declaratory order or order setting the matter for hearing is issued within 60 days of the Request, the Request shall be deemed denied.

(6) An Initial Order of the Director on a Request for Declaratory Action may be challenged by filing a request for agency action under this Rule.

R305-7-503. Emergency Actions.

Emergency orders may be issued as provided in Section 63G-4-502. See R305-7-111.

R305-7-601. Purpose of Part.

(1) Part 6 of this Rule (R305-7-601 through 623) provides definitions and other provisions that will govern the way the procedures specified in Parts 2 through 5 of this Rule will apply to adjudicative procedures brought under specific statutes.

(2) For all statutes, Parts 1, 2 and 6 of this Rule apply to a proceeding to challenge a Permit Order.

(3) For all statutes, Parts 1, 3 and 6 of this Rule apply to a proceeding to challenge a Notice of Violation or other Initial Order.

R305-7-602. Addresses for Filing.

(1) Documents submitted to the Executive Director of the Department of Environmental Quality shall be sent to:

Executive Director
Department of Environmental Quality
P.O. Box 144810
Salt Lake City, Utah 84114-4810

Alternatively, these documents may be delivered by courier or hand delivery to:

Executive Director
Department of Environmental Quality
195 North 1950 West, 4th Floor
Salt Lake City, Utah 84116-3097

(2) Documents submitted to the Director of the Division of Air Quality shall be sent to:

Director, Division of Air Quality
P.O. Box 144820
Salt Lake City, Utah 84114-4820

Alternatively, these documents may be delivered by courier or hand delivery to:

Director, Division of Air Quality
195 North 1950 West, 4th Floor
Salt Lake City, Utah 84116-3097

(3) Documents submitted to the Director of the Division of Drinking Water shall be sent to:

Director, Division of Drinking Water
P.O. Box 144830
Salt Lake City, Utah 84114-4830

Alternatively, these documents may be delivered by courier or hand delivery to:

Director, Division of Drinking Water
195 North 1950 West, 3rd Floor
Salt Lake City, Utah 84116-3097

(4) Documents submitted to the Director of the Division of Waste Management and Radiation Control shall be sent to:

Director, Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, Utah 84114-4880

Alternatively, these documents may be delivered by courier or hand delivery to:

Director, Division of Waste Management and Radiation Control
195 North 1950 West, 2nd Floor
Salt Lake City, Utah 84116-3097

(5) Documents submitted to the Director of the Division of Environmental Response and Remediation shall be sent to:

Director, Division of Environmental Response and Remediation
P.O. Box 144840
Salt Lake City, Utah 84114-4840

Alternatively, these documents may be delivered by courier or hand delivery to:

Director, Division of Environmental Response and Remediation
195 North 1950 West, 1st Floor
Salt Lake City, Utah 84116-3097

(6) Documents submitted to the Director of the Division of Water Quality shall be sent to:

Director, Division of Water Quality
P.O. Box 144870
Salt Lake City, Utah 84114-4870

Alternatively, these documents may be delivered by courier or hand delivery to:

Director
Division of Water Quality
195 North 1950 West, 3rd Floor
Salt Lake City, Utah 84116-3097

R305-7-603. Matters Governed by Title 19, Chapter 1 of the Environmental Quality Code, but not Including Title 19, Chapter 1, Part 4.

(1) Scope. This subsection R305-7-603 applies to all matters governed by Title 19, Chapter 1, of the Environmental Quality Code.

(2) Definitions.

"Director" shall refer to the Executive Director.

(3) Orders and notices issued under the authority of Title 19, Chapter 1 of the Environmental Quality Code are not exempt from the requirements of UAPA. The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated under the authority of Title 19, Chapter 1, the "Environmental Quality Code."

(4) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for any person other than the agency to initiate adjudicative proceedings under Title 19, Chapter 1. Nothing in this Rule constitutes authority for any person to intervene in an action commenced under Title 19,

Chapter 1.

(5) Proceedings under Title 19, Chapter 1 of the Environmental Quality Code, and specifically under Section19-1-202(2)(a), will be conducted formally under UAPA.

(6) Agency review under Section 63G-4-301 is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-7-604. Matters Governed by the Air Conservation Act, Title 19, Chapter 2, but not Including Sections 19-2-112 or 19-2-123 through 19-2-126.

(1) This subsection R305-7-604 applies to all matters governed by the Air Conservation Act, Title 19, Chapter 2, but not including Sections 19-2-112 or 19-2-123 through 19-2-126.

(2) "Director" means the Director of the Division of Air Quality.

R305-7-605. Matters Governed by Section 19-2-112 of the Air Conservation Act.

(1) This subsection R305-7-605 describes matters governed by Section 19-2-112(1) of the Air Conservation Act, and applies to matters governed by Section 19-2-112(2) of that Act.

(2) Actions taken under the authority of Section 19-2-112(1) are subject to the procedures specified in that subsection only; neither this Rule nor UAPA applies.

(3) Orders and notices issued under the authority of 19-2-112(2) are subject to the requirements of and procedure specified in 63G-4-502. There is no administrative review available for orders issued under this provision. Any request for reconsideration shall be addressed to the Executive Director at the address specified in R305-7-602(1).

(4) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for:

(a) any person other than a Director to initiate adjudicative proceedings under 19-2-112(2); or

(b) any person to intervene in an action commenced under 19-2-112(2).

R305-7-606. Matters Governed by Sections 19-2-123 through 19-2-126 of the Air Conservation Act.

(1) This subsection R305-7-606 applies to matters governed by Sections 19-2-123 through 19-2-126 of the Air Conservation Act. Sections 59-7-605 and 59-10-1009 of the Utah Tax Code also apply to these matters.

(2) Definitions.

"Director" means the Director of the Division of Air Quality for Requests relating to air pollution control equipment, or the Director of the Division of Water Quality for requests relating to water pollution control equipment.

R305-7-607. Matters Governed by the Radiation Control Act, Title 19, Chapter 3, but not Including Section 19-3-109.

(1) This subsection R305-7-607 applies to all matters governed by the Radiation Control Act, Title 19, Chapter 3, but not including Section 19-3-109.

(2) Definitions.

"Director" means the Director of the Division of Waste Management and Radiation Control.

R305-7-608. Matters Governed by the Radiation Control Act, Title 19, Chapter 3, Section 19-3-109.

(1) This subsection R305-7-608 applies to all matters governed by Section 19-3-109 of the Radiation Control Act.

(2) Definitions.

"Director" means the Director of the Division of Waste Management and Radiation Control.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of Section 19-3-109.

R305-7-609. Matters Governed by the Safe Drinking Water Act, Title 19, Chapter 4, but not Including Section 19-4-109(1).

(1) This subsection R305-7-609 applies to all matters governed by the Safe Drinking Water Act, Title 19, Chapter 4, but not included Section 19-4-109(1).

(2) Definitions.

"Director" means the Director of the Division of Drinking Water.

R305-7-610. Matters Governed by the Safe Drinking Water Act, Title 19, Chapter 4, Section 19-4-109(1).

(1) This subsection R305-7-610 applies to all matters governed by Section 19-4-109(1) of the Safe Drinking Water Act.

(2) Definitions.

"Director" means the Director of the Drinking Water Division.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of Section 19-4-109(1).

R305-7-611. Matters Governed by the Water Quality Act, Title 19, Chapter 5.

(1) This subsection R305-7-611 applies to all matters governed by the Water Quality Act, Title 19, Chapter 5.

(2) Definitions.

"Director" means the Director of the Division of Water Quality or, for purposes of groundwater quality at a facility licensed by and under the jurisdiction of the Division of Radiation Control, the Director of the Division of Radiation Control.

R305-7-612. Matters Governed by the Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 1.

(1) This subsection R305-7-612 applies to all matters governed by Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 1.

(2) Definitions.

"Director" means the Director of the Division of Waste Management and Radiation Control.

R305-7-613. Matters Governed by the Hazardous Substances Mitigation Act, Title 19, Chapter 6, Part 3.

(1) This subsection R305-7-613 applies to all matters governed by the Hazardous Substances Mitigation Act, Title 19, Chapter 6, Part 3.

(2) Definitions.

"Director" means the Executive Director.

R305-7-614. Matters Governed by the Underground Storage Tank Act, Title 19, Chapter 6, Part 4, but not Including Sections 19-6-405.3, 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(1) This subsection R305-7-614 applies to all matters governed by the Underground Storage Tank Act, Title 19, Chapter 6, Part 4, but not including Sections 19-6-405.3, 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(2) Definitions.

"Director" means the Director of the Division of Environmental Response and Remediation.

R305-7-615. Matters Governed by the Underground Storage Tank Act, Title 19, Chapter 6, Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(1) This subsection R305-7-615 applies to all matters governed by Sections 19-6-407, 19-6-408, 19-6-416, and 19-6-

416.5 of the Underground Storage Tank Act.

(2) Definitions.

"Director" means the Director of the Division of Environmental Response and Remediation.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

R305-7-616. Matters Governed by the Used Oil Management Act, Title 19, Chapter 6, Part 7.

(1) This subsection R305-7-616 applies to all matters governed by the Used Oil Management Act, Title 19, Chapter 6, Part 7.

(2) Definitions.

"Director" means the Director of the Division of Waste Management and Radiation Control.

R305-7-617. Matters Governed by the Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

(1) This subsection R305-7-617 applies to all matters governed by Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

(2) Definitions.

"Director" means the Director of the Division of Waste Management and Radiation Control.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of the Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

R305-7-618. Matters Governed by the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9.

(1) This subsection R305-7-618 applies to all matters over which the Director has authority under the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9, and under the authority of the Board.

(2) Definitions.

"Director" means the Director of the Division of Environmental Response and Remediation.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9.

R305-7-619. Matters Governed by the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

(1) This subsection R305-7-619 applies to all matters governed by the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

(2) Definitions.

"Director" means the Director of the Division of Waste Management and Radiation Control.

(3) The provisions of UAPA and of Parts 1, 4 and 6 of this Rule shall apply to proceedings initiated by filing a notice of agency action under the authority of the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

R305-7-620. Matters Governed by the Industrial Byproduct Reuse Act, Title 19, Chapter 6, Part 11.

(1) Scope. This subsection R305-7-620 applies to all matters governed by the Industrial Byproduct Reuse Act, Title 19, Chapter 6, Part 11.

(2) Definitions.

"Director" means the Director of the Division of Waste Management and Radiation Control.

R305-7-621. Matters Governed by the Voluntary Cleanup Program Statute, Title 19, Chapter 8.

(1) This subsection R305-7-621 applies to all matters governed by the Voluntary Cleanup Program statute, Title 19, Chapter 8.

(2) Determinations about whether to enter into an agreement under this program lie within the sole discretion of the Executive Director or a person appointed by the Executive Director.

(3) The Executive Director delegates to the Director of the Division of Environmental Response and Remediation authority to issue orders and other Notices of Agency Action regarding:

(a) proposed determinations regarding approvals, disapprovals or modifications of work plans and reports;

(b) approvals, denials or modifications of certificates of completion; and

(c) declaratory orders under Section 63G-4-503 and R305-7-502.

R305-7-622. Matters Governed by the Environmental Institutional Control Act, Title 19, Chapter 10.

(1) This subsection R305-7-622 applies to all matters governed by the Environmental Institutional Control Act, Title 19, Chapter 10.

(2) A request to approve a proposed termination or modification of an environmental institutional control adopted under this act shall be considered a Request for Agency Action and Parts 1, 2 and 6 of this Rule shall apply.

R305-7-623. Matters Governed by the Uniform Environmental Covenants Act, Title 57, Chapter 25.

(1) This subsection R305-7-623 applies to all matters governed by the Uniform Environmental Covenants Act, Title 57, Chapter 25.

(2) A request to approve a proposed agreement, modification of an agreement, or termination of an agreement shall be considered to be a Request for Agency Action and Parts 1, 2 and 6 of this Rule shall apply.

KEY: administrative procedures, adjudicative procedures, hearings

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	63G-4-102
	63G-4-201
	63G-4-202
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	63G-4-503

R307. Environmental Quality, Air Quality.
R307-361. Architectural Coatings.
R307-361-1. Purpose.

(1) The purpose of R307-361 is to limit volatile organic compounds (VOC) emissions from architectural coatings.

(2) This rule specifies architectural coatings storage, cleanup, and labeling requirements.

R307-361-2. Applicability.

R307-361 applies to any person who supplies, sells, offers for sale, applies, or solicits the application of any architectural coating, or who manufactures, blends or repackages any architectural coating for use within Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber counties.

R307-361-3. Definitions.

The following additional definitions apply only to R307-361.

"Adhesive" means any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

"Aerosol coating product" means a pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant, and is packaged in a disposable can for hand-held application or for use in specialized equipment for ground traffic/marking applications.

"Aluminum roof coating" means a coating labeled and formulated exclusively for application to roofs and containing at least 84 grams of elemental aluminum pigment per liter of coating (at least 0.7 pounds per gallon).

"Appurtenance" means any accessory to a stationary structure coated at the site of installation, whether installed or detached, including, but not limited to, bathroom and kitchen fixtures; cabinets; concrete forms; doors; elevators; fences; hand railings; heating equipment, air conditioning equipment, and other fixed mechanical equipment or stationary tools; lampposts; partitions; pipes and piping systems; rain gutters and downspouts; stairways, fixed ladders, catwalks, and fire escapes; and window screens.

"Architectural coating" means a coating to be applied to stationary structures or their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs.

(1) Coatings applied in shop applications or to non-stationary structures such as airplanes, ships, boats, railcars, and automobiles, and adhesives are not considered architectural coatings for the purposes of this rule.

"Basement specialty coating" means a clear or opaque coating that is labeled and formulated for application to concrete and masonary surfaces to provide a hydrostatic seal for basements and other below-grade surfaces, meeting the following criteria:

(1) Coating must be capable of withstanding at least 10 psi of hydrostatic pressure, as determined in accordance with ASTM D7088-04 and;

(2) Coating must be resistant to mold and mildew growth and must achieve a microbial growth rating of 8 or more, as determined in accordance with ASTM D3273-00 and ASTM D3274-95.

"Bitumens" means black or brown materials including, but not limited to, asphalt, tar, pitch, and asphaltite that are soluble in carbon disulfide, consist mainly of hydrocarbons, and are obtained from natural deposits or as residues from the distillation of crude petroleum or coal.

"Bituminous roof coating" means a coating that incorporates bitumens and that is labeled and formulated exclusively for roofing for the primary purpose of preventing water penetration.

"Bituminous roof primer" means a primer that incorporates bitumens and that is labeled and formulated exclusively for roofing and intended for the purpose of preparing a weathered or aged surface or improving adhesion of subsequent surface components.

"Bond breaker" means a coating labeled and formulated for application between layers of concrete to prevent a freshly poured top layer of concrete from bonding to the layer over which it is poured.

"Calcimine recoaters" means a flat solvent borne coating formulated and recommended specifically for coating calcimine-painted ceilings and other calcimine-painted substrates.

"Coating" means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes, and such materials include, but are not limited to, paints, varnishes, sealers, and stains.

"Colorant" means a concentrated pigment dispersion in water, solvent, or binder that is added to an architectural coating after packaging in sale units to produce the desired color.

"Concrete curing compound" means a coating labeled and formulated for application to freshly poured concrete to retard the evaporation of water and or harden or dustproof the surface of freshly poured concrete.

"Concrete/masonry sealer" means a clear or opaque coating that is labeled and formulated primarily for application to concrete and masonry surfaces to prevent penetration of water, provide resistance against abrasion, alkalis, acids, mildew, staining, or ultraviolet light, or harden or dustproof the surface of aged or cured concrete.

"Concrete surface retarder" means a mixture of retarding ingredients such as extender pigments, primary pigments, resin, and solvent that interact chemically with the cement to prevent hardening on the surface where the retarder is applied allowing the retarded mix of cement and sand at the surface to be washed away to create an exposed aggregate finish.

"Conjugated oil varnish" means a clear or semi-transparent wood coating, labeled as such, excluding lacquers or shellacs, based on a natural occurring conjugated vegetable oil (tung oil) and modified with other natural or synthetic resins; a minimum of 50% of the resin solids consisting of conjugated oil.

"Conversion varnish" means a clear acid coating with an alkyd or other resin blended with amino resins and supplied as a single component or two-component product.

"Department of Defense military technical data" means a specification that specifies design requirements, such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.

"Driveway sealer" means a coating labeled and formulated for application to worn asphalt driveway surfaces to fill cracks, seal the surface to provide protection, or to restore or preserve the appearance.

"Dry fog coating" means a coating labeled and formulated only for spray application such that overspray droplets dry before subsequent contact with incidental surfaces in the vicinity of the surface coating activity.

"Faux finishing coating" means a coating labeled and formulated to meet one or more of the following criteria:

(1) A glaze or textured coating used to create artistic effects, including, but not limited to, dirt, suede, old age, smoke damage, and simulated marble and wood grain;

(2) A decorative coating used to create a metallic, iridescent, or pearlescent appearance and that contains at least 48 grams of pearlescent mica pigment or other iridescent pigment per liter of coating as applied (at least 0.4 pounds per gallon); or

(3) A decorative coating used to create a metallic appearance and that contains less than 48 grams of elemental metallic pigment per liter of coating as applied (less than 0.4 pounds per gallon); or

(4) A decorative coating used to create a metallic

appearance and that contains greater than 48 grams of elemental metallic pigment per liter of coating as applied (greater than 0.4 pounds per gallon) and which requires a clear topcoat to prevent the degradation of the finish under normal use conditions; or

(5) A clear topcoat to seal and protect a faux finishing coating that meets the requirements of (1) through (4) of this definition, and these clear topcoats shall be sold and used solely as part of a faux finishing coating system.

"Fire-resistive coating" means a coating labeled and formulated to protect structural integrity by increasing the fire endurance of interior or exterior steel and other structural materials. The Fire-Resistive coating category includes sprayed fire resistive materials and intumescent fire resistive coatings that are used to bring structural materials into compliance with federal, state, and local building code requirements. The fire-resistant coatings shall be tested in accordance with ASTM E119-08.

"Flat coating" means a coating that is not defined under any other definition in this rule and that registers gloss less than 15 on an 85 degree meter or less than 5 on a 60 degree meter according to ASTM D523-89 (1999).

"Floor coating" means an opaque coating that is labeled and formulated for application to flooring, including, but not limited to, decks, porches, steps, garage floors, and other horizontal surfaces that may be subject to foot traffic.

"Form-release compound" means a coating labeled and formulated for application to a concrete form to prevent the freshly poured concrete from bonding to the form which may consist of wood, metal, or some material other than concrete.

"Graphic arts coating or sign paint" means a coating labeled and formulated for hand-application by artists using brush, airbrush, or roller techniques to indoor and outdoor signs, excluding structural components, and murals including lettering enamels, poster colors, copy blockers, and bulletin enamels.

"High-temperature coating" means a high performance coating labeled and formulated for application to substrates exposed continuously or intermittently to temperatures above 204 degrees Celsius (400 degrees Fahrenheit).

"Impacted immersion coating" means a high performance maintenance coating formulated and recommended for application to steel structures subject to immersion in turbulent, debris-laden water. These coatings are specifically resistant to high-energy impact damage by floating ice or debris.

"Industrial maintenance coating" means a high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats, formulated for application to substrates, including floors exposed to one or more of the following extreme environmental conditions:

(1) Immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous solutions), or chronic exposure of interior surfaces to moisture condensation;

(2) Acute or chronic exposure to corrosive, caustic or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions;

(3) Frequent exposure to temperatures above 121 degrees Celsius (250 degrees Fahrenheit);

(4) Frequent heavy abrasion, including mechanical wear and frequent scrubbing with industrial solvents, cleansers, or scouring agents; or

(5) Exterior exposure of metal structures and structural components.

"Low solids coating" means a coating containing 0.12 kilogram or less of solids per liter (1 pound or less of solids per gallon) of coating material as recommended for application by the manufacturer.

"Magnesite cement coating" means a coating labeled and formulated for application to magnesite cement decking to protect the magnesite cement substrate from erosion by water.

"Manufacturer's maximum thinning recommendation" means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.

"Mastic texture coating" means a coating labeled and formulated to cover holes and minor cracks and to conceal surface irregularities, and is applied in a single coat of at least 10 mils (at least 0.010 inch) dry film thickness.

"Medium density fiberboard (MDF)" means a composite wood product, panel, molding, or other building material composed of cellulosic fibers, usually wood, made by dry forming and pressing of a resinated fiber mat.

"Metallic pigmented coating" means a coating that is labeled and formulated to provide a metallic appearance and must contain at least 48 grams of elemental metallic pigment (excluding zinc) per liter of coating as applied (at least 0.4 pounds per gallon), when tested in accordance with SCAQMD Method 318-95, but does not include coatings applied to roofs, or zinc-rich primers.

"Multi-color coating" means a coating that is packaged in a single container and that is labeled and formulated to exhibits more than one color when applied in a single coat.

"Non-flat coating" means a coating that is not defined under any other definition in this rule and that registers a gloss of 15 or greater on an 85-degree meter and five or greater on a 60-degree meter according to ASTM D523-89 (1999).

"Non-flat/high-gloss coating" means a non-flat coating that registers a gloss of 70 or greater on a 60-degree meter according to ASTM D523-89 (1999).

"Nuclear coating" means a protective coating formulated and recommended to seal porous surfaces such as steel or concrete that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to long-term cumulative radiation exposure according to ASTM Method 4082-02, relatively easy to decontaminate, and resistant to various chemicals to which the coatings are likely to be exposed according to ASTM Method D 3912-95 (2010).

"Particleboard" means a composite wood product panel, molding, or other building material composed of cellulosic material, usually wood, in the form of discrete particles, as distinguished from fibers, flakes, or strands, which are pressed together with resin.

"Pearlescent" means exhibiting various colors depending on the angles of illumination and viewing, as observed in mother-of-pearl.

"Plywood" means a panel product consisting of layers of wood veneers or composite core pressed together with resin and includes panel products made by either hot or cold pressing (with resin) veneers to a platform.

"Post-consumer coating" means a finished coatings generated by a business or consumer that have served their intended end uses, and are recovered from or otherwise diverted from the waste stream for the purpose of recycling.

"Pre-treatment wash primer" means a primer that contains a minimum of 0.5% acid, by weight, when tested in accordance with ASTM D1613-06, that is labeled and formulated for application directly to bare metal surfaces to provide corrosion resistance and to promote adhesion of subsequent topcoats.

"Primer, sealer, and undercoater" means a coating labeled and formulated to provide a firm bond between the substrate and the subsequent coatings, prevent subsequent coatings from being absorbed by the substrate, prevent harm to subsequent coatings by materials in the substrate, provide a smooth surface for the subsequent application of coatings, provide a clear finish coat to seal the substrate, or to block materials from penetrating into or leaching out of a substrate.

"Reactive penetrating sealer" means a clear or pigmented coating that is formulated for application to above-grade concrete and masonry substrates to provide protection from water and waterborne contaminants, including, but not limited to, alkalis, acids, and salts.

(1) Reactive penetrating sealers penetrate into concrete and masonry substrates and chemically react to form covalent bonds with naturally occurring minerals in the substrate.

(2) Reactive penetrating sealers line the pores of concrete and masonry substrates with a hydrophobic coating but do not form a surface film.

(3) Reactive penetrating sealers shall meet all of the following criteria:

(a) The reactive penetrating sealer must improve water repellency at least 80% after application on a concrete or masonry substrate, and this performance shall be verified on standardized test specimens in accordance with one or more of the following standards: ASTM C67-07, ASTM C97-02, or ASTM C140-06.

(b) The reactive penetrating sealer shall not reduce the water vapor transmission rate by more than 2% after application on a concrete or masonry substrate, and this performance must be verified on standardized test specimens, in accordance with ASTM E96/E96M-05.

(c) Products labeled and formulated for vehicular traffic surface chloride screening applications shall meet the performance criteria listed in the National Cooperative Highway Research Report 244 (1981).

"Reactive penetrating carbonate stone sealer" means a clear or pigmented coating that is labeled and formulated for application to above-grade carbonate stone substrates to provide protection from water and waterborne contaminants, including but not limited to, alkalis acids, and salts and that penetrates into carbonate stone substrates and chemically reacts to form covalent bonds with naturally occurring minerals in the substrate. They must meet all of the following criteria:

(1) Improve water repellency at least 80% after application on a carbonate stone substrate. This performance shall be verified on standardized test specimens, in accordance with one or more of the following standards: ASTM C67-07, ASTM C97-02, or ASTM C140-06; and

(2) Not reduce the water vapor transmission rate by more than 10% after application on a carbonate stone substrate. This performance shall be verified on standardized test specimens in accordance with one or more of the following standards: ASTM E96/E96M-05.

"Recycled coating" means an architectural coating formulated such that it contains a minimum of 50% by volume post-consumer coating, with a maximum of 50% by volume secondary industrial materials or virgin materials.

"Residential" means areas where people reside or lodge, including, but not limited to, single and multiple family dwellings, condominiums, mobile homes, apartment complexes, motels, and hotels.

"Roof coating" means a non-bituminous coating labeled and formulated for application to roofs for the primary purpose of preventing water penetration, reflecting ultraviolet light, or reflecting solar radiation.

"Rust preventative coating" means a coating that is for metal substrates only and is formulated to prevent the corrosion of metal surfaces for direct-to-metal coating or a coating intended for application over rusty, previously coated surfaces but does not include coatings that are required to be applied as a topcoat over a primer or coatings that are intended for use on wood or any other nonmetallic surface.

"Secondary industrial materials" means products or by-products of the paint manufacturing process that are of known composition and have economic value but can no longer be used for their intended purpose.

"Semitransparent coating" means a coating that contains binders and colored pigments and is formulated to change the color of the surface but not conceal the grain pattern or texture.

"Shellac" means a clear or opaque coating formulated solely with the resinous secretions of the lac beetle (Laciffer lacca) and formulated to dry by evaporation without a chemical reaction.

"Shop application" means an application of a coating to a product or a component of a product in or on the premises of a factory or a shop as part of a manufacturing, production, or repairing process (e.g., original equipment manufacturing coatings).

"Solicit" means to require for use or to specify by written or oral contract.

"Specialty primer, sealer, and undercoater" means a coating that is formulated for application to a substrate to block water-soluble stains resulting from fire damage, smoke damage, or water damage.

"Stain" means a semi-transparent or opaque coating labeled and formulated to change the color of a surface but not conceal the grain pattern or texture.

"Stone consolidant" means a coating that is labeled and formulated for application to stone substrates to repair historical structures that have been damaged by weathering or other decay mechanisms.

(1) Stone consolidants must penetrate into stone substrates to create bonds between particles and consolidate deteriorated material.

(2) Stone consolidants must be specified and used in accordance with ASTM E2167-01.

"Swimming pool coating" means a coating labeled and formulated to coat the interior of swimming pools and to resist swimming pool chemicals.

"Thermoplastic rubber coating and mastic" means a coating or mastic formulated and recommended for application to roofing or other structural surfaces that incorporates no less than 40% by weight of thermoplastic rubbers in the total resin solids and may also contain other ingredients, including, but not limited to, fillers, pigments, and modifying resins.

"Tint base" means an architectural coating to which colorant is added after packaging in sale units to produce a desired color.

"Traffic marking coating" means a coating labeled and formulated for marking and striping streets, highways, or other traffic surfaces, including, but not limited to, curbs, berms, driveways, parking lots, sidewalks, and airport runways.

"Tub and tile refinish coating" means a clear or opaque coating that is labeled and formulated exclusively for refinishing the surface of a bathtub, shower, sink, or countertop and that meets the following criteria:

(1) Has a scratch hardness of 3H or harder and a gouge hardness of 4H or harder, determined on bonderite 1000, in accordance with ASTM D3363-05;

(2) Has a weight loss of 20 milligrams or less after 1,000 cycles, determined with CS-17 wheels on bonderite 1000, in accordance with ASTM D4060-07;

(3) Withstands 1,000 hours or more of exposure with few or no #8 blisters, determined on unscribed bonderite in accordance with ASTM D4585-99, and ASTM D714-02e1; and

(4) Has an adhesion rating of 4B or better after 24 hours of recovery, determined on unscribed bonderite in accordance with ASTM D4585-99 and ASTM D3359-02.

"Veneer" means thin sheets of wood peeled or sliced from logs for use in the manufacture of wood products such as plywood, laminated veneer lumber, or other products.

"Virgin Materials" means materials that contain no post-consumer coatings or secondary industrial materials.

"VOC actual" means the weight of VOC per volume of coating and applies to coatings in the low solids coatings category and it is calculated with the following equation:

VOC Actual = (Ws - Ww - Wec)/(Vm)

Where, VOC actual = the grams of VOC per liter of coating (also known as "Material VOC");

Ws = weight of volatiles, in grams;

Ww = weight of water, in grams;
Wec = weight of exempt compounds, in grams; and
Vm = volume of coating, in liters

"VOC content" means the weight of VOC per volume of coating and is VOC regulatory for all coatings except those in the low solids category.

(1) For coatings in the low solids category, the VOC Content is VOC actual.

(2) If the coating is a multi-component product, the VOC content is VOC regulatory as mixed or catalyzed.

(3) If the coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOCs during the curing process, the VOC content must include the VOCs emitted during curing.

(4) VOC content must include maximum amount of thinning solvent recommended by the manufacturer.

"VOC regulatory" means the weight of VOC per volume of coating, less the volume of water and exempt compounds. It is calculated with the following equation:

VOC Regulatory = (Ws - Ww - Wec)/(Vm - Vw - Vec)

Where, VOC regulatory = grams of VOC per liter of coating, less water and exempt compounds (also known as "Coating VOC");
Ws = weight of volatiles, in grams;
Ww = weight of water, in grams;
Wec = weight of exempt compounds, in grams;
Vm = volume of coating, in liters;
Vw = volume of water, in liters; and
Vec = volume of exempt compounds, in liters

VOC regulatory must include maximum amount of thinning solvent recommended by the manufacturer.

"Waterproofing membrane" means a clear or opaque coating that is labeled and formulated for application to concrete and masonry surfaces to provide a seamless waterproofing membrane that prevents any penetration of liquid water into the substrate.

(1) Waterproofing membranes are intended for the following waterproofing applications: below-grade surfaces, between concrete slabs, inside tunnels, inside concrete planters, and under flooring materials.

(2) The waterproofing membrane category does not include topcoats that are included in the concrete/masonry sealer category (e.g., parking deck topcoats, pedestrian deck topcoats, etc.).

(3) Waterproofing Membranes shall:

(a) Be applied in a single coat of at least 25 mils (at least 0.025 inch) dry film thickness; and

(b) Meet or exceed the requirements contained in ASTM C836-06.

"Wood coatings" means coatings labeled and formulated for application to wood substrates only and include clear and semitransparent coatings: lacquers; varnishes; sanding sealers; penetrating oils; clear stains; wood conditioners used as undercoats; and wood sealers used as topcoats. The Wood Coatings category also includes the following opaque wood coatings: opaque lacquers, opaque sanding sealers, and opaque lacquer undercoaters but do not include clear sealers that are labeled and formulated for use on concrete/masonry surfaces or coatings intended for substrates other than wood.

"Wood preservative" means a coating labeled and formulated to protect exposed wood from decay or insect attack that is registered with the U.S. EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 United States Code (U.S.C.) Section 136, et seq.).

"Wood substrate" means a substrate made of wood, particleboard, plywood, medium density fiberboard, rattan, wicker, bamboo, or composite products with exposed wood grain but does not include items comprised of simulated wood.

"Zinc-rich primer" means a coating that contains at least 65% metallic zinc powder or zinc dust by weight of total solids and is formulated for application to metal substrates to provide a firm bond between the substrate and subsequent applications of coatings and are intended for professional use only.

R307-361-4. Exemptions.

The coatings described in R307-361-4(1) through (3) are exempt from the requirements of R307-361.

(1) Any architectural coating that is supplied, sold, offered for sale, or manufactured for use outside of the counties in R307-361-2 or for shipment to other manufacturers for reformulation or repackaging.

(2) Any aerosol coating product.

(3) Any architectural coating that is sold in a container with a volume of one liter (1.057 quarts) or less, including kits containing containers of different colors, types or categories of coatings and two component products and including multiple containers of one liter or less that are packaged and shipped together with no intent or requirement to ultimately be sold as one unit.

(a) The exemption in R307-361-4(3) does not include bundling of containers one liter or less, which are sold together as a unit with the intent or requirement that they be combined into one container.

(b) The exemption in R307-361-4(3) does not include packaging from which the coating cannot be applied. This exemption does include multiple containers of one liter or less that are packaged and shipped together with no intent or requirement to ultimately sell as one unit.

(4) The requirements of R307-361-5 Table 1 do not apply to operations that are exclusively covered by Department of Defense military technical data and performed by a Department of Defense contractor and or on site at installations owned and or operated by the United States Armed Forces.

R307-361-5. Standards.

(1) Except as provided in R307-361-4, no person shall manufacture, blend, or repackage, supply, sell, or offer for sale within the counties in R307-361-2; or solicit for application or apply within those counties any architectural coating with a VOC content in excess of the corresponding limit specified in Table 1.

TABLE 1

VOC Content Limit for Architectural and Industrial Maintenance Coatings

(Limits are expressed as VOC content, thinned to the manufacturer's maximum thinning recommendation, excluding any colorant added to tint bases.)

COATING CATEGORY	VOC Content Limit (grams/liter)
Flat coatings	50
Non-flat coatings	100
Non-flat/high-gloss coatings	150
Specialty Coatings	
Aluminum roofing	450
Basement Specialty Coatings	400
Bituminous Specialty Coatings	400
Bituminous roof coatings	270
Bituminous roof primers	350
Bond beakers	350
Calcimine recoaters	475
Concrete curing compounds	350
Concrete/masonary sealer	100
Concrete surface retarders	780
Conjugated oil varnish	450
Conversion varnish	725
Driveway sealers	50
Dry fog coatings	150
Faux finishing coatings	350
Fire resistive coatings	350
Floor coatings	100
Form-release compounds	250
Graphic arts coatings	500

(sign paints)	
High temperature coatings	420
Impacted Immersion Coatings	780
Industrial maintenance coatings	250
Low solids coatings	120
Magnesite cement coatings	450
Mastic texture coatings	100
Metallic pigmented coatings	500
Multi-color coatings	250
Nuclear coatings	450
Pre-treatment wash primers	420
Primers, sealers, and undercoaters	100
Reactive penetrating sealer	350
Reactive penetrating carbonate stone sealer	500
Recycled coatings	250
Roof coatings	250
Rust preventative coatings	250
Shellacs:	
Clear	730
Opaque	550
Specialty primers, sealers, and undercoaters	100
Stains	250
Stone consolidant	450
Swimming pool coatings	340
Thermoplastic rubber coatings and mastic	550
Traffic marking coatings	100
Tub and tile refinish	420
Waterproofing membranes	250
Wood coating	275
Wood Preservatives	350
Zinc-Rich Primer	340

(2) If a coating is recommended for use in more than one of the specialty coating categories listed in Table 1, the most restrictive (lowest) VOC content limit shall apply.

(a) This requirement applies to usage recommendations that appear anywhere on the coating container, anywhere on any label or sticker affixed to the container, or in any sales, advertising, or technical literature supplied by a manufacturer or anyone acting on their behalf.

(b) R307-361-5(2) does not apply to the following coating categories:

(i) Aluminum roof coatings
(ii) Bituminous roof primers
(iv) High temperature coatings
(v) Industrial maintenance coatings
(vi) Low-solids coatings
(vii) Metallic pigmented coatings
(viii) Pretreatment wash primers
(ix) Shellacs
(x) Specialty primers, sealers and undercoaters
(xi) Wood Coatings
(xii) Wood preservatives
(xiii) Zinc-rich primers
(xiv) Calcimine recoaters
(xv) Impacted immersion coatings
(xvi) Nuclear coatings
(xvii) Thermoplastic rubber coatings and mastic
(xviii) Concrete surface retarders
(xix) Conversion varnish

(3) Sell-through of coatings. A coating manufactured prior to January 1, 2015, may be sold, supplied, or offered for sale for up to three years after January 1, 2015.

(a) A coating manufactured before January 1, 2015, may be applied at any time.

(b) R307-361-5(3) does not apply to any coating that does not display the date or date code required by R307-361-6(1)(a).

(4) Painting practices. All architectural coating containers used when applying the contents therein to a surface directly from the container by pouring, siphoning, brushing, rolling, padding, ragging or other means, shall be closed when not in use. These architectural coating containers include, but are not limited to, drums, buckets, cans, pails, trays or other application containers. Containers of any VOC-containing materials used for thinning and cleanup shall also be closed when not in use.

(5) Thinning. No person who applies or solicits the application of any architectural coating shall apply a coating that is thinned to exceed the applicable VOC limit specified in Table 1.

(6) Rust preventative coatings. No person shall apply or solicit the application of any rust preventative coating manufactured before January 1, 2015 for industrial use, unless such a rust preventative coating complies with the industrial maintenance coating VOC limit specified in Table 1.

(7) Coatings not listed in Table 1. For any coating that does not meet any of the definitions for the specialty coatings categories listed in Table 1, the VOC content limit shall be determined by classifying the coating as a flat, non-flat, or non-flat/high gloss coating, based on its gloss, as defined in R307-361-3 and the corresponding flat, non-flat, or non-flat/high gloss coating VOC limit in Table 1 shall apply.

R307-361-6. Container Labeling Requirements.

(1) Each manufacturer of any architectural coating subject to R307-361 shall display the information listed in R307-361-6(1)(a) through (c) on the coating container (or label) in which the coating is sold or distributed.

(a) Date Code.

(i) The date the coating was manufactured, or a date code representing the date, shall be indicated on the label, lid or bottom of the container.

(ii) If the manufacturer uses a date code for any coating, the manufacturer shall file an explanation of each code with the director upon request.

(b) Thinning Recommendations.

(i) A statement of the manufacturer's recommendation regarding thinning of the coating shall be indicated on the label or lid of the container.

(ii) This requirement does not apply to the thinning of architectural coatings with water.

(iii) If thinning of the coating prior to use is not necessary, the recommendation shall specify that the coating is to be applied without thinning.

(c) VOC Content.

(i) Each container of any coating subject to this rule shall display one of the following values, in grams of VOC per liter of coating:

(A) Maximum VOC content as determined from all potential product formulations;

(B) VOC content as determined from actual formulation data; or

(C) VOC content as determined using the test methods in R307-361-8.

(ii) If the manufacturer does not recommend thinning, the container shall display the VOC Content, as supplied.

(iii) If the manufacturer recommends thinning, the container shall display the VOC Content, including the maximum amount of thinning solvent recommended by the manufacturer.

(iv) If the coating is a multicomponent product, the container shall display the VOC content as mixed or catalyzed.

(v) If the coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOCs during the curing process, the VOC content shall include the VOCs emitted during curing.

(2) Faux finishing coatings. The labels of all clear topcoat faux finishing coatings shall prominently display the statement, "This product can only be sold or used as part of a faux finishing coating system."

(3) Industrial maintenance coatings. The label of all industrial maintenance coatings shall prominently display at least one of the following statements:

(a) "for industrial use only;"
(b) "for professional use only;" or
(c) "not for residential use" or "not intended for residential use."

(4) Rust preventative coatings. The labels of all rust preventative coatings shall prominently display the statement, "For metal substrates only."

(5) Non-flat/high-gloss coatings. The labels of all non-flat/high-gloss coatings shall prominently display the words "high gloss."

(6) Specialty primers, sealers and undercoaters. The labels of all specialty primers, sealers and undercoaters shall prominently display one or more of the following descriptions:
(a) "For blocking stains;"
(b) "For smoke-damaged substrates;"
(c) "For fire-damaged substrates;"
(d) "For water-damaged substrates;" or
(e) "For excessively chalky substrates."

(7) Reactive penetrating sealers. The labels of all reactive penetrating sealers shall prominently display the statement, "Reactive penetrating sealer."

(8) Reactive penetrating carbonate stone sealers. The labels of all reactive penetrating carbonate stone sealers shall prominently display the statement, "Reactive penetrating carbonate stone sealer."

(9) Stone consolidants. The labels of all stone consolidants shall prominently display the statement, "Stone consolidant -For professional use only."

(10) Wood coatings. The labels of all wood coatings shall prominently display the statement, "For wood substrates only."

(11) Zinc rich primers. The labels of all zinc rich primers shall prominently display one or more of the following descriptions:
(a) "For professional use only;"
(b) "For industrial use only;" or
(c) "Not for residential use" or "Not intended for residential use."

R307-361-7. Reporting Requirements.

(1) Within 180 days of written request from the director, the manufacturer shall provide the director with data concerning the distribution and sales of architectural coatings, including, but not limited to:
(a) The name and mailing address of the manufacturer;
(b) The name, address and telephone number of a contact person;
(c) The name of the coating product as it appears on the label and the applicable coating category;
(d) Whether the product is marketed for interior or exterior use or both;
(e) The number of gallons sold in counties listed in R307-361-2 in containers greater than one liter (1.057 quart) and equal to or less than one liter (1.057 quart);
(f) The VOC actual content and VOC regulatory content in grams per liter;
(i) If thinning is recommended, list the VOC actual content and VOC regulatory content after maximum recommended thinning.
(ii) If containers less than one liter have a different VOC content than containers greater than one liter, list separately.
(iii) If the coating is a multi-component product, provide the VOC content as mixed or catalyzed.
(g) The names and CAS numbers of the VOC constituents in the product;
(h) The names and CAS numbers of any compounds in the product specifically exempted from the VOC definition in R307-101;
(i) Whether the product is marketed as solvent-borne, waterborne, or 100% solids;
(j) Description of resin or binder in the product;
(k) whether the coating is a single-component or multi-component product;
(l) The density of the product in pounds per gallon;
(m) The percent by weight of: solids, all volatile materials, water, and any compounds in the product specifically exempted from the VOC definition in R307-101; and
(n) The percent by volume of: solids, water, and any compounds in the product specifically exempted from the VOC definition in R307-101.

R307-361-8. Test Methods.

(1) Determination of VOC content.
(a) For the purpose of determining compliance with the VOC content limits in Table 1, the VOC content of a coating shall be calculated by following the appropriate formula found in the definitions of VOC actual, VOC content, and VOC regulatory found in R307-361-3.
(b) The VOC content of a tint base shall be determined without colorant that is added after the tint base is manufactured.
(c) If the manufacturer does not recommend thinning, the VOC content shall be calculated for the product as supplied.
(d) If the manufacturer recommends thinning, the VOC content shall be calculated including the maximum amount of thinning solvent recommended by the manufacturer.
(e) If the coating is a multi-component product, the VOC content shall be calculated as mixed or catalyzed.
(f) The coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOC during the curing process, the VOC content shall include the VOCs emitted during curing.

(2) VOC content of coatings.
(a) To determine the VOC content of a coating, the manufacturer may use EPA Method 24, SCAQMD Method 304-91 (revised February1996), or an alternative method, formulation data, or any other reasonable means for predicting that the coating has been formulated as intended (e.g., quality assurance checks, recordkeeping).
(b) If there are any inconsistencies between the results of EPA Method 24 test and any other means for determining VOC content, the EPA Method 24 test results will govern.
(c) The exempt compounds content shall be determined by ASTM D 3960-05, SCAQMD Method 303-91 (Revised 1993), BAAQMD Method 43 (Revised 1996), or BAAQMD Method 41 (Revised 1995), as applicable.

(3) Methacrylate traffic marking coatings. Analysis of methacrylate multicomponent coatings used as traffic marking coatings shall be conducted according to a modification of EPA Method 24 (40 CFR 59, subpart D, Appendix A), which has not been approved for methacrylate multicomponent coatings used for purposes other than as traffic marking coatings or for other classes of multicomponent coatings.

(4) Flame spread index. The flame spread index of a fire-retardant coating shall be determined by ASTM E84-10, "Standard Test Method for Surface Burning Characteristics of Building Materials."

(5) Fire resistance rating. The fire resistance rating of a fire-resistive coating shall be determined by ASTM E119-08, "Standard Test Methods for Fire Tests of Building Construction and Materials."

(6) Gloss determination. The gloss of a coating shall be determined by ASTM D523-89 (1999), "Standard Test Method for Specular Gloss."

(7) Metal content of coatings. The metallic content of a coating shall be determined by SCAQMD Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction, SCAQMD Laboratory Methods of Analysis for Enforcement Samples."

(8) Acid content of coatings. The acid content of a coating shall be determined by ASTM D1613-06, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products."

(9) Drying times. The set-to-touch, dry-hard, dry-to-touch and dry-to-recoat times of a coating shall be determined by ASTM D1640-95 (1999), "Standard Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature," and the tack-free time of a quick-dry enamel coating shall be determined by the Mechanical Test Method of ASTM D1640-95.

(10) Surface chalkiness. The chalkiness of a surface shall be determined by using ASTM D4214-07, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films."

(11) Exempt compounds-siloxanes. Exempt compounds that are cyclic, branched, or linear, completely methylated siloxanes, shall be analyzed as exempt compounds by methods referenced in ASTM D 3960-05, "Standard Practice for Determining Volatile Organic Compound (VOC) Content of Paints and Related Coatings" or by BAAQMD Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials," BAAQMD Manual of Procedures, Volume III, adopted November 6, 1996.

(12) Exempt compounds-parachlorobenzotrifluoride (PCBTF). The exempt compound PCBTF, shall be analyzed as an exempt compound by methods referenced in ASTM D 3960-05 "Standard Practice for Determining Volatile Organic Compound (VOC) Content of Paints and Related Coatings" or by BAAQMD Method 41, "Determination of Volatile Organic Compounds in Solvent Based Coatings and Related Materials Containing Parachlorobenzotriflouride," BAAQMD Manual of Procedures, Volume III, adopted December 20, 1955.

(13) Tub and tile refinish coating adhesion. The adhesion of tub and tile coating shall be determined by ASTM D4585-99, "Standard Practice for Testing Water Resistance of Coatings Using Controlled Condensation" and ASTM D3359-02, "Standard Test Methods for Measuring Adhesion by Tape Test."

(14) Tub and tile refinish coating hardness. The hardness of tub and tile refinish coating shall be determined by ASTM D3363-05, "Standard Test Method for Film Hardness by Pencil Test."

(15) Tub and tile refinish coating abrasion resistance. Abrasion resistance of tub and tile refinish coating shall be analyzed by ASTM D4060-07, "Standard Test Methods for Abrasion Resistance of Organic Coatings by the Taber Abraser."

(16) Tub and tile refinish coating water resistance. Water resistance of tub and tile refinish coatings shall be determined by ASTM D4585-99, "Standard Practice for Testing Water Resistance of Coatings Using Controlled Condensation" and ASTM D714-02e1, "Standard Test Method for Evaluating Degree of Blistering of Paints."

(17) Waterproofing membrane. Waterproofing membrane shall be tested by ASTM C836-06, "Standard Specification for High Solids Content, Cold Liquid-Applied Elastomeric Waterproofing Membrane for Use with Separate Wearing Course."

(18) Reactive penetrating sealer and reactive carbonate stone sealer water repellency. Reactive penetrating sealer and reactive carbonate stone sealer water repellency shall be analyzed by ASTM C67-07, "Standard Test Methods for Sampling and Testing Brick and Structural Clay Tile;" ASTM C97-02, "Standard Test Methods for Absorption and Bulk Specific Gravity of Dimension Stone;" or ASTM C140-06, "Standard Test Methods for Sampling and Testing Concrete Masonry Units and Related Units."

(19) Reactive penetrating sealer and reactive penetrating carbonate stone sealer water vapor transmission. Reactive penetrating sealer and reactive penetrating carbonate stone sealer water vapor transmission shall be analyzed ASTM E96/E96M-05, "Standard Test Method for Water Vapor Transmission of Materials."

(20) Reactive penetrating sealer -chloride screening applications. Reactive penetrating sealers shall be analyzed by National Cooperative Highway Research Report 244 (1981), "Concrete Sealers for the Protection of Bridge Structures."

(21) Stone consolidants. Stone consolidants shall be tested by using ASTM E2167-01, "Standard Guide for Selection and Use of Stone Consolidants."

(22) Radiation resistance -nuclear coatings. The radiation resistance of a nuclear coating shall be determined by ASTM D 4082-02, "Standard Test Method for Use in Light Water Nuclear Power Plants."

(23) Chemical resistance-nuclear coatings. The chemical resistance of nuclear coatings shall be determined by ASTM D3912-95 (2001), "Standard Test Method for Chemical Resistance of Coatings Used in Light Water Nuclear Power Plants."

R307-361-9. Compliance Schedule.

Persons subject to this rule shall be in compliance by January 1, 2015.

KEY: air pollution, emission controls, architectural coatings
October 31, 2013 19-2-104(1)
Notice of Continuation October 4, 2018 19-2-101

R331. Financial Institutions, Administration.
R331-25. Rule Governing Debt Cancellation and Debt Suspension Agreements Issued by Depository Institutions, Who Are Under the Jurisdiction of the Department of Financial Institutions.
R331-25-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 7-1-324(2).

(2) This rule governs the issuance of a debt cancellation agreement or debt suspension agreement by a depository institution under the jurisdiction of the Department of Financial Institutions.

(3) This rule establishes uniform rules for debt cancellation and debt suspension agreements by depository institutions subject to the jurisdiction of the department and minimum standards of disclosure to protect the public interest.

R331-25-2. Definitions.

(1) "Actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

R331-25-3. Refunds of Fees in the Event of Termination or Prepayment of the Covered Loan.

(1) Refunds. If a debt cancellation agreement or debt suspension agreement is terminated (including, for example, when the customer prepays the covered loan), the depository institution shall refund to the customer any unearned fees paid for the agreement unless the agreement provides otherwise. A depository institution may offer a customer an agreement that does not provide for a refund only if the depository institution also offers that customer a bona fide option to purchase a comparable agreement that provides a refund.

(2) Method of calculating refund. The depository institution shall calculate the amount of a refund using a method at least as favorable to the customer as the actuarial method.

(3) Method of payment of fees. Except as provided in R331-25-6(3)(b), a depository institution may offer a customer the option of paying the fee for an agreement in a single payment, provided the depository institution also offers the customer a bona fide option of paying the fee for that agreement in monthly or other periodic payments. If the depository institution offers the customer the option to finance the single payment by adding it to the amount the customer is borrowing, the depository institution must also disclose to the customer, in accordance with R331-25-4, whether and, if so, the time period during which, the customer may cancel the agreement and receive a refund.

R331-25-4. Disclosures.

(1) Content of short form of disclosures. The short form of disclosures required by this rule must include:

(a) a statement that the purchase of the agreement is optional and whether or not the consumer purchases the agreement will have no effect on their application for credit or the terms of any existing credit agreement;

(b) a statement that the consumer may choose to pay the fee in a single lump sum or in monthly/quarterly payments and a disclosure that adding a lump sum of the fee to the amount borrowed will increase the cost of the agreement;

(c) a statement that the consumer may choose an agreement with or without a refund provision and that the prices are likely to differ;

(d) a statement that the depository institution will provide additional information before the consumer is required to pay for the agreement.

(2) Content of long form of disclosures. The long form of disclosures required by this rule must include:

(a) a statement that the purchase of the agreement is optional and whether or not the consumer purchases the agreement will have no effect on their application for credit or the terms of any existing credit agreement;

(b) an explanation that a debt suspension agreement means that the duty to pay the loan principal and interest to the depository institution or industrial loan company is only suspended and does not cancel the obligation if the agreement is activated;

(c) a statement describing the total fee for the agreement and that the consumer may choose to pay the fee in a single lump sum or in monthly/quarterly payments and a disclosure that adding a lump sum of the fee to the amount borrowed will increase the cost of the agreement plus the formula used to compute any monthly or quarterly fee payment;

(d) a statement that the consumer may choose an agreement with or without a refund provision and that the prices are likely to differ;

(e) a statement explaining the circumstances under which the consumer or the depository institution can terminate the agreement if termination is permitted during the life of the loan.

(3) Disclosure requirements; timing and method of disclosures.

(a) Short form disclosures: The depository institution shall make the short form disclosures orally at the time the depository institution first solicits the purchase of an agreement.

(b) Long form disclosures: The depository institution shall make the long form disclosures in writing before the customer completes the purchase of the agreement. If the initial solicitation occurs in person, then the depository institution shall provide the long form disclosures in writing at that time.

(c) Transactions by telephone: If the agreement is solicited by telephone, the depository institution shall provide the short form disclosures orally and shall mail the long form disclosures, and, if appropriate, a copy of the agreement to the customer within 3 business days, beginning on the first business day after the telephone solicitation.

(d) Solicitations using written mail inserts or "take one" applications: If the agreement is solicited through written materials such as mail inserts or "take one" applications, the depository institution may provide only the short form disclosures in the written materials if the depository institution mails the long form disclosures to the customer within 3 business days, beginning on the first business day after the customer contacts the depository institution to respond to the solicitation, subject to the requirements of R331-25-5(3).

(e) Electronic transactions: The disclosures described in this section may be provided through electronic media in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.

(4) Form of disclosures.

(a) Readily Understandable: The disclosures required by this section must be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided.

(b) Meaningful: The disclosures required by this section must be in a meaningful form. Examples of methods that could call attention to the nature and significance of the information provided include:

(i) A plain-language heading to call attention to the disclosures;

(ii) A typeface and type size that are easy to read;

(iii) Wide margins and ample line spacing;

(iv) Boldface or italics for key words; and

(v) Distinctive type style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(5) Advertisements and other promotional material for debt cancellation agreements and debt suspension agreements. The short form disclosures are required for advertisements and promotional material for agreements unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the depository institution.

R331-25-5. Affirmative Election to Purchase and Acknowledgment of Receipt of Disclosures.

(1) Affirmative election and acknowledgment of receipt of disclosures. Before entering into an agreement the depository institution must obtain a customer's written affirmative election to purchase an agreement and written acknowledgment of receipt of the disclosures required by R331-25-4(2). The election and acknowledgment information must be conspicuous, simple, direct, readily understandable, and designed to call attention to their significance. The election and acknowledgment satisfy these standards if they conform with the requirements in R331-25-4(2) of this rule.

(2) Telephone solicitations: If the sale of an agreement occurs by telephone, the customer's affirmative election to purchase may be made orally, provided the depository institution:

(a) Maintains sufficient documentation to show that the customer received the short form disclosures and then affirmatively elected to purchase the agreement;

(b) Mails the affirmative written election and written acknowledgment, together with the long form disclosures required by this subsection, to the customer within 3 business days after the telephone solicitation, and maintains sufficient documentation to show it made reasonable efforts to obtain the documents from the customer; and

(c) Permits the customer to cancel the purchase of the agreement without penalty within 30 days after the depository institution has mailed the long form disclosures to the customer.

(3) Solicitations using written mail inserts or "take one" applications: If the agreement is solicited through written materials such as mail inserts or "take one" applications and the depository institution provides only the short form disclosures in the written materials, then the depository institution shall mail the acknowledgment of receipt of disclosures, together with the long form disclosures required by this subsection, to the customer within 3 business days, beginning on the first business day after the customer contacts the depository institution or otherwise responds to the solicitation. The depository institution may not obligate the customer to pay for the agreement until after the depository institution has received the customer's written acknowledgment of receipt of disclosures unless the depository institution:

(a) Maintains sufficient documentation to show that the depository institution provided the acknowledgment of receipt of disclosures to the customer as required by this subsection;

(b) Maintains sufficient documentation to show that the depository institution made reasonable efforts to obtain from the customer a written acknowledgment of receipt of the long form disclosures; and

(c) Permits the customer to cancel the purchase of the agreement without penalty within 30 days after the depository institution has mailed the long form disclosures to the customer.

(4) Electronic election: The affirmative election and acknowledgment may be made electronically in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.

R331-25-6. Prohibited Practices.

(1) A depository institution may not extend credit nor alter the terms or conditions of an extension of credit conditioned upon the customer entering into a debt cancellation agreement or debt suspension agreement with the depository institution.

(2) A depository institution may not engage in any practice or use any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous expectation with respect to information that must be disclosed under this rule.

(3) Prohibited contract terms. A depository institution may not offer debt cancellation agreements or debt suspension agreements that contain contract terms:

(a) Giving the depository institution the right unilaterally to modify the agreement unless:

(i) The modification is favorable to the customer and is made without additional charge to the customer; or

(ii) The customer is notified of any proposed change and is provided a reasonable opportunity to cancel the agreement without penalty before the change goes into effect; or

(b) Requiring a lump sum, single payment for the agreement payable at the outset of the agreement, where the debt subject to the agreement is a residential mortgage loan.

R331-25-7. Safety and Soundness Requirements.

A depository institution must manage the risks associated with debt cancellation agreements and debt suspension agreements in accordance with safe and sound banking principles. Accordingly, a depository institution must establish and maintain effective risk management and control processes over its debt cancellation agreements and debt suspension agreements. Such processes include appropriate recognition and financial reporting of income, expenses, assets and liabilities, and appropriate treatment of all expected and unexpected losses associated with the agreements. A depository institution also should assess the adequacy of its internal control and risk mitigation activities in view of the nature and scope of its debt cancellation agreement and debt suspension agreement programs.

KEY: financial institutions, debt cancellation, debt suspension
October 15, 2003 7-1-324(2)
Notice of Continuation October 11, 2018

R357. Governor, Economic Development.
R357-22. Rural Employment Expansion Program.
R357-22-101. Title.

This rule is known as the "Rural Employment Expansion Program Rule."

R357-22-102. Definitions.

In addition to the terms defined in 63N-4-402, the following terms are defined as follows:

(1) "At least 12 consecutive months", as used in Subsection 63N-4-402(3)(b), includes a new full-time employee position that is vacated within the eligible employment period and is filled within 15 business days of the position being vacated.

(2) "Eligible employment period" means an employee filling a new full-time employee position has worked for at least 12 consecutive months.

(3) "REDI", Rural Economic Development Incentives, means the same as the Rural Employment Expansion Program.

(4) "Taxable year", as used in Subsection 63N-4-402(3), means the previous calendar year unless the business entity demonstrates extenuating circumstances that justifies adopting a different timeframe.

R357-22-103. Authority.

This rule is adopted by the office under the authority of Subsection 63N-4-403(2)(c).

R357-22-104. Form and Content of Application for Rural Employment Expansion Program Participation.

(1) The content of the application for a rural employment expansion grant shall, at minimum, include the business entity's:

(a) name;

(b) physical address;

(c) telephone number;

(d) email address;

(e) Federal EIN number;

(f) primary NAICS code;

(g) vendor number, if the applicant is a registered vendor with the State of Utah;

(h) requested rural employment expansion grant amount; and

(i) forecasted:

(i) number of new full-time positions;

(ii) wage of new full-time employee positions;

(iii) hire date of new full-time employee positions.

(2) The following documents shall, at minimum, be included in each application for participation in the program:

(a) copy of current W-9 form; and

(b) two most recent Form 33H - Utah Employer Quarterly Wage List and Contribution Reports

R357-22-105. Documentation Required to Demonstrate the Creation of New Full-Time Positions.

(1) The following documents shall, at minimum, be included when a business entity demonstrates the creation of new full-time positions:

(a) employee pay stubs including pay stubs at 6-month, calendar year-end, and last pay period following completion of the eligible employment period showing the:

(i) name of new employee;

(ii) year-to-date salary of new employee;

(iii) date;

(iv) address;

(v) benefits (if any);

(b) address of work location if different from address of pay stub;

(c) one or more reports that show each employee on at least one Form 33H - Utah Employer Quarterly Wage List and Contribution Report. unemployment insurance quarterly report;

(d) Form 33H - Utah Employer Quarterly Wage List and Contribution Report for the last quarter of the eligible employment period.

R357-22-106. Documentation Required to Demonstrate the Creation of New Full-Time Positions -- Appeal Process.

(1) If, after a review of the documentation required to demonstrate the creation of a new full-time positions is inadequate the office shall:

(a) deny the request for a rural employment expansion grant; or

(b) inform the business entity that the documentation is inadequate and ask the business entity to submit additional documentation.

(2) If the office denies the request for a rural employment expansion grant the business entity may appeal the denial to the office, in writing, within 20 business days of the denial notice date.

(3) The office shall review any appeal within 20 business days and make a final determination of the business entity's request for a rural employment expansion grant.

R357-22-107. Administration of the Rural Employment Expansion Grant.

(1) From the date of entering a written agreement, as described in Subsection 63N-4-404 (3), the business entity shall have six months to hire an employee to fill any new full-time employee positions.

(2) The business entity shall provide the documentation required to demonstrate the creation of new full-time positions within 90-days of the completion of all eligible employment periods for the new full-time positions.

(3) New full-time employee positions that qualify for the Rural Employment Expansion Grant are not eligible to be counted as eligible positions for the Rural Fast Track and/or the Enterprise Zone programs.

(4) The business entity shall verify that newly hired employees are legal U.S. Citizens or meet eligible non-citizen requirements (employer must use the E-Verify and keep a record of citizen documentation on hand).

KEY: rural employment expansion, economic development
October 11, 2018 63N-4-403(2)©

R357. Governor, Economic Development.
R357-23. Business Expansion and Retention Initiative.
R357-23-101. Title.

This rule is known as the "Business and Expansion and Retention Initiative Rule."

R357-23-102. Definitions.

In addition to the definitions in Title 63N, Chapter 3, Section 104.5 as defined or used in this rule:

(1) "BEAR" means the Business Expansion and Retention Initiative program.

(2) "Benchmarks" means the points of reference in measuring, tracking and evaluating the performance of a project and the impact on economic development.

(3) "Board" means the Governor's Rural Partnership Board created in Section 63C-10-102.

(4) "Project" means outreach and information gathering efforts, as outlined in Subsection 63N-3-104.5(7)(a), or other activities approved by the administrator under Subsection R357-22-106.

R357-23-103. Authority.

This rule is adopted by the office under the authority of Subsection 63N-3-104.5(5)(c).

R357-23-104. Content of Application.

(1) The following content shall, at minimum, be included in each application for participation in BEAR:

(a) company name;

(b) contact information including:

(i) applicants' physical address;

(ii) telephone number; and

(iii) email address.

(c) if the applicant is a registered vendor with that State of Utah documentation of the vendor number.

(d) copy of a current W-9 form;

(e) evidence that the applicant qualifies as a "rural economic development entity" as defined in Subsection 63N-3-104.5 (1) (b);

(f) executive summary of the proposed project that clearly establishes the primary activity of the project and how the project will:

(i) assist new and existing rural businesses;

(ii) influence rural job creation;

(iii) diversify Utah's rural economies;

(g) the benchmarks of the proposed project and how they will be measured, tracked and reported;

(h) amount of grant funding requested;

(i) list of all entities associated with the proposed project and their anticipated roles;

(j) letters of support from all entities associated with the proposed project;

(k) additional funding sources associated with the proposed project;

(l) timeline of the proposed project; and

(m) detailed budget of the proposed project.

(3) The office will use a scoring system to enable the Board and the Office to analyze the awarding of grants and grant amounts. The scoring system will be made available in the instructions to the application.

R357-23-105. Verification.

(1) Participation in the application process and approval to participate in BEAR do not guarantee grant funding.

(2) The office shall verify that all benchmarks have been satisfied prior to an economic development entity receiving a grant.

R357-23-106. Other Activities Approved by the Administrator.

Other activities approved by the Administrator include economic development:

(1) planning;

(2) plan implementation;

(3) strategic studies;

(4) revitalization projects;

(5) regional initiatives support;

(6) training, education and cultivation;

(7) seminars and summits; or

(8) other activities if approved by the Board and the Administrator.

KEY: business expansion and retention, economic development
October 11, 2018 63N-3-104.5(5)©

R380. Health, Administration.
R380-300. Employee Background Screening.
R380-300-1. Authority.

This rule is adopted pursuant to Title 26 Chapter 1 Section 17.1.

R380-300-2. Purpose.

(1) The purpose of this rule is to set forth the standards for the Department employee and volunteer background screening in accordance with Section 26-1-17.1.

R380-300-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 1. In addition:

(1) "Current Employee" means all staff, contracted employees, and volunteers who:

(a) have access to protected health information or personal identifying information;

(b) have direct contact with patients, children, or vulnerable adults as defined in Section 62A-2-120;

(c) work in areas of privacy and data security;

(d) handle financial information, including receipt of funds, reviewing invoices, making payments, and other types of financial information; or

(e) perform audit functions, whether internal or external, on behalf of the department.

(2) "Employee" means a current employee of the Department

(3) "New Employee" means job applicants who have been offered a position or reassignment with the department who:

(a) have access to protected health information or personal identifying information;

(b) have direct contact with patients, children, or vulnerable adults as defined in Section 62A-2-120;

(c) work in areas of privacy and data security;

(d) handle financial information, including receipt of funds, reviewing invoices, making payments, and other types of financial information; or

(e) perform audit functions, whether internal or external, on behalf of the department.

(4) "Office of Background Processing" means the background processing section within the department.

R380-300-4. Background Screening Process - Current Employee.

(1) The Department may conduct a background screening on current employees based on division's background screening guidelines determined by risk associated with the employees' work responsibilities.

(2) Current employees who require screening must:

(a) sign a criminal background screening authorization form;

(b) provide personal demographics required; and

(c) submit live scan fingerprints.

(3) Current employees may continue to work during the department's implementation of the background screening process.

(4) If the Office of Background Processing determines that a current employee is not eligible for continued employment, based on criminal record information obtained through the initial or ongoing background screening process, the Office of Background Processing shall send a notice of action to the employee and the employee's division director which shall include the action, the reconsideration process, and a statement that the information is confidential.

(5) The department may allow a current employee to continue to work with conditions, during the reconsideration process as defined in each division's background screening guidelines if the employee can demonstrate the work arrangement does not pose a threat to the department and the safety and health of Utah citizens.

(6) The department is responsible for the payment of all fees required and any fees required to be submitted to the Federal Bureau of Investigation by the bureau.

R380-300-5. Background Screening Process - New Employees.

(1) Background screening is part of the department's hiring process and any offer of employment is conditional upon the results of the background screening.

(2) An employee who is reassigned to the department will be informed in writing that their offer of employment with the department is conditional upon on the results of the background screening.

(3) The Office of Background Processing shall determine if the new employee is eligible for employment prior to the new employee:

(a) having access to protected health information or personal identifying information;

(b) having direct contact with patients, children, or vulnerable adults as defined in Section 62A-2-120;

(c) working in areas of privacy and data security;

(d) handling financial information, including receipt of funds, reviewing invoices, making payments, and other types of financial information; or

(e) performing audit functions, whether internal or external, on behalf of the department.

(4) All new employees who have been offered employment with the department shall:

(a) sign a criminal background screening authorization form;

(b) provide personal demographics; and

(c) submit live scan fingerprints.

(5) If the Office of Background Processing determines that a new employee is not eligible for employment, based on information obtained through the background screening process, the Office of Background Processing shall send a notice of action to the employee, Human Resources and the employee's division director which shall include the action and a statement that the information is confidential.

(6) The department is responsible for the payment of all fees required and any fees required to be submitted to the Federal Bureau of Investigation by the bureau.

R380-300-6. Sources for Background Review.

(1) In accordance with Section 26-1-17.1, the department may review relevant information obtained from the following sources:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files; and

(b) federal criminal background databases available to the state.

(2) The department shall classify a crime committed in another state according to the closest matching crime under Utah law, regardless of how the crime is classified in the state where the crime was committed.

(3) If the Office of Background Processing determines an employee is not eligible for continued employment based upon the criminal background screening and the employee disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the employee may challenge the information obtained from the background screening process through the appropriate agency.

(4) Ongoing monitoring of records referred to in 6(1) will immediately be discontinued upon separation of employment.

R380-300-7. Current Employee Exclusions.

(1) Convictions or Pending Charges.

(a) If an employee has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement, for deniable offenses outlined within each division's background screening guidelines, the employee may be terminated.

(b) If an employee has a warrant for arrest or an arrest for any of the identified deniable offenses, the department may terminate employment based on:

(i) the type of offense;

(ii) the severity of offense; and

(iii) potential risk to the department.

(2) Review of Relevant Information.

(a) Results of background screening, may be reviewed to determine under what circumstance, if any, the current employee may continue to be employed. The following factors may be considered:

(i) types and number;

(ii) passage of time;

(iii) surrounding circumstances;

(vi) intervening circumstances; and

(v) steps taken to correct or improve.

(3) The Office of Background Processing may deny clearance based on the relevant information identified in subsection 6(1).

KEY: employees, background screenings
October 22, 2018 26-1-17.1

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-1. General Definitions.
R426-1-100. Authority and Purpose.

This rule establishes uniform definitions for all R426 rules. It also provides administration standards applicable to all R426 rules.

R426-1-200. General Definitions.

The definitions in Title 26, Chapter 8a are adopted and incorporated by reference into this rule, in addition:

(1) "Advanced Emergency Medical Technician" or "AEMT" means an individual who has completed an AEMT training program, approved by the Department, who is licensed by the Department as qualified to render services enumerated in this rule.

(2) "Affiliated Provider" means a licensed EMS individual's secondary employer or employers.

(3) "Air Ambulance" means a specially equipped and permitted aircraft, especially a helicopter or fixed wing airplane, for transporting patients.

(4) "Air Ambulance Personnel" mean the pilot and patient care personnel who are involved in an air medical transport.

(5) "Air Ambulance Service" means any publicly or privately owned organization that is licensed or applies for licensure under R426-3 and provides transportation and care of patients by air ambulance.

(6) "Air Ambulance Service Medical Director" means a physician knowledgeable of potential medical complications which may arise because of air medical transport, and is responsible for overseeing and assuring that the appropriate air ambulance, medical personnel, and equipment are provided for patients transported by the air ambulance service.

(7) "Categorization" means the process of identifying and developing a stratified profile of Utah hospital trauma critical care capabilities in relation to the standards defined under R426-5-7.

(8) "Certify," "Certification," and "Certified" mean the official Department recognition that an individual has completed a specific level of training and has the minimum skills required to provide emergency medical care at the level for which he is certified.

(9) "Competitive Grant" means a grant awarded through the Emergency Medical Services Grants Program on a competitive basis for a share of available funds.

(10) "Complaint, Compliance, and Enforcement Unit or CCEU" means the investigative unit of the Department.

(11) "Continuing Medical Education" means a Department-approved training relating specifically to the appropriate level of certification designed to maintain or enhance an individual's emergency medical skills.

(12) "County or Multi-County EMS Council or Committee" means a group of persons recognized as the legitimate entity within the county to formulate policy regarding the provision of EMS.

(13) "Course Coordinator" means an individual who has completed a Department course coordinator course and is certified by the Department as capable to conduct Department-authorized EMS courses.

(14) "Department" means the Utah Department of Health.

(15) "Emergency Medical Dispatcher" or "EMD" means an individual who has completed a Department approved EMD training program, and is licensed by the Department as qualified to render services enumerated in this rule.

(16) "Emergency Medical Service Dispatch Center" means a call center designated by the Department for the routine acceptance of calls for emergency assistance, staffed by trained operators who utilize a selective medical dispatch system to dispatch licensed ambulance and paramedic services.

(17) "Emergency Medical Responder" or "EMR" means an individual who has completed a Department approved EMR training program, and is licensed by the Department as qualified to render services enumerated in this rule.

(18) "Emergency Medical Technician" or "EMT" means an individual who has completed a Department approved EMT training program and is licensed by the Department as qualified to render services enumerated in this rule.

(19) "Emergency Medical Technician Intermediate Advanced" means an individual who has completed a Department approved EMT- IA training program and is licensed by the Department as qualified to render services enumerated in this rule.

(20) "Emergency vehicle operator" means an individual on the roster of an EMS provider who may, in the normal course of the individual's duties, drive an ambulance or an emergency medical response vehicle.

(21) "EMS" means Emergency Medical Services.

(22) "Emergency Medical Incident" means any instance in which an Emergency Medical Services Provider is requested to provide or potentially provide emergency medical services.

(23) "EMS Instructor" means an individual who has completed a Department EMS instructor course and is certified by the Department as capable to teach EMS personnel.

(24) "EMS stand-by event" means the on-site licensed ambulance, paramedic service, or designated quick response unit at a scheduled event or activity provided by the local 911 exclusive license provider or their designee.

(25) "Exclusive License" means the sole right to perform the licensed act in a defined geographic service area, and that prohibits the Department of Health from performing the licensed act, and from granting the right to anyone else.

(26) "Grants Review Subcommittee" means a subcommittee appointed by the EMS Committee to review, evaluate, prioritize and make grant funding recommendations to the EMS Committee.

(27) "Ground Ambulance" means a vehicle which is properly equipped, maintained, permitted and used to transport a patient to a patient destination such as a patient receiving facility or resource hospital.

(28) "Inclusive Trauma System" means the coordinated component of the State emergency medical services (EMS) system composed of all general acute hospitals licensed under Title 26, Chapter 21, trauma centers, and pre-hospital providers which have established communication linkages and triage protocols to provide for the effective management, transport and care of all injured patients from initial injury to complete rehabilitation.

(29) "Inter-facility Transfer" means an ambulance transfer of a patient, who does not have an emergency medical condition as defined in UCA 26-8a-102(6)(a), and the ambulance transfer of the patient originates at a hospital, nursing facility, patient receiving facility, mental health facility, or other licensed medical facility.

(30) "Individual" means a human being.

(31) "Level of Care" means the capabilities and commitment to the care of the trauma patient available within a specified facility.

(32) "Level of License" means the official Department recognized step in the licensure process in which an individual has attained as an EMS provider.

(33) "Licensed EMS Individual" means a person licensed by the Bureau of Emergency Medical Services and Preparedness to perform an EMS function.

(34) "Meritorious Complaint" means a complaint against a licensed ambulance provider, designated agency, or licensed provider(s) that is made by a patient, a member of the immediate family of a patient, or health care provider, that the Department determines is substantially supported by the facts or a licensed

ambulance provider, designated agency, or licensed provider(s):

(a) has repeatedly failed to provide service at the level or in the exclusive geographic service area required licensee;

(b) has repeatedly failed to follow operational standards established by the EMS Committee;

(c) has committed an act in the performance of a professional duty that endangered the public or constituted gross negligence; or

(d) has otherwise repeatedly engaged in conduct that is adverse to the public health, safety, morals or welfare, or would adversely affect the public trust in the emergency medical service system.

(35) "Matching Funds" means that portion of funds, in cash, contributed by the grantee to total project expenditures.

(36) "On-line Medical Control" which refers to physician medical direction of pre-hospital personnel during a medical emergency; and

(37) "Off-line Medical Control" which refers to physician oversight of local EMS services and personnel to assure their medical accountability.

(38) "Medical Director" means a physician certified by the Department to provide off-line medical control.

(39) "Mid-level Provider" means a licensed nurse practitioner or a licensed physician assistant.

(40) "Net Income" means the sum of net service revenue, plus other regulated operating revenue and subsidies of any type, less operating expenses, interest expense, and income.

(41)"Paramedic" means an individual who has completed a Department approved Paramedic training program and is licensed by the Department as qualified to render services enumerated in this rule.

(42) "Paramedic Ground Ambulance" means the provision of advanced life support patient care and transport by licensed paramedic personnel in a licensed ambulance.

(43) "Paramedic Rescue Service" means the provision of advanced life support patient care by licensed paramedic personnel without the ability to transport patients.

(44) "Paramedic Unit" means a vehicle which is properly equipped, maintained and used to transport licensed paramedics to the scene of emergencies to perform paramedic services without the ability to transport patients to a designated hospital or designated patient receiving facility.

(45) "Paramedic Tactical Service" means the retrieval and field treatment of injured peace officers or victims of traumatic confrontations by licensed paramedics who are trained in combat medical response.

(46) "Paramedic Tactical Unit" means a vehicle which is properly equipped, maintained, and used to transport licensed paramedics to the scene of traumatic confrontations to provide paramedic tactical services.

(47) "Patient Care Report" means a record of the response by each responding Emergency Medical Services Provider unit to each patient during an EMS Incident.

(48) "Patient Receiving Facility" means a Department designated medical clinic or designated resource hospital that is approved to receive patients transported by a licensed ambulance provider.

(49) "Per Capita grants" mean block grants determined by prorating available funds on a per capita basis as delineated in 26-8a-207, as part of the Emergency Medical Services Grants Program.

(50) "Permit" means the document issued by the Department that authorizes a vehicle to be used in providing emergency medical services.

(51) "Person" means an individual, firm, partnership, association, corporation, company, or group of individuals acting together for a common purpose, agency, or organization of any kind public or private.

(52) "Physician" means a medical doctor licensed to practice medicine in Utah.

(53) "Pilot" means any individual licensed under Federal Aviation Regulations, Part 135.

(54) "Pre-hospital Care" means medical care given to an ill or injured patient by a designated or licensed EMS provider outside of a hospital setting.

(55) "Primary Affiliated Provider" or "PAP" means a licensed EMS individual's primary or main employer or provider.

(56) "Primary emergency medical services" means an organization that is the only licensed or designated service in a geographical area.

(57) "Provider" means a Department licensed or designated entity that provides emergency medical services.

(58) "Provisional License" means temporary terms and conditions placed on a licensed EMS individual's license until completion of an investigation or a final adjudication or conclusion of the pending matter.

(59) "Quick Response Unit" or "QRU" means an entity that provides emergency medical services to supplement local licensed ambulance providers or provide unique services.

(60) "Quick Response Vehicle" or "QRV" means a vehicle which is properly equipped, maintained, permitted and used to perform assistive services at a scene. A QRV may transport or deliver a patient to a licensed ambulance provider access point. The QRV may include an automobile, an all-terrain vehicle or a watercraft.

(61) "Resource Hospital" means a facility designated by the EMS Committee to provide on-line medical control for the provision of pre-hospital emergency care.

(62) "Restricted License" means a licensed EMS individual may not function in their EMS capacity for an interim period of time.

(63) "Scene" means the location of initial contact with the patient.

(64) "Selective Medical Dispatch System" means a Department-approved reference system used by a designated local dispatch agency to dispatch aid to medical emergencies which includes:

(a) systemized caller interrogation questions;

(b) systemized pre-arrival instructions; and

(c) protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration.

(65) "Specialized Life Support Air Ambulance Service" means a level of care which requires equipment or specialty patient care by one or more medical personnel in addition to the regularly scheduled air medical team.

(66) "Training Officer" means an individual who has completed a department Training Officer Course and is certified by the Department to be responsible for an EMS provider organization's continuing medical education, license renewal records, and testing.

KEY: emergency medical services
April 19, 2018 26-8a
Notice of Continuation October 9, 2018

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-2. Emergency Medical Services Provider Designations for Pre-Hospital Providers, Critical Incident Stress Management and Quality Assurance Reviews.
R426-2-100. Authority and Purpose.

(1) This rule establishes types of providers that require a designation, the application process for a obtaining a designation and minimum designation requirements. The rule also establishes criteria for critical incident stress management and the process for quality assurance reviews.

R426-2-200. Pre-hospital Provider Designation Types.

The following type of provider shall obtain a designation from the Department:

(1) Quick Response Unit.

(2) Emergency Medical Service Dispatch Center.

R426-2-300. Quick Response Unit Minimum Designation Requirements.

A quick response unit shall meet the following minimum designation requirements:

(1) Have vehicle(s), equipment, and supplies that meet the current requirements of the Department for licensed and designated providers as found on the Bureau of EMS and Preparedness' web-site to carry out its responsibilities under its designation;

(2) Have location(s) for stationing its vehicle(s), equipment and supplies;

(3) Have a current dispatch agreement with a designated Emergency Medical Service Dispatch Center;

(4) Have a Department-certified training officer;

(5) Have a current plan of operations, which shall include:

(a) the names, EMS ID Number, and license level of all personnel;

(b) operational procedures; and

(c) a description of how the designee proposes to interface with other EMS agencies;

(6) Have a current agreement with a Department-certified off-line medical director who will perform the following:

(a) develop and implement patient care standards which include written standing orders and triage, treatment, pre-hospital protocols, and/or pre-arrival instructions to be given by designated emergency medical dispatch centers;

(b) ensure the qualification of field EMS personnel involved in patient care and dispatch through the provision of ongoing continuing medical education programs and appropriate review and evaluation;

(c) develop and implement an effective quality improvement program, including medical audit, review, and critique of patient care;

(d) annually review triage, treatment, and transport protocols and update them as necessary;

(e) suspend from patient care, pending Department review, a field EMS personnel or dispatcher who does not comply with local medical triage, treatment and transport protocols, pre-arrival instruction protocols, or who violates any of the EMS rules, or who the medical director determines is providing emergency medical service in a careless or unsafe manner. The medical director shall notify the Department within one business day of the suspension; and

(f) attend meetings of the local EMS Council, if one exists, to participate in the coordination and operations of local EMS providers.

(7) Have current treatment protocols approved by the agencies off-line medical director for the designated service level;

(8) Provide the Department with a copy of its certificate of insurance;

(9) Provide the Department with a letter of support from the licensed provider(s) in the geographical service area; and

(10) Not be disqualified for any of the following reasons:

(a) violation of Subsection 26-8a-504; or

(b) a history of disciplinary action relating to an EMS license, permit, designation or certification in this or any other state.

R426-2-400. Emergency Medical Service Dispatch Center Minimum Designation Requirements.

An emergency medical service dispatch center shall meet the following minimum designation requirements:

(1) Have in effect a selective medical dispatch system approved by the Department which includes:

(a) systemized caller interrogation questions;

(b) systemized pre-arrival instructions;

(c) a systemized method which produces consistent results to assist a dispatcher in categorizing incoming calls so that dispatcher can notify the proper licensed provider for the level of care, whether an emergency response or an inter-facility patient transfer is needed, as defined in R426-1-200(29); and

(d) protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration.

(2) Provide pre-hospital arrival instructions by a licensed Emergency Medical Dispatcher.

(3) Have a current updated plan of operations, which shall include:

(a) plan of operations to be used in a disaster or emergency;

(b) communication systems, and

(c) aid agreements with other designated medical service dispatch centers.

(4) Have a current agreement with a Department-certified off-line medical director.

(5) Have an ongoing medical call review quality assurance program; and

(6) Have a licensed emergency medical dispatcher roster, which shall include:

(a) licensed staff names, Department license numbers and expiration dates; and

(b) dispatch system training certification number and expiration dates.

R426-2-500. Designation Applications.

Any provider applying for designation shall submit to the Department: applications fees, complete application on Department approved forms, and documentation verifying that the provider meets the minimum requirements for the designation, as listed in this rule. The Department may determine other information is necessary for processing, and will provide a list of those requirements to the applicant. Additional items specific to the designation type are required as outlined below. A provider applying for re-designation shall submit an application as described above 90 days prior to the expiration of its designation.

R426-2-600. Quick Response Unit Designation Applications.

A Quick Response Unit shall provide:

(1) Name of the organization and its principles.

(2) Name of the person or organization financially responsible for the service and documentation from that entity accepting responsibility.

(3) If the applicant is privately owned, they shall submit certified copies of the document creating the entity.

(4) A description of the geographical area of service.

(5) A demonstrated need for the service.

R426-2-700. Emergency Medical Service Dispatch Center

Designation Applications.

An Emergency Medical Service Dispatch Center shall provide:

(1) Name of the organization and its principles.

(2) Name of the person or organization financially responsible for the service provided by the designee and documentation from that entity accepting responsibility.

(3) If the applicant is privately owned, they shall submit certified copies of the document creating the entity.

(4) A description of the geographical area of service.

(5) A demonstrated need for the service.

R426-2-800. Criteria for Denial or Revocation of Designation.

(1) The Department may deny an application for a designation for any of the following reasons:

(a) failure to meet requirements as specified in the rules governing the service;

(b) failure to meet vehicle, equipment, or staffing requirements;

(c) failure to meet requirements for renewal or upgrade;

(d) conduct during the performance of duties relating to its responsibilities as an EMS provider that is contrary to accepted standards of conduct for EMS personnel described in Sections 26-8a-502 and 26-8a-504;

(e) failure to meet agreements covering training standards or testing standards;

(f) a history of disciplinary action relating to a license, permit, designation, or certification in this or any other state;

(g) a history of criminal activity by the licensed or designated provider or its principals while licensed or designated as an EMS provider or while operating as an EMS service with permitted vehicles;

(h) falsifying or misrepresenting any information required for licensure or designation or by the application for either;

(i) failure to pay the required designation or permitting fees or failure to pay outstanding balances owed to the Department;

(j) failure to submit records and other data to the Department as required by statute or rule;

(k) misuse of grant funds received under Section 26-8a-207; and

(l) violation of OSHA or other federal standards that it is required to meet in the provision of the EMS service.

(2) An applicant who has been denied a designation may request a Department review by filing a written request for reconsideration within thirty calendar days of the issuance of the Department's denial.

R426-2-900. Application Review and Award.

(1) If the Department finds that an application for designation is complete and that the applicant meets all requirements, it may approve the designation.

(2) Issuance of a designation by the Department is contingent upon the applicant's demonstration of compliance with all applicable rules and a successful Department quality assurance review.

(3) A designation may be issued for up to a four-year period. The Department may alter the length of the designation to standardize renewal cycles.

R426-2-1000. Change in Designated Service Level.

(1) A quick response unit may apply to provide a higher designated level of service by:

(a) submitting the applicable fees; and

(b) submitting an application on Department-approved forms to the Department.

(2) As part of the application, the applicant shall provide:

(a) a copy of the new treatment protocols for the higher level of service approved by the off-line medical director;

(b) an updated plan of operations demonstrating the applicant's ability to provide the higher level of service;

(c) a written assessment of the performance of the applicant's field performance by the applicant's off-line medical director; and

(d) provide the Department with a letter of support from the licensed provider(s) in the geographical service area.

(3) If the Department finds that the applicant has demonstrated the ability to provide the upgraded service, it shall issue a new designation reflecting the higher level of service.

R426-2-1100. Critical Incident Stress Management.

(1) The Department may establish a critical incident stress management (CISM) team to meet its public health responsibilities under Utah Code Section 26-8a-206.

(2) The CISM team may conduct stress debriefings, defusings, demobilizations, education, and other critical incident stress interventions upon request for persons who have been exposed to one or more stressful incidents in the course of providing emergency services.

(3) Individuals who serve on the CISM team shall complete initial and ongoing training.

(4) While serving as a CISM team member, the individual is acting on behalf of the Department. All records collected by the CISM team are Department records. CISM team members shall maintain all information in strict confidence as provided in Utah Code Title 26, Chapter 3.

(5) The Department may reimburse a CISM team member for travel expenses incurred in performing his or her duties in accordance with state finance mileage reimbursement policy.

R426-2-1200. Quality Assurance Reviews.

(1) The Department may conduct quality assurance reviews of licensed and designated organizations and training programs on an annual basis or more frequently as necessary to enforce this rule;

(2) The Department shall conduct a quality assurance review prior to issuing a new license or designation.

(3) The Department may conduct quality assurance reviews on all personnel, vehicles, facilities, communications, equipment, documents, records, methods, procedures, materials and all other attributes or characteristics of the organization, which may include audits, surveys, and other activities as necessary for the enforcement of the Emergency Medical Services System Act and the rules promulgated pursuant to it.

(a) The Department shall record its findings and provide the organization with a copy.

(b) The organization shall correct all deficiencies within 30 days of receipt of the Department's findings.

(c) The organization shall immediately notify the Department on a Department-approved form when the deficiencies have been corrected.

KEY: emergency medical services
April 19, 2018 26-8a
Notice of Continuation October 9, 2018

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-3. Licensure.
R426-3-100. Authority and Purpose.

(1) This Rule is established under Chapter 8, Title 26a, Chapter 8a. It establishes standards for the licensure of an air ambulance, ground ambulance, and paramedic services.

(2) The purpose of this rule is to set forth air and ground ambulance policies, rules, and standards adopted by the Utah Emergency Medical Services Committee, which promotes and protects the health and safety of the people of this state.

(3) The definitions in Title 26, Chapter 8a are adopted and incorporated by reference into this rule.

R426-3-200. Requirement for Licensure.

(1) A person who provides or represents that it provides air ambulance, ground ambulance, paramedic ground ambulance, or paramedic services shall first be licensed by the Department.

R426-3-300. Licensure Types.

(1) The Department may issue exclusive ground ambulance transport licenses for the following types of service at the given levels:

(a) emergency medical technician (EMT);

(b) advanced emergency medical technician (AEMT); and

(c) paramedic.

(2) Current emergency medical technician intermediate advanced (EMT-IA) licenses will remain in effect, no new EMT-IA ground ambulance licenses will be issued.

(3) The Department may issue exclusive ground ambulance inter-facility transport licenses for the following types of service at the given levels:

(a) emergency medical technician (EMT);

(b) advanced emergency medical technician (AEMT); and

(c) paramedic.

(4) The Department may issue exclusive paramedic, non-transport licenses.

(5) The Department may issue a paramedic tactical license that is a designation of function not geographical location.

R426-3-310. Air Ambulance Licensure Types.

(1) The Department may issue an Air Ambulance provider a license in accordance with services accredited by a Department approved accreditation vendor.

R426-3-400. Scope of Operations.

(1) A ground ambulance or paramedic licensed provider as described in R426-3-300 may only provide service to its specific licensed geographic service area and is responsible to provide all services to its entire specific geographic service area except as provided by R426-3-900 Aid Agreements. It will provide emergency medical services for its category of licensure that corresponds to the licensed levels in R426-5 Emergency Medical Services Training, Licensure and Certification Standards.

(2) A ground ambulance provider or paramedic service provider as described in R426-3-300 shall provide services 24 hours a day, every day of the year.

(3) Air ambulance services shall provide services 24 hours a day, every day of the year as allowed by weather conditions.

(4) A ground ambulance provider or paramedic service provider as described in R426-3-300 shall provide all standby services for any special event that requires ground ambulance or paramedic services within its geographic service area. The licensed provider may arrange for those services through R426-3-900 aid agreements. Designated quick response units may also support licensed ground ambulance or paramedic services at special events. If a licensed provider refuses to provide service, or is non-responsive in a timely manner to a request for a special event, the event organizer may use a licensed or designated provider of their choice.

R426-3-500. Minimum Licensure Requirements Air Ambulance, Ground Ambulance, and Paramedic Services.

A licensed provider conforming to R426-3-200 shall meet the following minimum requirements:

(1) sufficient air or ground ambulances, emergency response vehicle(s), equipment, and supplies that meet the requirements of this rule and as may be necessary to carry out its responsibilities under its license or proposed license without relying upon aid agreements with other licensed provider;

(2) locations or staging areas for stationing its vehicles;

(3) a current written dispatch agreement with a designated emergency medical dispatch center;

(4) ground ambulances may have current written aid agreements with other ground ambulance licensed providers to give assistance in times of unusual demand;

(5) a Department certified EMS training officer that is responsible for continuing education;

(6) a current plan of operations.

(7) a description of how the licensed provider or applicant proposes to interface with other licensed and designated EMS providers.

(8) demonstrate fiscal viability;

(9) medical personnel roster which includes level of licensure to ensure there is sufficient trained and licensed staff who meet the requirements of R426-4-200 Staffing, and operational procedures.

(10) all permitted vehicles shall be equipped to allow field EMS personnel to be able to:

(a) communicate with hospital emergency departments, dispatch centers, EMS providers, and law enforcement services; and

(b) communicate on radio frequencies assigned to the Department for EMS use by the Federal Communications Commission.

(11) a current written agreement with a Department-certified off-line medical director or a medical director certified in the state where the service is based pursuant to R426-3-700.

(12) provide the Department with a copy of its certificate of insurance or if seeking application, provide proof of the ability to obtain insurance to respond to damages due to operation of a vehicle or air ambulance in the manner and following minimum amounts:

(a) liability insurance in the amount of $1,000,000 for each individual claim; and

(b) liability insurance in the amount of $1,000,000 for property damage from any one occurrence;

(c) the licensed provider as described in R426-3-300 shall obtain the insurance from an insurance company authorized to write liability coverage in Utah or through a self-insurance program and shall:

(i) provide the Department with a copy of its certificate of insurance demonstrating compliance with this section; and

(ii) direct the insurance carrier or self-insurance program to notify the Department of all changes in insurance coverage within 60 days.

(13) not be disqualified for any of the following reasons:

(a) violation of Subsection 26-8a-504; or

(b) disciplinary action relating to an EMS license, permit, designation, or certification in this or any other state that adversely affect its service under its license; and

(14) A paramedic tactical service as described in R426-3-300 shall be a public safety agency or have a letter of recommendation from a county or city law enforcement agency within the paramedic tactical service's geographic service area.

(15) In areas that are served by more than one transport provider, both providers shall have an agreement addressing

first response and transport responsibilities for all types of facilities listed in R426-1-200(29) in effect by June 30, 2018 and shall provide copies to the Department and all impacted PSAP's and dispatch centers. The Department may act as mediator if needed to reach agreement.

R426-3-600. Cost, Quality, and Access Goals for Ground Ambulance Providers.

(1) A local government shall establish emergency medical service goals pursuant to Title 26-8a-408(7).

(2) Goals shall be renewed every four years in concurrence with the licensure process for the EMS licensed ground ambulance provider. All local governments in a licensed service area are required to participate.

(3) Goals may be amended, if necessary, due to:

(a) unforeseen changes in service delivery,

(b) community impacts, or

(c) significant unforeseen impact in the geographical service area.

(4) Goals shall be written, approved by local governments, and submitted to the Department with licensure and re-licensure application by the EMS licensed ground ambulance provider for the geographical service area.

(5) Local governments may choose to recognize EMS providers who have achieved accreditation by a Department approved accreditation organization as meeting the cost, quality, and access goals.

(6) Cost goals shall indicate the expected financial cost to the local government(s) and patients for the level of service provided.

(7) Quality goals shall indicate the expected level of service plus any additional foreseen improvements or advancements in service expectations.

(8) Access goals shall indicate the local government's expectation for access to the EMS system by any individual within the local government's geographic area.

R426-3-700. Ground Ambulance or Paramedic Service Application.

(1) An applicant desiring to obtain a new license for ground ambulance, or paramedic services shall submit the applicable fees and application on Department-approved forms to the Department. As part of the application, the applicant shall submit documentation that it meets the requirements listed in R426-3-500 along with the following:

(a) a detailed description and detailed map of the exclusive geographical areas that will be served;

(b) if the requested geographical service area is for less than all ground ambulance or paramedic services, the applicant shall include a written description and detailed map showing how the areas not included will receive ground ambulance or paramedic services;

(c) if an applicant is responding to a public bid as described in 26-8a-405.2 the applicant shall include detailed maps and descriptions for all geographical areas served in accordance with 26-8a-405.2(2);

(d) documentation showing that the applicant meets all local zoning and business licensing standards within the exclusive geographical service area that it will serve;

(e) a written description of how the applicant will communicate with dispatch centers, law enforcement agencies, on-line medical control, and patient transport destinations;

(f) patient care protocols, medications, and equipment approved by the provider's medical director based on licensure level according to Department policies; and

(g) applicant's plans for operations during times of unusual demand.

(2) An applicant desiring to renew an existing license shall submit documentation that it meets the requirements listed in R426-3-500, along with the following:

(a) a written assessment of field performance from the applicant's off-line medical director; and

(b) other information that the Department determines necessary for the processing of the application and the oversight of the licensed entity.

(3) An applicant desiring to obtain a new license or renew an existing license shall submit written cost, quality, and access goals as described in R426-3-600, if available.

(4) A ground ambulance or paramedic service holding a license under 26-8a-404, including any political subdivision that is part of a special district may respond to a request for proposal if it complies with 26-8a-405(2).

(5) Upon receipt of an appropriately completed application, ground ambulance or paramedic service license and submission of license fees, the Department shall collect supporting documentation and review each application.

(6) If, upon Department review, the application for a new license is complete and meets all the requirements, the Department shall issue a notice of approved application as required by 26-8a-405 and 406.

(7) Award of a new license or a renewal license is contingent upon the applicant's demonstration of compliance with all applicable statute and rules and a successful Department quality assurance review.

(8) After review and before issuing a license to a new service, the Department shall directly inspect the ground vehicle(s), equipment, and required documentation.

(9) A license may be issued for up to a four-year period unless revoked or suspended by the Department. The Department may alter the length of the license to standardize renewal cycles.

R426-3-710. Air Ambulance Application.

An applicant desiring to obtain a new license or to renew its license for air ambulance services shall submit the applicable fees and application on Department-approved forms to the Department. As part of the application, the applicant shall submit documentation that it meets the requirements listed in R426-3-500 and the following:

(1) certified articles of incorporation, if incorporated;

(2) a statement summarizing the training and experience of the applicant in the air transportation and care of patients;

(3) a copy of current Federal Aviation Administration (FAA) Air Carrier Operating Certificate authorizing FAR, Part 135, operations;

(4) a copy of the current certificates of insurance demonstrating coverage for medical malpractice;

(5) a description and location of each dedicated and back-up air ambulance(s) procured for use in the air ambulance service, including the make, model, and year of manufacture, FAA-N number, insignia, name or monogram, or other distinguishing characteristics;

(6) successful completion of a Department approved accreditation process and such accreditation decision shall exclude Federal Aviation Agency or Aviation Deregulation Act regulated activities;

(7) for new air ambulance services licensed under R426-3-200, the applicant shall submit an application for accreditation by a Department approved accreditation process within one year of receiving a license under this rule; and

(8) licensed air ambulance services shall achieve accreditation and maintain accreditation.

(9) Any new air ambulance providers applying for a license who have been licensed and operating in any other state for at least one year shall provide the Department with a copy of a successful accreditation decision, or an application sent to a Department approved accreditation vendors prior to receiving an air ambulance license.

(10) Upon receipt of an appropriately completed application for air ambulance provider license and submission of license fees, the Department shall collect supporting documentation and review each application.

(11) After review and before issuing a license to a new service, the Department shall directly inspect the air vehicle(s), equipment, and required documentation.

(12) Department approved accreditation vendors shall allow a Department representative to accompany accreditation surveyors on site surveys or during any accreditation inspections at the request of the Department.

(13) If, upon Department review, the application for a new license is complete and meets all the requirements, the Department shall issue a notice of approved application as required by 26-8a-405 and 406.

(14) Award of a new license or a renewal license is contingent upon the applicant's demonstration of compliance with all applicable statute and rules and a successful Department quality assurance review.

(15) Any events impacting patient safety including death, permanent harm, or severe temporary harm, or requiring intervention to sustain life shall be reported to the Department and the associated Department approved accreditation vendor(s) by the licensed air ambulance provider within 30 days or the event.

(16) A license may be issued for up to a four-year period unless revoked or suspended by the Department. The Department may alter the length of the license to standardize renewal cycles.

R426-3-800. Medical Control.

(1) All licensed providers shall enter into a written agreement with a physician to serve as its off-line medical director to supervise the medical care or instructions provided by the field EMS personnel and dispatchers. The physician shall be familiar with:

(a) the design and operation of the local pre-hospital EMS system; and

(b) local dispatch and communication systems and procedures.

(2) The off-line medical director shall:

(a) develop and implement patient care standards which include written standing orders and triage, treatment, and transport protocols;

(b) ensure the qualification of field EMS personnel involved in patient care through the provision of ongoing continuing medical education programs and appropriate review and evaluation;

(c) develop and implement an effective quality improvement program, including medical audit, review, and critique of patient care;

(d) annually review triage, treatment, and transport protocols and update them as necessary;

(e) suspend from patient care, pending Department review, a field EMS personnel who does not comply with local medical triage, treatment and transport protocols, or who violates any of the EMS rules, or who the medical director determines is providing emergency medical service in a careless or unsafe manner. The medical director shall notify the Department within one business day of the suspension;

(f) attend meetings of the local EMS Council, if one exists, to participate in the coordination and operations of local EMS providers; and

(g) licensed providers shall notify the Department if an off-line medical director is replaced, within thirty days.

(3) It is the responsibility of the air ambulance medical director to:

(a) authorize written protocols for the use by air medical attendants and review policies and procedures of the Air ambulance service; and

(b) develop and review treatment protocols, assess field performance, and critique at least 10% of the Air ambulance service runs.

R426-3-900. Ground Ambulance or Paramedic Service Provider Aid Agreements.

(1) All licensed ground ambulance providers are expected to render mutual aid support for adjoined geographical service areas. Mutual aid support means that they may be called upon to provide assistance during times of unusual demand. Exceptions for this expectation should be submitted as part of a license application.

(2) Other types of aid agreements shall be in writing, signed by both parties, and detail the:

(a) purpose of the agreement;

(b) type of assistance required;

(c) circumstances under which the assistance would be given; and

(d) duration of the agreement.

(3) The parties shall provide a copy of any aid agreement(s) except for mutual aid support as described in R426-3-900(1) to the Department and to the designated emergency medical dispatch center(s) that dispatch the licensed ground ambulance providers.

(4) When mutual aid support is given as described in R426-3-900(1), the licensed ground ambulance provider rendering support will be responsible for the following, unless otherwise stated in writing, and approved by the Department prior to the event:

(a) billing or other financial reimbursements;

(b) liability for EMS operations related to staff and patient care, and;

(c) patient care protocols for licensure level.

R426-3-1100. Application Review and Award for Ground Ambulance Providers Selected by Public Bid.

(1) Upon receipt of an appropriately completed application, for ground ambulance or paramedic service license and submission of license fees, the Department shall collect supporting documentation and review each application.

(2) If, upon Department review, the application is complete and meets all the requirements, the Department shall:

(a) for a new license application, issue a notice of approved application as required by 26-8a-405 and 406;

(b) issue a renewal license to an applicant in accordance with 26-8a-413(1) and (2) or 26-8a-405.1(3), whichever is applicable.

(c) issue a four-year renewal license to a license selected by a political subdivision if the political subdivision certified to the Department that the licensed provider has met all of the specifications of the original bid and requirements of 26-8a-413(1) through 26-8a-313(3); or

(d) issue a second four-year renewal license to a licensed provider selected by a political subdivision if:

(i) the political subdivision certified to the Department that the licensed provider has met all of the specifications of the original bid and requirements of 26-8a(1) through (3); and

(ii) if the Department or the political subdivision has not received, prior to the expiration date, written notice from an approved applicant desiring to submit a bid for ambulance or paramedic services.

(3) Upon the request of the political subdivision and the agreement of all interested parties and the Department that the public interest would be served, the renewal license may be issued for a period of less than four years or a new request for the proposal process may be commenced at any time.

R426-3-1200. Criteria for Denial or Revocation of

Licensure.

(1) The Department may deny an application for a license, a renewal of a license, or revoke, suspend or restrict a license without reviewing whether a license shall be granted or renewed to meet public convenience and necessity for any of the following reasons:

(a) failure to meet substantial requirements as specified in the rules governing the service;

(b) failure to meet vehicle, equipment, staffing, or insurance requirements;

(c) failure to meet agreements covering training standards or testing standards;

(d) substantial violation of Subsection 26-8a-504(1);

(e) a history of disciplinary action relating to a license, permit, designation, or certification in this or any other state;

(f) a history of serious or substantial public complaints;

(g) a history of criminal activity by the licensee or its principals while licensed or designated as an EMS provider or while operating as an EMS service with permitted vehicles;

(h) falsification or misrepresentation of any information in the application or related documents;

(i) failure to pay the required licensing or permitting fees or other fees or failure to pay outstanding balances owed to the Department;

(j) failure to submit records and other data to the Department as required by R426-7;

(k) a history of inappropriate billing practices, such as:

(i) charging a rate that exceeds the maximum rate allowed by rule;

(ii) charging for items or services for which a charge is not allowed by statute or rule; or

(iii) Medicare or Medicaid fraud.

(l) misuse of grant funds received under Section 26-8a-207; or

(m) violation of OSHA or other federal standards that it is required to meet in the provision of the EMS service.

(2) An applicant or licensed provider that has been denied, revoked, suspended or issued a restricted license may appeal by filing a written appeal within thirty calendar days of the receipt of the issuance of the Department's denial.

R426-3-1300. Change of Owner.

(1) A license and the vehicle permits cannot be transferred to another party.

(2) As outlined in 26-8a-415, a new owner shall submit within 10 (ten) calendar days prior to acquisition of property, applications and fees for a new license and vehicle permits.

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R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-4. Operations.
R426-4-100. Authority and Purpose.

This rule is established under Title 26, Chapter 8a. It establishes standards for the operation of EMS providers licensed or designated under the provisions of the Emergency Medical Services System Act.

R426-4-200. Ground Ambulance and QRV Staffing.

(1) While responding to a call, each QRV shall be staffed by at least one individual certified at or above the provider's designated level of service.

(2) While responding to a call, each ground ambulance shall be staffed with the following minimum complement of certified personnel for the service level described:

(a) Basic Life Support ambulance: two EMTs, AEMTs, or paramedics, or any combination thereof.

(b) AEMT ambulance: one AEMT and one EMT, AEMT, or paramedic.

(c) EMT-IA ambulance: one EMT-IA and one EMT, AEMT, or Paramedic.

(d) Paramedic ambulance: one paramedic and one EMT, AEMT, EMT-IA, or paramedic.

(e) Paramedic (non-transport): one paramedic.

(f) Paramedic inter-facility: one paramedic and one EMT, AEMT, EMT-IA, or paramedic.

(g) Paramedic tactical: one paramedic.

(3) A paramedic ground ambulance or paramedic provider shall deploy two paramedics to the scene of 911 calls for service requiring Advanced Life Support response, unless otherwise determined by local selective medical dispatch system protocols.

(4) When providing care, responders not in a Department approved uniform shall display their level of medical certification.

(5) Each provider shall maintain a personnel file for each certified individual. The personnel file must include records documenting the individual's qualifications, training, certification, immunizations, and continuing medical education.

(6) An individual may perform only to his certified service level, even if the provider is licensed or designated at a higher level.

R426-4-210. Air Ambulance Staffing.

(1) Air ambulance provider shall have at least one medical attendant who is a licensed PA, RN, or MD/DO. This attendant shall be the primary medical attendant. The second medical attendant shall be a Paramedic, PA, Respiratory Therapist, RN, or MD/DO.

(2) Air ambulance providers shall operate only within their accreditation standards designation.

(3) Air ambulance providers shall notify the Department if the air ambulance provider changes its specialty designation through its accrediting agency.

R426-4-300. Permits and Inspections.

(1) A ground ambulance, QRV or air ambulance provider shall only use vehicles for which the provider has obtained a permit from the Department.

(a) Ground ambulances must meet Federal General Services Administration Specification for ground ambulances as of the date of manufacture. New ground ambulance vehicles must meet current state approved specifications for ground ambulances.

(b) QRVs shall meet the Department requirements.

(2) A permit issued by the Department is valid for one year.

(3) The provider shall display the current permit location on vehicle in a location easily visible at ground level from outside of the vehicle.

(4) Permits and decals are not transferable to other vehicles.

(5) Each permit holder shall annually provide proof that every operator of an emergency vehicle has successfully completed an emergency vehicle operator's course approved by the Department for all emergency vehicle operators.

R426-4-310. Air Ambulance Shall Meet Federal Aviation Regulations.

Air Ambulance providers shall meet all Federal Aviation Regulations specific to their operations.

R426-4-400. Ground Ambulance and QRV Operations.

(1) Each ground ambulance provider or QRV provider shall notify the Department of the permanent location of its ground ambulances and QRVs. The ground ambulance provider or QRV provider shall notify the Department in writing whenever it changes the permanent location for any ground ambulance or QRV.

(2) Each ground ambulance provider or QRV provider shall maintain each operational permitted vehicle on a premise suitable to make it available for immediate use, in good mechanical repair, properly equipped, and in a sanitary condition.

(3) Each ground ambulance provider or QRV provider shall maintain each operational vehicle in a clean condition with the interior being thoroughly cleaned after each use in accordance with OSHA standards and the provider's exposure control plan.

(4) Each ground ambulance provider or QRV provider shall equip each operational vehicle with adult and child safety restraints. To the point practicable and feasible, all occupants must be safely restrained during operation.

(5) Each ground ambulance provider or QRV provider shall assure that each emergency vehicle operator who may drive the emergency vehicle:

(a) is at least 18 years of age;

(b) possesses a valid driver license;

(c) successfully passed the provider's criminal background check within the prior four years; and

(d) successfully completed a department approved emergency vehicle operator's course or refresher course within the past two years.

(6) The Department shall verify annually that providers are in compliance with this requirement.

R426-4-500. Scene and Patient Management.

(1) Emergency medical service dispatch centers shall use a selective medical dispatch system to determine which EMS service provider will be notified for patient transport.

(2) When responding to a medical emergency call, EMS personnel shall follow protocols approved by the service provider's medical director, and act within their scope of practice.

(3) EMS personnel shall establish communication with on-line medical control as soon as reasonable.

(4) Paramedic tactical service may only function at the invitation of the local or state public safety authority. When called upon for assistance, the tactical paramedic shall immediately notify the local emergency medical service dispatch center to coordinate patient transportation.

R426-4-600. Pilot Projects.

(1) A person who proposes to undertake a research or study project which requires waiver of any rule must have a project director who is a physician licensed to practice medicine in Utah, and shall submit a written proposal to the Department for presentation to the EMS Committee for recommendation.

(2) The proposal shall include the following:
(a) A project description that describes the:
(i) need for project;
(ii) project goal;
(iii) specific objectives;
(iv) approval by the provider off-line medical director;
(v) methodology for the project implementation;
(vi) geographical area involved by the proposed project;
(vii) specific rule or portion of rule to be waived;
(viii) proposed waiver language; and
(ix) evaluation methodology.
(b) A list of the EMS providers and hospitals participating in the project;
(c) a signed statement of endorsement from the participating hospital medical directors and administrators, the director of each participating paramedic and ambulance licensee, other project participants, and other parties who may be significantly affected.
(d) If the pilot project requires the use of additional skills, a description of the skills to be utilized by the field EMS personnel and provision for training and supervising the field EMS personnel who are to utilize these skills, including the names of the field EMS personnel.
(e) The name and signature of the project director attesting to his support and approval of the project proposal.
(3) If the pilot project involves human subjects' research, the applicant must also obtain Department Institutional Review Board approval.
(4) The Department or Committee, as appropriate, may require the applicant to meet additional conditions as it considers necessary or helpful to the success of the project, integrity of the EMS system, and safety to the public.
(5) The Department or Committee, as appropriate, may initially grant project approval for one year. The Department or Committee, as appropriate, may grant approval for continuation beyond the initial year based on the achievement and satisfactory progress as evidenced in written progress reports to be submitted to the Department at least 90 days prior to the end of the approved period. A pilot project may not exceed three years;
(6) the Department or Committee, as appropriate, may only waive a rule if:
(a) the applicant has met the requirements of this section;
(b) the waiver is not inconsistent with statutory requirements;
(c) there is not already another pilot project being conducted on the same subject; and
(d) it finds that the pilot project has the potential to improve pre-hospital medical care.
(7) Approval of a project allows the field EMS personnel listed in the proposal to exercise the specified skills of the participants in the project. The project director shall submit the names of field EMS personnel not initially approved to the Department.
(8) The Department or Committee, as appropriate, may rescind approval for the project at any time if:
(a) Those implementing the project fail to follow the protocols and conditions outlined for the project;
(b) it determines that the waiver is detrimental to public health; or
(c) it determines that the project's risks outweigh the benefits that have been achieved.
(9) The Department or Committee, as appropriate, shall allow the EMS provider involved in the study to appear before the Department or Committee, as appropriate, to explain and express its views before determining to rescind the waiver for the project.
(10) At least six months prior to the planned completion of the project, the medical director shall submit to the Department a report with the preliminary findings of the project and any recommendations for change in the project requirements.

R426-4-700. Confidentiality of Patient Information.
Providers shall not disclose patient information except as necessary for patient care or as allowed by statute or rule.

R426-4-800. Ground Ambulance and QRV Supply Requirements.
(1) In accordance with the licensure or designation type and level, the ground ambulance or QRV shall carry on each vehicle the quantities of supplies, medications, and equipment as described in the Department inspection requirements. The vehicle requirements shall be approved by the State EMS Medical Director and the State EMS Committee.
(2) Medical directors for licensed or designated providers are responsible to provide protocols, training, and quality assurance for all medications used by certified individuals performing duties for their respective provider.
(3) If a licensed or designated provider desires to carry different equipment, supplies, or medication from the vehicle supply requirements, the provider shall submit a written request from the off-line medical director to the Department requesting the waiver. The request shall include:
(a) a detailed training outline;
(b) protocols;
(c) proficiency testing
(d) support documentation;
(e) local EMS Council or committee comments; and
(f) a detailed letter of justification.
(4) All non-disposable equipment shall be designed and constructed of materials that are durable and capable of withstanding repeated cleaning. The provider:
(a) shall clean the equipment after each use in accordance with OSHA standards;
(b) shall sanitize or sterilize equipment prior to reuse;
(c) shall not reuse equipment intended for single use;
(d) shall clean and change linens after each use; and
(e) shall store or secure all equipment in a readily accessible and safe manner to prevent its movement.
(5) The provider shall have all equipment tested, maintained, and calibrated according to the manufacturer's standards.
(6) The provider shall document all equipment inspections, testing, maintenance and calibrations. Testing or calibration conducted by an outside service shall be documented. Such inspections, testing and calibration shall be performed monthly. All testing documentation shall be maintained and available for Department review upon request.
(7) A provider required to carry any of the following equipment shall perform monthly inspections to ensure proper functionality:
(i) defibrillator, manual, or automatic;
(ii) autovent;
(iii) infusion pump;
(iv) glucometer;
(v) flow restricted, oxygen-powered ventilation devices;
(vi) suction equipment;
(vii) electronic Doppler device;
(viii) automatic blood pressure/pulse measuring device;
(ix) pulse oximeter; and,
(x) any other electronic, battery powered, or critical care device.
(8) The provider shall perform monthly inspections to ensure proper functionality of all equipment that require consumables: power supplies, electrical cables, pneumatic power lines, hydraulic power lines, or related connectors.
(9) Unless otherwise authorized by the State EMS Medical

Director, a provider shall store all medications according to the manufacturers' recommendations:

(a) for temperature control and packaging requirements; and

(b) return to the supplier for replacement of any medication known or suspected to have been subjected to temperatures outside the recommended range.

(10) The Department shall maintain and publish requirements for ground ambulances and QRVs on the Department's website.

R426-4-900. Air Ambulance Equipment Standards.

Air ambulance providers must maintain minimum quantities of supplies and equipment for each air ambulance transport in accordance with its accreditation designation. The air ambulance medical director shall oversee and determine the protocols and provide training to support the medications.

R426-4-1000. Air Ambulance Operational Standards.

(1) An air ambulance pilot may refuse transport to any individual who the pilot considers to be a safety hazard to the air ambulance or any of its passengers.

(2) Air ambulance providers shall provide a patient care record to the receiving hospital as soon as practical, but no longer than 24 hours after completion of the transport.

(3) Air ambulance providers shall maintain a personnel file which shall include staff qualifications and training.

(4) All air ambulance providers shall have an operational manual or policy and procedures manual available for all air ambulance personnel.

(5) All air ambulance provider records shall be available for inspection by representatives of the Department.

(6) Air ambulances shall be equipped to allow air ambulance provider personnel to be able to:

(a) Communicate with hospital emergency medical departments, flight operations centers, air traffic control, ground ambulance providers, and law enforcement agencies;

(b) Communicate with other air ambulances while in flight;

(c) Have the ability to override any radio or telephone transmission in the event of an emergency.

(7) The management of the air ambulance provider shall be familiar with the federal regulations related to air ambulance providers.

(8) Each air ambulance provider shall have a safety committee, with a designated safety officer. The committee shall meet at least quarterly to review safety issues and submit a written report to the air ambulance provider's management and maintain a copy on file at the air ambulance provider's office.

(9) Air ambulance providers shall have a quality management team and a program implemented by this team to assess and improve the quality of patient care provided by the air ambulance provider.

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R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-9. Trauma and EMS System Facility Designations.
R426-9-100. Authority and Purpose for Trauma System Standards.

(1) Authority - This rule is established under Title 26, Chapter 8a, 252, Statewide Trauma System, which authorizes the Department to:

(a) establish and actively supervise a statewide trauma system;

(b) establish, by rule, trauma center designation requirements and model state guidelines for triage, treatment, transport, and transfer of trauma patients to the most appropriate health care facility; and

(c) designate trauma care facilities consistent with the trauma center designation requirements and verification process established by the Department and applicable statutes.

(2) This rule provides standards for the categorization of all hospitals and the voluntary designation of Trauma Centers to assist physicians in selecting the most appropriate physician and facility based upon the nature of the patient's critical care problem and the capabilities of the facility.

(3) It is intended that the categorization process be dynamic and updated periodically to reflect changes in national standards, medical facility capabilities, and treatment processes. Also, as suggested by the Utah Medical Association, the standards are in no way to be construed as mandating the transfer of any patient contrary to the wishes of his attending physician, rather the standards serve as an expression of the type of facilities and care available in the respective hospitals for the use of physicians requesting transfer of patients requiring skills and facilities not available in their own hospitals.

R426-9-200. Trauma System Advisory Committee.

(1) The trauma system advisory committee, created pursuant to 26-8a-251, shall:

(a) be a broad and balanced representation of healthcare providers and health care delivery systems; and

(b) conduct meetings in accordance with committee procedures.

(2) The Department shall appoint committee members to serve terms from one to four years.

(3) The Department may re-appoint committee members for one additional term in the position initially appointed by the Department.

(4) Causes for removal of a committee member include the following:

(a) more than two unexcused absences from meetings within 12 calendar months;

(b) more than three excused absences from meetings within 12 calendar months;

(c) conviction of a felony; or

(d) change in organizational affiliation or employment which may affect the appropriate representation of a position on the committee for which the member was appointed.

R426-9-300. Trauma Center Categorization Guidelines.

The Department adopts as criteria for Level I, Level II, Level III, IV and Pediatric trauma center designation, compliance with national standards published in the American College of Surgeons document: Resources for Optimal Care of the Injured Patient 2014.

R426-9-400. Trauma Center Review Process.

(1) The Department shall conduct a quality review site visit of trauma centers and applicants to verify compliance with standards set in R426-9-300. In conducting each evaluation, the Department may consult with experts from the following disciplines:

(a) trauma surgery;

(b) emergency medicine;

(c) emergency or critical care nursing; and

(d) hospital administration.

(2) A consultant shall not assist the Department in evaluating a facility in which the consultant is employed, practices, or has any financial interest.

R426-9-500. Trauma Center Categorization Process.

The Department shall:

(1) Develop a survey document based upon the Trauma Center Criteria described in R426-9-300.

(2) Periodically survey all Utah hospitals which provide emergency trauma care to determine the maximum level of trauma care which each is capable of providing.

(3) Disseminate survey results to all Utah hospitals, and as appropriate, to Utah licensed ambulance providers.

R426-9-600. Trauma Center Designation Process.

(1) Hospitals seeking voluntary designation and all designated Trauma Centers desiring to remain designated, shall apply for designation by submitting the following information to the Department at least 30 days prior to the date of the scheduled site visit:

(a) a completed and signed application and appropriate fees for trauma center verification;

(b) a letter from the hospital administrator of continued commitment to comply with current trauma center designation standards as applicable to the applicant's designation level;

(c) the data specified under R426-9-7 are current;

(d) Level I and Level II Trauma Centers must submit a copy of the Pre-review Questionnaire (PRQ) from the American College of Surgeons in lieu of the application in 1a above;

(e) Level III and Level IV and Level V trauma centers must submit a complete Department approved application.

(2) Hospitals desiring to be designated as Level I and Level II Trauma Centers must be verified by the American College of Surgeons (ACS) within three (3) months of the expiration date of previous designation and must submit a copy of the full ACS report detailing the results of the ACS site visit. A Department representative must be present during the entire ACS verification or consultation visit. Hospitals desiring to be Level III or Level IV Trauma Centers must be designated by hosting a formal site visit by the Department.

(3) Hospitals not previously designated as a Level I or a Level II trauma center, applying for designation after December 31, 2016, will be considered for designation implementing the point system suggested by the American College of Surgeons as follows and using data from the Utah Trauma Registry:

(a) population as defined by the federal Office of Management and Budget total Metropolitan Statistical Area (MSA);

(i) total MSA population of less than 600,000 receives 2 points,

(ii) total MSA population of 600,000 to 1,200,000 receives 4 points,

(iii) total MSA population of 1,200,000 to 1,800,000 receives 6 points,

(iv) total MSA population of 1,800,000 to 2,400,000 receives 8 points,

(v) total MSA population of greater than 2,400,000 receives 10 points.

(b) Median Transport Times (combined air and ground -- scene only no transfer);

(i) median transport time of less than 10 minutes received 0 points,

(ii) median transport time of 10 -- 20 minutes receives 1 points,

(iii) median transport time of 21 -- 30 minutes receives 2

points,

(iv) median transport time of 31 -- 40 minutes receives 3 points,

(v) median transport time of greater than 41 minutes receives 4 points.

(c) Department/System Stakeholder/Community Support;

(i) Department support for a trauma center(if none exist)or an additional trauma center in the MSA -- 5 points,

(ii) Department position that no additional trauma centers are needed -- negative 5 points,

(iii) Trauma System Advisory Committee (or equivalent body) statement of support for a trauma center (if none exist) or an additional trauma center in the MSA -- 5 points,

(iv) community support demonstrated by letters of support from 25- 50% of city and county governing bodies within the MSA -- 1 points,

(v) community support demonstrated by letters of support from over 50% of city and county governing bodies within the MSA -- 2 points.

(d) Severely injured patients (ISS more than 15) discharged from acute care facilities not designated as Level I, II, or III trauma centers;

(i) discharges of 0-200 severely injured patients receives 0 points,

(ii) discharges of 201 -- 400 severely injured patients receives 1 points,

(iii) discharges of 401 -- 600 severely injured patients receives 2 points,

(iv) discharges of 601 -- 800 severely injured patients receives 3 points,

(v) discharges of greater than 800 severely injured patients receives 4 points.

(e) Level I Trauma Centers;

(i) for the existence of each verified Level I trauma center already in the MSA assign 1 negative point,

(ii) for the existence of each verified Level II trauma center already in the MSA assign 1 negative point,

(iii) for the existence of each verified Level III trauma center already in the MSA assign 0.5 negative points.

(f) Numbers of severely injured patients (ISS more than 15) seen in trauma centers (Level I and II) already in the MSA. The expected number of high-ISS patients is calculated as: 500 x (Number of Level I and Level II centers in the MSA) = (Expected Number of high ISS patients);

(i) if the MSA has more than 500 severely injured patients above the expected number assign 2 points,

(ii) if the MSA has 0 - 500 severely injured patients above the expected number assign 1 point,

(iii) if the MSA has 0 - 500 fewer severely injury patients than the expected number assign 1 negative point,

(iv) if the MSA has more than 500 fewer severely injured patients than the expected number assign 2 negative points.

(g) The following scoring system shall be used to allocate trauma centers within the MSAs:

(i) MSAs with scores of 5 points or less shall be allocated 1 Level I or II trauma center;

(ii) MSAs with scores of 6 - 10 points shall be allocated 2 Level I or II trauma centers;

(iii) MSAs with score of 11 - 15 points shall be allocated 3 Level I or II trauma centers;

(iv) MSAs with scores of 16 - 20 points shall be allocated 4 Level I or II trauma centers.

(h) If the number of trauma centers allocated by the model is greater than the existing number of Level I or II trauma centers in the MSA, efforts should be undertaken to recruit and designate additional trauma centers.

(i) If the number of Level I and II trauma centers allocated by the model is less than or equal to the number currently designated, the Department should not designate additional Level I or II trauma centers in the MSA.

R426-9-700. Data Requirements for an Inclusive Trauma System.

(1) All hospitals shall collect, and monthly submit to the Department, Trauma Registry information necessary to maintain an inclusive trauma system. Designated trauma centers shall provide such data in a standardized electronic format approved by the Department. The Department shall provide funds to hospitals, excluding designated trauma centers, for the data collection process. In order to ensure consistent patient data collection, a trauma patient is defined as a patient sustaining a traumatic injury and meeting the following criteria:

(a) At least one of the following injury diagnostic codes: ICD10 Diagnostic Codes: S00-S00 with 7th character modifiers of A, B, or C only, T07, T14, T20-T28 with 7th character modifier of A, T30-T32, T79.A1-T79.A9 with 7th character modifier of A excluding the following isolated injuries: S00, S10, S20, S30, S40, S50, S60, S70, S80, S90. Late effect codes, which are represented using the same range of injury diagnosis codes but with the 7th digit modifier code of D through S are also excluded; and

(b) At least one of the following patient conditions:

Stay at a hospital greater than 12 hours (as measured from the Emergency Department arrival to patient discharge); transferred in or out of reporting hospital via EMS transport (including air ambulance); death resulting from the traumatic injury (independent of hospital admission or hospital transfer status.

(c) The Department adopt by reference the National Trauma Data Standard Data Dictionary for 2016 Admissions published by the American College of Surgeons, and the Utah Trauma Registry State Required Elements for 2016 published by the Department.

R426-9-800. Trauma Triage and Transfer Guidelines.

The Department adopts by reference the 2009 Resources and Guidelines for the Triage and Transfer of Trauma Patients published by the Utah Department of Health as model guidelines for triage, transfer, and transport of trauma patients. The guidelines do not mandate the transfer of any patient contrary to the judgment of the attending physician. They are a resource for pre-hospital and hospital providers to assist in the triage, transfer and transport of trauma patients to designated trauma centers or acute care hospitals which are appropriate to adequately receive trauma patients.

R426-9-900. Noncompliance to Trauma Standards.

(1) The Department may warn, reduce, deny, suspend, revoke, or place on probation a facility designation, if the Department finds evidence that the facility has not been or will not be operated in compliance to standards adopted under R426-9-300.

(2) A hospital, clinic, health care provider, or health care delivery system may not profess or advertise to be designated as a trauma center if the Department has not designated it as such pursuant to this rule.

R426-9-1000. Resource Hospital Minimum Designation Requirements.

A Resource Hospital shall meet the following minimum requirements for designation:

(1) Be licensed in Utah or another state as a general acute hospital or be a Veteran's Administration hospital operating in Utah;

(2) Have the ability to communicate with other EMS providers operating in the area;

(3) Provide on-line medical control for all pre-hospital EMS providers who request assistance for patient care, 24

hours-a-day, seven days a week;

(4) Create and abide by written pre-hospital emergency patient care protocols for use in providing on-line medical control for pre-hospital EMS providers;

(5) Train new staff on the protocols before the new staff is permitted to provide on-line medical control and annually review protocols with physician and nursing staff;

(6) Annually provide in-service training on the protocols to all physicians and nurses who provide on-line medical control;

(7) Make the protocols immediately available to staff for reference;

(8) Provide on-line medical control which shall include:

(a) direct voice communication with a physician; or

(b) a registered nurse or physician's assistant, who shall to be licensed in Utah, who is in voice contact with a physician;

(9) Implement a quality improvement process which shall include:

(a) representatives from local EMS providers that routinely transport patients to the resource hospital;

(b) quarterly meetings; and

(c) minutes of the quality improvement meetings which are available for Department review;

(10) Identify a coordinator for the pre-hospital quality improvement process;

(11) Cooperate with the pre-hospital EMS providers' off-line medical directors in the quality review process, including granting access to hospital medical records of patients served by the particular pre-hospital EMS provider;

(12) Participate in local and regional forums for performance improvement; and

(13) Assist the Department in evaluating EMS system effectiveness by submitting to the Department, in an electronic format quarterly data specified by the Department.

(14) Designated Trauma Centers are deemed to meet the Resource Hospital standards and are exempt from requirements outlined in this section.

R426-9-1100. Stroke Treatment and Stroke Receiving Facility Minimum Designation Requirements.

(1) A Primary or Comprehensive Stroke Treatment Center or an Acute Stroke Ready Hospital shall be accredited by the Joint Commission or other nationally recognized accrediting body.

(2) A hospital designated as a Stroke Receiving Facility for receiving stroke patients via Emergency Medical Services shall meet the following requirements:

(a) Be licensed as an acute care hospital in Utah;

(b) Require physician response to the emergency department in less than thirty (30) minutes for treatment of stroke patients;

(c) Maintain the ability of physician and nursing staff to utilize a standardized assessment tool for ischemic stroke patients;

(d) Maintain and utilize approved thrombolytic medications for treatment of patients meeting criteria for administration of thrombolytic therapy;

(e) Establish a standardized acute stroke protocol and authorize appropriate emergency department staff to implement the protocol when appropriate;

(f) Have ancillary equipment and personnel available to diagnose and treat acute stroke patients in a timely manner;

(g) Establish patient transport protocols with designated stroke treatment centers;

(h) Have a performance improvement program for acute stroke care and report data as required by the Department; and

(i) Submit to a site visit by representatives of the Department.

(3) Upon designation, the Department may, in consultation with off line EMS medical direction and protocol, recommend direct transport of stroke patients to a Stroke Receiving Center or a Stroke Treatment Center by licensed ambulance provider.

R426-9-1200. Percutaneous Coronary Intervention Center Minimum Designation Requirements.

(1) A Percutaneous Coronary Intervention (PCI) Center, for the purpose of receiving acute ST-elevation myocardial infarction (STEMI) patients via an ambulance, shall meet the following minimum designation requirements:

(a) Be licensed as an acute care hospital in Utah;

(b) Maintain an emergency department staffed by at least one (1) Physician and one (1) Registered Nurse at all times;

(c) Have the ability to receive 12 lead EKG data from licensed ambulance providers transporting patients to the hospital for treatment of ST Segment Elevation Myocardial Infarction (STEMI);

(d) Maintain the ability to provide cardiac catheterization and PCI of STEMI patients within ninety (90) minutes of patient arrival in the emergency department twenty four (24) hours a day and seven (7) days a week;

(e) Maintain a performance improvement program for STEMI care and report data to the Department as required by the Department; and

(f) Submit to a site visit by representatives of the Department.

(2) Upon designation, the Department may, in consultation with offline EMS medical direction and protocol, recommend direct transport of STEMI patients to a STEMI Treatment Center by a licensed ambulance provider.

(3) The PCI designation and re-designation period shall be for a period of three years.

R426-9-1300. Patient Receiving Facility Minimum Designation Requirements.

(1) A Patient Receiving Facility shall meet the following minimum designation requirements:

(a) Have the ability to communicate with licensed and designated EMS providers;

(b) Be staffed or have on-call physician, physician assistant, or nurse practitioner availability during designated hours with a response time of less than 20 minutes;

(c) Have and maintain ACLS and PALS certification;

(d) Attend meetings of the local EMS council, if one exists, to participate in the coordination and operations of local licensed and designated EMS providers;

(e) Abide by off-line protocols approved by the licensed ambulance provider's off-line medical director;

(f) Train staff on protocols used by the licensed ambulance providers who transport patients to the Patient Receiving Facility;

(g) Implement a quality improvement process of all patients received at the patient receiving facility with the local resource hospital or trauma center including access to medical records for patients transported by ambulance;

(h) Maintain equipment, services and medications on-site to provide Advanced Life Support (ALS) intervention and appropriate treatment. Equipment and services shall include:

(i) ECG;

(ii) ACLS medications;

(iii) laboratory services;

(iv) radiology services;

(v) oxygen delivery systems;

(vi) airway support equipment and supplies;

(vii) suction equipment and supplies; and,

(i) Submit to a yearly site visit by representatives of the Department; and

(j) Submit monthly data reports to the Department on all patients received by an ambulance, and in an electronic format

provided by the Department.

(2) The Department may recommend the preferential transportation of STEMI patients by ambulance to a Patient Receiving Facility.

KEY: emergency medical services, trauma, reporting, trauma center designation
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R432. Health, Family Health and Preparedness, Licensing.
R432-950. Mammography Quality Assurance.
R432-950-1. Authority.

This rule is adopted pursuant to Section 26-21a-203.

R432-950-2. Compliance.

Facilities shall be in full compliance with R432-950 and 42 U.S.C. 263b, the Mammography Quality Standards Act of 1992.

R432-950-3. Definitions.

(1) "Diagnostic mammography" means performing a mammogram on a woman suspected of having breast cancer.

(2) "Facility" means a hospital, outpatient department, clinic, radiology practice, or mobile unit, an office of a physician, or other facility that conducts breast cancer screening or diagnosis, including any or all of the following: operation of equipment to produce a mammogram, processing of film, initial interpretation of the mammogram, and the viewing conditions for that interpretation.

(3) "Image quality" means the overall clarity and detail of an x-ray including spatial resolution or resolving power, sharpness, and contrast.

(4) "Mammogram" means a radiographic image of the breast.

(5) "Mammogram unit" means an x-ray system designed specifically for breast imaging, providing optimum imaging geometry, a device for breast compression, and low dose exposure that can produce reproducible images of high quality.

(6) "Mammography" means radiography of the breast to diagnose breast cancer.

(7) "Phantom" means an artificial test object simulating the average composition of, and various structures within, the breast.

(8) "Screening mammography" means a standard readable two-view per breast low dose radiographic examination to detect unsuspected breast cancer using specifically designed equipment dedicated for mammography.

(9) "Quality assurance" means a program designed to achieve the desired degree or grade of care including evaluation and educational components to identify and correct problems in interpreting and obtaining mammogram.

(10) "Quality control" means the process of testing and maintaining the highest possible standards of equipment performance and acquisition of radiographic images.

R432-950-4. Facility Quality Assurance.

(1) The facility shall conduct a quality assurance program to assure the operation and the services provided are in accordance with R432-950.

(2) The facility shall correct identified deficiencies to produce desired results.

(3) The facility shall evaluate the corrections required for a systems change to update the quality assurance plan.

R432-950-5. Compliance with State and Local Rules.

(1) A supplier of mammography services shall comply with all applicable Federal, State, and local laws and regulations pertaining to radiological services and mammography services.

(2) The facility shall maintain documentation showing that it complies with all applicable state and local laws and rules pertaining to radiological and mammography services. This includes the following:

(a) Certification of the facility;

(b) Licensure or certification of the personnel;

(c) Documentation that the facility has been approved by the American College of Radiology (ACR).

R432-950-6. Facility Oversight.

(1) The facility is responsible for the overall quality of the mammography conducted.

(2) The facility shall have available, either on staff or through arrangement, sufficient qualified staff to meet patients' needs relating to mammography. Sufficient staff includes the following:

(a) A designated physician supervisor who meets the requirements for qualified physicians specified by the Utah Department of Commerce;

(b) A medical physicist who is certified by the American Board of Radiology in Radiological Physics or Diagnostic Radiological Physics, or who meets the requirements specified by the Department of Environmental Quality;

(c) One or more radiologic technologists who meet the requirements specified by the Utah Department of Commerce pursuant to Section 26-21a-203.

R432-950-7. Physician, Physicist and Radiologic Technologist Standards.

(1) A physician interpreting mammograms or supervising mammography, or both, shall provide documentation to the Department upon request showing he meets minimum qualifications specified by the Utah Department of Commerce and the Mammography Quality Standards Act. A qualified physician shall interpret the results of all mammograms. Diagnostic mammography shall be done under the direct on-site supervision of a qualified physician.

(2) A radiologic technologist shall meet the following requirements and the facility shall provide documentation to the Department upon request showing the radiologic technologist:

(a) Meets minimum qualifications specified by the Utah Department of Commerce and the Mammography Quality Standards Act;

(b) Obtains on-the-job training in mammography under the supervision of a qualified physician, or the supervising radiologic technologist, or both;

(c) Is competent in breast positioning and compression as determined from critiques by a qualified physician of mammogram films taken by the radiologic technologist;

(d) Is knowledgeable in facility policies concerning technical factors, radiation safety, radiation protection, and quality control as evaluated by the radiologic technologist's supervisor;

(e) Receives continuous supervision and feedback on image quality from the interpreting or supervising physician.

(3) A medical physicist must:

(a) be certified in an acceptable specialty by one of the bodies approved by the FDA to certify medical physicists;

(b) be licensed or approved by a State to conduct evaluations of mammography equipment as required by State law; or

(c) for those medical physicists associated with facilities that apply for accreditation before October 27, 1997, who meet training and experience requirements of Mammography Quality Standards Act and its implementing regulations.

R432-950-8. Personnel Requirements.

(1) The facility shall document that new staff orientation and ongoing in-service training is based on current written facility policies and procedures.

(2) Personnel shall have access to the facility's written policies and procedures when on duty.

(3) The facility shall implement a standardized orientation program for each employment position including the time for completing training.

(4) A written in-service training program shall identify the topics and frequency of training including an annual review of facility policies and procedures.

(5) The facility shall maintain personnel records documenting that each employee is qualified and competent to

perform respective duties and responsibilities by means of appropriate licensure or certification, experience, orientation, ongoing in-service training, and continuing education.

(6) The facility shall retain personnel records for terminated employees for a minimum of four years following the final date of termination.

R432-950-9. Equipment Standards.

(1) Mammogram units shall be designed specifically for mammography and shall have a compression device and the capability for placement of a grid.

(2) The facility shall maintain current written policies and procedures for operating equipment.

(3) Prior to initiating operation of a mammogram unit it shall be registered with the Utah Department of Environmental Quality.

R432-950-10. Safety Standards.

(1) The facility shall maintain documentation that the mammogram unit is safe and that proper radiation safety practices are being followed.

(2) The facility shall maintain documentation that employees have been trained on safety standards for radiation.

(3) The facility shall maintain procedure manuals and logs for equipment quality control.

(4) The facility shall maintain documentation that the quality control program complies with ACR quality control manuals for mammography or the equivalent.

(a) Equivalent programs shall include a quality control program for equipment, mammogram unit performance, and film processors, approved by the Utah Department of Environmental Quality.

(b) Equivalent programs shall contain stated objectives achieved by procedures comparable to objectives and procedures in the American College of Radiology Quality Control Manuals for Mammography.

(5) Accreditation by the American College of Radiology Mammography Program documents compliance with mammogram unit quality control requirements in R432-950-10(1).

R432-950-11. Technical Specifications for Mammography.

(1) The facility shall have available a phantom for use in the facility's ongoing quality control program.

(2) The facility shall evaluate image quality at least monthly using a phantom that produces measurements satisfactory to the supervising physician.

(3) The facility's evaluation of clinical images shall include the following:

(a) Positioning;
(b) Compression;
(c) Exposure level;
(d) Resolution;
(e) Contrast;
(f) Noise;
(g) Exam Identification;
(h) Artifacts.

R432-950-12. Physician Supervisor Responsibility.

(1) A physician supervisor is responsible for general oversight of the quality control program of the facility. Oversight responsibilities include:

(a) Annual review of the policy and procedure manual;

(b) Verification that the equipment and facility personnel meet applicable federal, state and local licensure and registration requirements;

(c) Verification that equipment is performing properly;

(d) Verification that safe operating procedures are used to protect facility personnel and patients;

(e) Verification that all other requirements of R432-950 are being met.

(2) The physician shall document annually that he provides oversight for the quality control of the mammography service.

R432-950-13. Mammography Records.

(1) A medical record shall be maintained for each patient on whom screening or diagnostic mammography is performed.

(a) Provision shall be made for the filing, safe storage and accessibility of medical records.

(b) Records shall be protected against loss, defacement, tampering, fires, and floods.

(c) Records shall be protected against access by unauthorized individuals.

(d) All records shall be readily available upon the request of:

(i) The attending physician,

(ii) Authorized representatives of the Department for determining compliance with licensure rules;

(iii) Any other person authorized by written consent.

(e) The facility shall establish a system to assure that the patient's mammogram is accessible for clinical follow-up when requested.

(i) A copy of the mammogram and other appropriate information shall be sent to the requesting party responsible for subsequent medical care of the patient no later than 14 working days from the request for information. This shall include the full notification and follow up required under Utah Code 26-21a-206 and Administrative Code R432-950-14.

(ii) Medical information may be released only upon the written consent of the patient of her legal representative.

(2) The facility shall attempt to obtain a prior mammogram for each patient if the prior mammogram is necessary for the physician to properly interpret the current exam.

(3) The interpreting physician shall prepare and sign a written report of his interpretation of the results of the screening mammogram.

(a) The written report shall include a description of detected abnormalities and recommendations for subsequent follow-up studies.

(b) The interpreting physician shall render the report as soon as reasonably possible.

(c) The interpreting physician or his designee shall document and communicate the results of the report to the referring physician or his designated representative by telephone, by certified mail, or in such a manner that receipt of the report is assured.

(d) The interpreting physician or his designee shall notify self-referred patients, that is, patients who have no referring physician, of the results of the screening study in writing and in lay language.

(4) The interpreting physician or his designee shall document and communicate the results of all diagnostic reports in the high probability category with suspicion of breast cancer to the referring physician or his designated representative by telephone, by certified mail, or in such a manner that receipt of the report is assured.

(5) The physician shall document and communicate in person in lay language, by certified mail, or in such a manner that receipt of the diagnostic report is assured to all self-referred patients within the high probability category with a suspicion of breast cancer. The report shall indicate whether the patient needs to consult with a physician.

(a) The interpreting physician or his designee shall attempt to make a follow-up contact with the patient to determine whether she has consulted a physician for follow-up care.

(b) The interpreting physician or his designee shall document in the patient's medical record attempts to

communicate the results to the patient.

(6) The facility shall retain the original and subsequent mammograms for a period of at least five years from the date of the procedure.

R432-950-14. Education and Notification Requirements.

(1) A patient has the right to be treated with dignity and afforded privacy during the examination.

(2) The facility shall establish an education system to ensure that the patient understands:

(a) The purpose of the mammogram and how it is used to screen for breast cancer;

(b) The process required to obtain the mammogram;

(c) The importance of the screening mammography to her ongoing health.

(3) As required in Utah Code 26-21a-206, the facility shall include the following notification and information with a mammography result provided to a patient with dense breast tissue: "Your mammogram indicates that you have dense breast tissue. Dense breast tissue is common and is found in as many as half of all women. However, dense breast tissue can make it more difficult to fully and accurately evaluate your mammogram and detect early signs of possible cancer in the breast. This information is being provided to inform and encourage you to discuss your dense breast tissue and other breast cancer risk factors with your health care provider. Together, you can decide what may be best for you. A copy of your mammography report has been sent to your health care provider. Please contact them if you have any questions or concerns about this notice."

(4) The copy of the mammography report provided to the patient and the health care provider shall include the dense breast tissue notification required under Utah Code 26-21a-206.

R432-950-15. Collecting and Reporting Data.

(1) The facility shall establish a system for collecting and periodic reporting of mammography examinations and clinical follow-up as provided below:

(a) Clinical follow-up data shall include the follow-up on the disposition of positive mammographic findings, and the correlation of the surgical biopsy results with mammogram reports.

(b) The facility shall maintain records correlating the positive mammographic findings to biopsies done and the number of cancers detected.

(c) The facility shall report the results of the outcomes annually to the Department or its designated agent, on forms furnished by the Department. The report shall include as a minimum:

(i) The number of individuals receiving screening mammograms;

(ii) Total number of patients recommended for biopsy based on a screening mammogram;

(iii) Total number of patients diagnosed with breast cancer based on a screening mammogram;

(iv) The number and names of individuals with positive mammographic findings lost to follow-up.

(2) The Department or its designated agent shall provide each reporting facility, on a schedule determined by the Department, summary statistical reports which permit each facility to compare its results to statewide and other comparative statistics.

R432-950-16. State Certification.

(1) No facility, person or governmental unit acting severally or jointly with any other person, may establish, conduct or maintain a mammography unit without first obtaining a state certificate from the Department.

(2) An applicant for state certification shall file a Request for Agency Action/Certification Application with the Utah Department of Health on forms furnished by the Department.

(3) Each facility shall comply with all zoning, building and licensing laws, rules and ordinances and codes of the city and county in which the facility is located. The applicant shall submit the following to the Department:

(a) Verification of participation and quality control by the American College of Radiology for monitoring mammography services in the facility;

(b) Verification of licensure or certification of required personnel;

(c) Fees established by the Utah State Legislature pursuant to Section 63-38-3.

(4) The Department shall render a decision on the initial certification within 60 days of receipt of a completed application packet or within 6 months of date that the first component of an application packet was received.

(a) Upon verification of compliance with state certification requirements, the Department shall issue a provisional certificate.

(b) The Department shall issue a notice of agency decision under the procedures for informal adjudicative proceedings denying a state certification if the applicant is not in compliance with the applicable laws or rules. The notice shall state the reasons for denial.

(5) Certificate Contents and Provisions. The state certificate shall include the name of the mammography facility, owner, supervising physician, address, issue and expiration dates of the state certificate and the certificate number.

(b) The state certificate may be issued only to the owner and for the premises described in the application and shall not be assignable or transferable.

(c) Each state certificate is the property of the Department and shall be returned within five days if the certification is suspended, revoked, or if the operation of the facility is discontinued.

(d) The state certificate shall be prominently displayed where it can be easily viewed by the public.

(6) Certification periods shall be for 24 months, and expire at midnight 24 months from the date of issuance.

(a) A request for renewal and applicable fees shall be filed with the Department 15 days before the state certificate expires.

(b) Failure to make a timely renewal shall result in assessment of late fees as established by the Utah State Legislature pursuant to Section 26-21a-203.

(7) The owner shall submit a Request for Agency Action/Application to amend or modify state certification status at least 30-days before any of the following proposed or anticipated changes occur:

(a) Change in the name of the facility;

(b) Change in the supervising physician;

(c) Change in the owner of the facility.

(8) The owner who wants to cease operation shall complete the following:

(a) Notify the patients within 30 days before the effective date of closure.

(b) Make adequate provision for the safekeeping of records and notify the department where those records will be stored.

(c) Return the state certificate to the Department within five days after the facility ceases operation.

(9) The Department may issue a provisional state certificate to a facility as an initial certification and may issue a provisional state certification to a facility that does not fully comply with the requirements for a standard certification but has made acceptable progress towards meeting the requirements.

(a) In granting a provisional state certification, the Department must be assured that the lack of full compliance does not harm the health, safety, and welfare of the patients.

(b) A provisional state certificate is nonrenewable and

shall be issued for no more than 6 months.

R432-950-17. Inspections.

Upon presentation of proper identification, authorized representatives of the Department shall be allowed to enter a facility at any reasonable time without a warrant and be permitted to review records including medical records, when it is determined by the Department to be necessary to ascertain compliance with state law and rules promulgated under Section 26-21a-205.

(1) Each facility may be inspected by the Department or its designee to determine compliance with minimum standards and the applicable rules.

(2) Upon receipt of the survey results of the ACR, the facility shall submit copies of the certificate and the survey report and recommendations.

(3) The accreditation documents are open to the public.

(4) The Department may conduct periodic validation inspections of facilities accredited by the ACR for the purpose of determining compliance with state requirements.

R432-950-18. Enforcement and Appeal Process.

Whenever the Department has reason to believe that the facility is in violation of Section 26-21a-203 or any of the rules adopted pursuant to Title 26, Chapter 21, the Department shall issue a written Statement of Findings/Plan of Correction to the certified facility.

KEY: health care facilities, mammography
October 23, 2018 26-21a-203
Notice of Continuation September 15, 2016

R512. Human Services, Child and Family Services.
R512-41. Qualifying Adoptive Families and Adoption Placement.
R512-41-1. Purpose and Authority.

(1) The purpose of this rule is to define the requirements used to qualify adoptive parent(s) and the criteria for adoption placement used by the Division of Child and Family Services (Child and Family Services).

(2) This rule is authorized by Section 62A-4a-102. This rule also incorporates by reference Public Law 110-351 (2008).

R512-41-2. Definitions.

(1) For the purpose of this rule the following definitions apply:

(a) "Adoptive parent(s)" means a couple or individual who completes Child and Family Services training and has a completed home study for prospective adoptive parent(s) and is approved by Child and Family Services.

(b) "Permanency" means the establishment and maintenance of a permanent living situation for a child to give the child an internal sense of family stability and belonging and a sense of self that connects the child to his or her past, present, and future.

R512-41-3. Requirements for Adoptive Parent(s).

(1) Prospective adoptive parent(s) who apply to adopt a child in the custody of Child and Family Services, including a relative of a child or a Child and Family Services employee, must meet all of the requirements listed in Rule R512-40.

R512-41-4. Adoption Decision.

(1) Permanency decisions should be made in a timely manner, recognizing the child's developmental needs and sense of time. Child and Family Services shall make intensive efforts to place the child with the adoptive parent(s) within 30 days after the court determined a permanency goal of adoption for the child.

(2) When the child is not residing with the family that will adopt the child, Child and Family Services will reconsider any potential kinship caregivers or other adults known to the child.

(3) Concurrently, the Adoption Committee or committees should seek other resource families in all regions of the state to select adoptive parent(s) who could meet the child's needs.

(4) If adoptive parent(s) are not found for the child within 30 days of the primary permanency goal becoming adoption, the child must be registered with The Adoption Exchange to help recruit adoptive parents.

(5) Geographic boundaries alone should not present barriers or delays to the selection of adoptive parent(s).

(6) The Indian Child Welfare Act, 25 USC 1915 (January 3, 2007), takes precedent for an adoption of an Indian child who is a member of a federally recognized tribe or Alaskan native village.

(7) Placements will be made in accordance with the Interethnic Adoption Act, 42 USC 1996b (2010).

R512-41-5. Matching the Child and the Adoptive Parent(s).

(1) The selection of the adoptive parent(s) for a child or sibling group will be determined based on the best interest of the child.

(2) The decision must be based on a thorough assessment of the child's current and potential development, medical, emotional, and educational needs, as well as needs for family connections.

(3) The capacity of the prospective adoptive parent(s) to successfully meet the child's needs and to love and accept the child as a fully integrated member of the family must be considered.

(4) The child's preference may be considered, if the child has the capacity to express a preference.

(5) Sibling groups should not be separated.

(a) If siblings are not placed together and there are no safety concerns that preclude the siblings being together, Child and Family Services should reconsider a family for all the siblings to be adopted together.

(b) If the siblings are not able to be adopted together or if being taken from a current family would create undue trauma to the child, arrangements should be made to allow life-long contact to be pursued between the adoptive families of the separated siblings.

(6) Foster care parent(s) (or other caregiver with physical custody) of the child may be given preferential consideration for adoption if the child has substantial emotional ties with the foster parent(s)/caregiver and if removal of the child from the foster parent(s)/caregiver would be detrimental to the child's well-being.

(7) Child and Family Services shall provide detailed information about the child to the prospective adoptive parent(s), allowing sufficient time for the prospective adoptive parent(s) to make an informed decision regarding placement of the child. The information given to the prospective adoptive parent(s) must include detailed information available in writing that is important to raise the child. Child and Family Services and the prospective adoptive parent(s) will acknowledge receipt of the information by signing a Child and Family Services' information disclosure form. Child and Family Services shall respond to questions or concerns of the prospective adoptive parent(s). The prospective adoptive parent(s) shall have the opportunity to meet the child prior to permanent placement. Release of all documents is subject to the Government Records Access Management Act, Title 63G, Chapter 2.

(8) When the approved adoptive parent(s) agree to accept the placement of a child for adoption, the adoptive parent(s) and a representative from Child and Family Services shall sign an agreement for the intent to adopt a specific child on a form provided by Child and Family Services.

(9) When the adoptive parent(s) agree to accept the placement of a child who is not free for adoption, the parent(s) shall sign Child and Family Services' foster care agreement.

R512-41-6. Placement.

(1) Child and Family Services will make every effort to make a smooth and effective transition of the child to the prospective adoptive parent(s) with the cooperation of the foster family and others who have a supportive relationship with the child.

(2) All out-of-home requirements continue to be applicable until the adoption is finalized.

(3) The prospective adoptive parent(s) will have access to all relevant information in the case record to help them understand and accept the child and preserve the child's history.

(4) The prospective adoptive parent(s) shall be advised about adoption assistance available to meet the special needs of the child before and after the adoption is final, as well as of community services.

(5) Child and Family Services will develop a Child and Family Plan within 30 days of placement and supervise the adoptive placement, including frequent visits with the child and adoptive family for at least the first six months after placement.

(6) Child and Family Services' supervision will continue until the adoption is final.

R512-41-7. Adoption Disruption/Removal of a Child from Adoptive Parent(s) Prior to Finalization.

(1) Child and Family Services shall consider removal of a child before an adoption is finalized if the adoptive parent(s) request removal or if serious circumstances impair the child's security or development.

(2) Prior to removal, Child and Family Services shall respond to the adoptive parent(s)' concerns in a timely manner, counsel with the adoptive parent(s), and, if possible and appropriate, offer further treatment, including intensive in-home services or temporary removal of the child from the home for respite purposes.

(3) When removal is recommended, the Adoption Committee shall review the placement progress and present situation, and shall decide to either continue placement with further services or to remove the child from the home. The region director will review and approve the decision.

(4) If the Adoption Committee decides to remove the child, a Notice of Agency Action shall be sent to the adoptive parent(s), notifying them of their due process rights. The adoptive parent(s) shall be offered the same rights as those offered a foster family regarding removal of a child (Rule R512-31).

(5) Child and Family Services will reconsider any potential kinship caregivers if the child is disrupted or removed from an adoptive placement or a permanent placement has not been identified.

R512-41-8. Adoption Finalization and Post Adoption.

(1) Before an adoption is final, the Adoption Assistance Committee shall assess if the child qualifies for adoption assistance and, when appropriate, what level of monthly subsidy the child is eligible to receive (Rule R512-43).

(2) The prospective adoptive family shall be made aware of available post adoption resources.

R512-41-9. Adoption Committee.

(1) An Adoption Committee will be appointed in each Child and Family Services region and will consist of at least three members to include senior-level Child and Family Services staff and one or more members from an outside agency with expertise in adoption or foster care.

(2) The Adoption Committee is responsible for deciding adoptive parent(s) who can best meet the needs of a child when the child is not residing with the family that will adopt. The Adoption Committee is also responsible for recommending removal of the child from a placement when indicated.

(3) Anyone who has information regarding the child and the prospective adoptive parents under consideration may be invited by the Adoption Committee to present information but not to participate in the deliberations.

(4) Any member of the Adoption Committee who has a potential conflict of interest must recuse himself or herself from the proceeding.

(5) The Adoption Committee will reach its decision through consensus. If consensus cannot be reached, the Adoption Committee will submit their recommendation to the region director for a decision.

(6) Child and Family Services will send written notification of selection to the adoptive parent(s).

(7) A family or individual that is not selected for an adoption placement of a specific child shall have no right to appeal the decision, unless the parent(s) not selected for the adoptive placement is the child's current foster parent(s) and the foster parent(s) have completed all requirements. If the foster parent(s) are not selected for the adoptive placement, the foster parent(s) due process rights for removal of a child apply (Rule R512-31).

(8) The adoption committee will make and retain a written record of their proceedings. All proceedings are confidential.

R512-41-10. Adult Adoptee or Adoptive Parent(s) Request for Records.

(1) The adoption records of Child and Family Services shall be made available to the adoptive parent(s) or adult adoptee upon written request in accordance with the Government Records Access Management Act, Title 63G, Chapter 2. An adult adoptee may also register with the Utah Department of Health Mutual-Consent, Voluntary Adoption Registry, Section 78B-6-144 to attempt to contact biological family members.

R512-41-11. Information Regarding the Adoptive Parent(s).

(1) No identifying information regarding the adoptive parent(s) shall be released to birth families without the written consent of the adoptive parent(s).

KEY: child welfare, adoption

May 9, 2016	**62A-4a-102**
Notice of Continuation October 15, 2018	**62A-4a-105**
	62A-4a-205.6

R512. Human Services, Child and Family Services.
R512-75. Rules Governing Adjudication of Consumer Complaints.
R512-75-1. Introductory Provisions.

(1) Purpose and Authority.

(a) The purpose of this rule is to define consumer complaint procedures, intended to provide for the prompt and equitable resolution of a consumer complaint filed in accordance with this rule.

(b) This rule is authorized by Section 62A-4a-102.

(2) Definitions.

(a) The definitions contained in Section 63G-4-103 apply. In addition, the following terms are defined for the purposes of this section:

(i) "Absorbable within Child and Family Services' appropriation authority" means those expenditures that fall within Child and Family Services' budgetary parameters.

(ii) "Aggrieved Person" or "Complainant" means any person who is alleged to have been adversely affected by an act or omission of Child and Family Services or its employees.

(iii) "Child and Family Services" means the Division of Child and Family Services of the Department of Human Services, including its regional offices.

(iv) The "Department" means the Department of Human Services.

(v) The "Director" means the Director of Child and Family Services.

(vi) "Office of the Child Protection Ombudsman" means the office, separate from Child and Family Services, designated by the Department to investigate a consumer complaint regarding Child and Family Services.

(vii) "Ombudsman Service Review Analyst" means the representative from the Office of the Child Protection Ombudsman designated to investigate a consumer complaint.

(viii) "Reasonable time" means the time specified in the action plan.

R512-75-2. Procedures for Filing an Initial Informal Non-adjudicative Complaint With Child and Family Services.

(1) An aggrieved person shall first make a reasonable attempt to resolve a complaint with a caseworker and the caseworker's supervisor. If resolution is not reached, a complaint may be filed with the regional office.

(2) If there is a filing of an initial complaint with a regional office:

(a) The complainant or aggrieved person shall make a complaint within six months from the date of the alleged circumstances giving rise to the complaint. A complaint may be made in any form.

(b) Each complaint shall:

(i) include the aggrieved person's name, address, and phone number;

(ii) describe Child and Family Services' alleged act or omission in sufficient detail to inform Child and Family Services of the nature and date of the alleged event.

(iii) describe the action desired; and

(c) The complaint shall be provided to the Child and Family Services regional designee. The region shall have ten working days from the date of the filing of the complaint to submit a response to the complaint.

(3) Investigation of the Complaint by the Regional Office.

(a) Complaints received by Child and Family Services' Constituent Services Office will be forwarded to the regional office or appropriate Child and Family Services staff to address the complaint. The regional office or state specialist will contact the complainant and address the complaint. The Child and Family Services regional office or Child and Family Services staff may hold meetings of the concerned parties. The review shall be conducted to the extent necessary to assure that all relevant facts are reviewed. If the complaint is resolved no further action is necessary.

(b) Within 20 calendar days of receiving the complaint, the regional office or Child and Family Services staff shall issue a written decision to the Child and Family Services Constituent Services Office, setting forth its action plan to address the complaint.

(c) If a complaint filed with a regional office is not adequately addressed, the complaint shall be forwarded to the Child and Family Services Constituent Services Office.

(d) A complaint filed with the Child and Family Services Constituent Services Office that is not resolved to the satisfaction of the complainant shall be forwarded to the Office of the Child Protection Ombudsman. Child and Family Services shall immediately notify the aggrieved person in writing that the complaint is being forwarded to the Office of Child Protection Ombudsman. Child and Family Services will forward copies of all correspondence regarding the steps taken by Child and Family Services to address the complaint to the Office of Child Protection Ombudsman.

R512-75-3. Procedures for Filing an Informal Non-adjudicative Complaint With the Office of the Child Protection Ombudsman.

(1) An aggrieved person may file a complaint to decision rendered by a regional office to the Office of the Child Protection Ombudsman, or if Child and Family Services is unable to resolve the complaint, it shall be forwarded to the Office of Child Protection Ombudsman according to the requirements of R515-1, Processing Complaints Regarding the Utah Division of Child and Family Services.

R512-75-4. Compliance with and Appeal of Recommendations of the Office of the Child Protection Ombudsman.

(1) Once the Office of the Child Protection Ombudsman completes an investigation according to the provisions of R515-1 and if recommendations are made to Child and Family Services, Child and Family Services has ten calendar days to agree with the recommendations.

(2) If Child and Family Services does not agree with the recommendation, Child and Family Services may file an appeal to the recommendations of the Office of the Child Protection Ombudsman within ten calendar days of receipt of the recommendations from the Office of Child Protection Ombudsman. The appeal shall be filed with the Department Executive Director and request that the recommendations be amended.

KEY: consumer hearing panel, grievance procedures
September 15, 2010 **62A-4a-102**
Notice of Continuation October 15, 2018 **63G-2-304**
63G-2-305
63G-2-603
63G-4 et seq.

R512. Human Services, Child and Family Services.
R512-306. Out-of-Home Services, Transition to Adult Living Services, Education and Training Voucher Program.
R512-306-1. Purpose and Authority.

(1) The Education and Training Voucher Program assists individuals in out-of-home care to make a more successful transition to adulthood. The Education and Training Voucher program provides the financial resources for postsecondary education and vocational training necessary to obtain employment or to support the individual's employment goals.

(2) The Education and Training Voucher Program is authorized by Public Law No. 107-133, which is incorporated by reference. 20 USC 1087kk and 20 USC 108711 (January 3, 2007) are also incorporated by reference.

(3) This rule is authorized by Section 62A-4a-102.

R512-306-2. Definitions.

(1) The following terms are defined for the purposes of this rule:

(a) Institution of higher education means a school that:

(i) Awards a bachelor's degree or not less than a two-year program that provides credit towards a degree, or

(ii) Provides not less than one year of training towards gainful employment, or

(iii) Is a vocational program that provides training for gainful employment and has been in existence for at least two years, and that also meets all of the following:

(A) Admits as regular students only persons with a high school diploma or equivalent; or who are beyond the age of compulsory school attendance (Sections 53A-11-101 and 53A-11-102).

(B) Public or non-profit facility; and

(C) Accredited or pre-accredited by a recognized accrediting agency that the Secretary of Education determines to be reliable and is authorized to operate in the state.

(b) Satisfactory progress means maintaining at least a C grade average or 2.0 on a 4.0 scale on a cumulative basis or equivalent passing status as determined by the educational institution.

(c) GED means General Education Development.

(d) Child and Family Services means the Division of Child and Family Services.

(e) Full-time means enrollment in the standard number of credit hours for each semester or quarter as defined by the educational institution.

(f) Out-of-home care means substitute care for children in the custody of the Department of Human Services/Division of Child and Family Services and/or Native American Tribes.

(g) Part-time means enrollment in fewer credit hours than the full-time standard as defined by the educational institution.

R512-306-3. Scope of Program.

(1) To be eligible for the Education and Training Voucher Program, an individual must meet all of the following requirements:

(a) An individual in out-of-home care who has not yet reached 21 years of age, or

(b) An individual no longer in out-of-home care, but who received 12 months of Transition to Adult Living services after the age of 14 years while in out-of-home care and the court terminated reunification, or

(c) An individual no longer in out-of-home care who reached 18 years of age while in out-of-home care and who has not yet reached 21 years of age, or

(d) An individual adopted from out-of-home care after reaching 16 years of age and who has not yet attained 21 years of age, and

(e) Has an individual educational assessment and individual education plan completed by Child and Family Services or their designee;

(f) Submits a completed application for the Education and Training Voucher Program;

(g) Is accepted to a qualified college, university, or vocational program;

(h) Applies for and accepts available financial aid from other sources before obtaining funding from the Education and Training Voucher Program;

(i) Enrolls as a full-time or part-time student in the college, university, or vocational program; and

(j) Maintains a 2.0 cumulative grade point average on a 4.0 scale or equivalent as determined by the educational institution.

(2) The application and attachments will be reviewed and approved by regional Transition to Adult Living program staff or their designee. Individuals meeting all requirements will be accepted for program participation when Education and Training Voucher Program funding is available. If demand exceeds available funding, Child and Family Services may establish a waiting list, which will then be awarded to the applicants in the order received on a first-come first-serve basis for funding or Child and Family Services may approve applications for lesser amounts of funding. The individual will receive written notice of approval or denial of the application. If denied or terminated, a written reason for denial will be provided.

(3) If an application for benefits under the Education and Training Voucher Program is denied, the applicant has the right to appeal the decision through an administrative hearing in accordance with Section 63G-4-301.

(4) The individual may participate in the Education and Training Voucher Program until:

(a) The completion of the degree or vocational program; or

(b) The individual reaches age 21 years.

(c) If an individual attains age 21 years while enrolled in the Education and Training Voucher Program, the individual may continue in the program until age 23 years as long as the individual is attending an accredited or pre-accredited college, university, or vocational program full-time or part-time, is making satisfactory progress, and funding continues to be available. The individual must make a written request and receive a written approval prior to his or her 21st birthday to be continued for eligibility for the Education and Training Voucher Program.

(5) The individual must provide ongoing documentation of full-time or part-time enrollment, satisfactory progress as detailed in the individual education plan, additional requests for funding, and any changes in total costs for attendance or other financial aid to Child and Family Services in order to continue receiving benefits under the program.

(6) A program participant who receives less than a 2.0 GPA in a single grading period will be placed on probationary status and,

(a) The individual will receive written notice of the probationary status. The individual will have one subsequent grading period to regain or show significant progress toward a 2.0 GPA to continue in the program.

(b) Upon completion of a satisfactory grading period, the participant will be notified that the probation period is over.

(c) The participant that does not receive satisfactory grades while on probation will receive written notice of loss of eligibility for the Education and Training Voucher Program.

(7) An individual under age 21 years who has previously been denied acceptance to the program or who lost eligibility for the program due to not making satisfactory progress may reapply for the program at any time.

(8) An individual may receive vouchers up to a maximum amount of $5,000 per year through the Education and Training

Voucher Program. Amounts are determined by the cost of tuition at specific educational institutions and enrollment status.

(a) In accordance with 20 USC 1087kk, the total amount awarded may not exceed the total cost of attendance, as described in R512-306-4, minus:

(i) Expected contributions from the individual's family; and

(ii) Estimated financial assistance from other State or Federal grants or programs.

(b) Awards are subject to the availability of Child and Family Services Education and Training Voucher Program funds appropriated for this program.

(c) In accordance with 42 USC 677, the amount of benefits received through the Education and Training Voucher Program may be disregarded in determining an individual's eligibility for, or amount of, any other Federal or Federally supported assistance.

KEY: out-of-home care, Transition to Adult Living
December 22, 2010 62A-4a-102
Notice of Continuation October 19, 2018 62A-4a-105
63G-4-301

R590. Insurance, Administration.
R590-267. Personal Injury Protection Relative Value Study Rule.
R590-267-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3) and 31A-22-307(2).

R590-267-2. Purpose.

(1) The purpose of this rule is to establish a reasonable value of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person under automobile personal injury protection coverage as described in Subsection 31A-22-307(1)(a).

(2) As required by Subsection 31A-22-307(2), the reasonable value is based on the 75th percentile of medical, dental, and chiropractic charges, as they presently exist in the most populous county in this State.

R590-267-3. Scope.

This rule applies to services and accommodations provided:

(1) under automobile personal injury protection coverage as described in Subsection 31A-22-307(1)(a); and

(2) on or after January 1, 2014.

R590-267-4. Definitions.

(1) As used in this rule "Conversion Factor" means a multiplier used to convert the relative value unit or units of a service or a procedure to a reimbursement rate.

(2) As used in this rule "RVD 2017" means 2017 Edition of the Relative Values for Dentists published by Optum360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; email: customerassistance@optum.com; website: www.optumcoding.com.

(3) As used in this rule "RVD 2015" means 2015 Edition of the Relative Values for Dentists published by Optum360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; email: customerassistance@optum.com; website: www.optumcoding.com.

(4) As used in this rule "RVP 2017" means 2017 Edition of the Relative Values for Physicians published by Optum360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; email: customerassistance@optum.com; website: www.optumcoding.com.

(5) As used in this rule "RVP 2015" means 2015 Edition of the Relative Values for Physicians published by Optum 360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; email: customerassistance@optum.com; website: www.optumcoding.com.

(6) As used in this rule "Relative Value Unit" means a numerical value assigned to a medical or dental procedure as published in RVP and RVD respectively.

(7) The publications identified in Subsections R590-267-4(2), (3), (4), and (5) are hereby incorporated by reference within this rule.

R590-267-5. Conversion Factors.

(1)(a) The following conversion factors shall be used with RVP 2017 to determine the reasonable value of medical services or accommodations provided on or after January 1, 2018:

(i) anesthesia, 99.27;
(ii) surgery, 225.90;
(iii) radiology, 37.50;
(iv) pathology, 25.00;
(v) medicine, 13.00;
(vi) evaluation and management, 14.65.

(b) The conversion factor used with RVD 2017 to determine the reasonable value of dental services or accommodations provided on or after January 1, 2018 shall be 63.00.

(2)(a) The following conversion factors shall be used with RVP 2015 to determine the reasonable value of medical services or accommodations provided from January 1, 2016 through December 31, 2017:

(i) anesthesia, 97.13;
(ii) surgery, 200.00;
(iii) radiology, 35.84;
(iv) pathology, 24.29;
(v) medicine, 11.67;
(vi) evaluation and management, 13.16.

(b) The conversion factor used with RVD 2015 to determine the reasonable value of dental services or accommodations provided from January 1, 2016 through December 31, 2017 shall be 60.00.

R590-267-6. Fee Schedule.

The reasonable value of any service or accommodation shall be calculated by multiplying the relative value unit assigned to the service or accommodation by the applicable conversion factor prescribed in R590-267-5.

R590-267-7. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-267-8. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: relative value study
January 1, 2018 31A-2-201(3)
Notice of Continuation October 24, 2018 31A-22-307(2)

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-1. Authority.

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Utah Occupational Safety and Health Division, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Utah Occupational Safety and Health Division of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of the Utah Occupational Safety and Health Division, incorporating by reference applicable federal standards from 29 CFR 1904, 1908, 1910 and 1926, and the Utah initiated occupational safety and health standards found in Utah Administrative Code R614-1 through R614-7.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administrator" means the director of the Division.

D. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

E. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

F. "Commission" means the Utah Labor Commission.

G. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of any time frame shall be included. If the last day of any time period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday.

H. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

I. "Division" means the Utah Occupational Safety and Health Division (UOSH) within the Commission.

J. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

K. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

L. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

M. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

N. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

O. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent

is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

P. "Hearing" means a proceeding conducted by the commission.

Q. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

R. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

S. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

T. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

U. "Publish" means publication in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

V. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

W. "Safety and Health Officer" means a person authorized by the Division to conduct inspections.

X. "Secretary" means the Secretary of the United States Department of Labor.

Y. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

Z. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

AA. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-1-12B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

BB. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

CC. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. The following federal occupational safety and health standards are hereby incorporated:

1. 29 CFR 1904, July 1, 2017, is incorporated by reference, except 29 CFR 1904.36 and the workplace fatality, injury and illness reporting requirements found in 29 CFR 1904.1, 1904.2, 1904.7 and 1904.39. Workplace fatalities, injuries and illnesses shall be reported pursuant to the more specific Utah standards in Utah Code Ann. Subsection 34A-6-301(3)(b)(2) and the Utah Administrative Code R614-1-5(C)(1).

2. 29 CFR 1908, July 1, 2015, is incorporated by reference.

3. 29 CFR 1910.6 and 1910.21 through the end part of 1910, July 1, 2017, are incorporated by reference, except 29 CFR 1910.1024.

4. 29 CFR 1926.6 and 1926.20 through the end of part 1926, of the July 1, 2017, edition are incorporated by reference, except 29 CFR 1926.1124.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and

place of employment of every employee engaged in construction work of:

1. New construction and building;
2. Remodeling, alteration and repair;
3. Decorating and painting;
4. Demolition; and
5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall within 8 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

2. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor commission or one of its Compliance Officers.

3. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

4. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employers' first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational disease which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

5. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

6. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational disease resulting in medical treatment, loss of consciousness, loss of work, restriction or work, or transfer to another job.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)
(2) Doctor
(3) Hospital
(4) Ambulance
(5) Fire Department
(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being

started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

F. All requirements of PSM Standard 29 CFR 1910.119 are hereby extended to include the blister agents, HT, HD, H, Lewisite, and the nerve agents, GA, VX.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are

physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records

shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After

considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any

court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

U. Multi-Employer worksites.

1. Pursuant to Section 34A-6-201 of the Act, violation of an applicable standard adopted under Section 34A-6-202 of the Act at a multi-employer worksite may result in a citation issued to more than one employer.

2. An employer on a multi-employer worksite may be considered a creating, exposing, correcting, or controlling employer. An employer may be cited should:

a. It meet the definition of a creating employer and be found to have failed to exercise the duty of care required by this Rule for a creating employer: or

b. It meet the definition of an exposing, correcting, or controlling employer and be found to have failed to exercise the duty of care required by this Rule for that category of employer.

c. Even if an employer meets its duty of reasonable care applicable to one category of employer, it may still be cited should it meet the definition of another category of employer

and be found to have failed to exercise the duty of care required by this Rule for that category of employer. No employer will be cited for the same violation under multiple categories of employers.

3. Creating Employer. A creating employer is one that created a hazardous condition on the worksite. A creating employer may be cited if:

a. Its own employees are exposed or if the employees of another employer at the site are exposed to this hazard; and

b. The employer did not exercise reasonable care by taking prompt and effective steps to alert employees of other employers of the hazard and to correct or remove the hazard or, if the creating employer does not have the ability or authority to correct or remove the hazard, to notify the controlling or correcting employer of the hazard.

4. Exposing Employer. An exposing employer is one that exposed its own employees to a hazard. If the exposing employer created the hazard, it is citable as the creating employer, not the exposing employer.

a. If the exposing employer did not create the hazard, it may be cited as the exposing employer if:

i. It knew of the hazard or failed to exercise reasonable care to discover the hazard; and

ii. Upon obtaining knowledge of the hazard, it failed to take prompt and reasonable precautions, consistent with its authority on the worksite, to protect its employees.

b. An exposing employer will be deemed to have exercised reasonable care to discover a hazard if it demonstrates that it has regularly and diligently inspected the worksite.

c. If the exposing employer has the authority to correct or remove the hazard, it must correct or remove the hazard with reasonable diligence. If the exposing employer lacks such authority, it may still be cited if:

i. It failed to make a good faith effort to ask the creating and/or controlling employer to correct the hazard;

ii. It failed to inform its employees of the hazard; and

iii. It failed to take reasonable alternative measures, consistent with its authority on the worksite, to protect its employees.

5. Correcting Employer. A correcting employer is one responsible for correcting a hazardous condition, such as installing or maintaining safety and health devices or equipment, or implementing appropriate health and safety procedures. A correcting employer must exercise reasonable care in preventing and discovering hazards and ensure such hazards are corrected in a prompt manner, which shall be determined in light of the scale, nature and pace of the work, and the amount of activity of the worksite.

6. Controlling Employer. A controlling employer is one with general supervisory authority over a worksite. This authority may be established either through contract or practice and includes the authority to correct safety and health violations or require others to do so, but it is separate from the responsibilities and care to be exercised by a correcting employer.

a. A controlling employer will not be cited if it has exercised reasonable care to prevent and detect violations on the worksite. The extent of the measures used by a controlling employer to satisfy this duty, however, is less than the extent required of an employer when protecting its own employees. A controlling employer is not required to inspect for hazards or violations as frequently or to demonstrate the same knowledge of applicable standards or specific trade expertise as the employer under its control.

b. When determining the duty of reasonable care applicable to a controlling employer on a multi-employer worksite, the factors that may be considered include, but are not limited to:

i. The nature of the worksite and industry in which the work is being performed;

ii. The scale, nature and pace of the work, including the pace and frequency at which the worksite hazards change as the work progresses;

iii. The amount of activity at the worksite, including the number of employers under its control and the number of employees working on the worksite;

iv. The implementation and monitoring of safety and health precautions for the entire worksite requiring that other employers on the worksite comply with their respective obligations and standards of care for the safety of employees, a graduated system of discipline for non-compliant employees and/or employers, regular worksite safety meetings, and when appropriate for atypical hazards, the providing of adequate safety training by employers for atypical hazards present on the worksite; and

v. The frequency of worksite inspections, particularly at the commencement of a project or the commencement of work on the project by other employers that come under its control. As work progresses, the frequency and sufficiency of such inspections shall be determined in relation to other employers' compliance with their respective obligations and standards of care as required by this Rule.

c. When evaluating whether a controlling employer has demonstrated reasonable care in preventing and discovering violations, the following factors, though not inclusive, shall be considered;

i. Whether the controlling employer conducted worksite inspections with sufficient frequency as contemplated by subsection 6(b);

ii. The controlling employer's implementation and monitoring of an effective system for identifying a hazardous condition and promptly notifying employers under its control of the hazard so as to ensure compliance with their respective duties of care under this Rule;

iii. Whether the controlling employer implements a graduated system of discipline for non-compliant employees and/or employers with their respective safety and health requirements;

iv. Whether the controlling employer performs follow-up inspections to ensure hazards are corrected; and

v. Other actions demonstrating the implementation and monitoring of safety and health precautions for the entire worksite.

7. In accordance with Section 34A-6-110, nothing in this Rule shall:

a. be deemed to limit or repeal requirements imposed by statute or otherwise recognized by law; or

b. be construed or held to supersede or in any manner affect workers' compensation or enlarge or diminish or affect the common-law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, occupational or other diseases, or death of employees arising out of, or in the course of employment.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

NOTE: Utah has adopted and will enforce the Federal Recordkeeping Standard 29CFR1904.

Utah Specific Recordkeeping requirements follow:

B. Supplementary record.

Each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 301, Utah Industrial Accidents Form 122. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 301, Utah Industrial Accidents Form 122. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 301, Utah Industrial Accidents Form 122 shall be used or the necessary information shall be otherwise maintained.

C. Retention of records.

Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

D. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

E. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

F. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

G. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

R614-1-9. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

R614-1-10. Discrimination.

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63G, Chapter 4, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6). The Act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear legislative intent that the existence of an employment relationship, for purposes of Section 34A-6-203, is to be based upon economic realities rather than upon common law doctrines and concepts. For a similar interpretation of federal law on this issue, see, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong. Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under

the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63G, Chapter 3, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy

favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972): Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent,

and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by

returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

a. The number of written access orders approved and a summary of the purposes for access;

b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form, manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested;, or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be

preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200

Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

KEY: safety
October 15, 2018 34A-6
Notice of Continuation October 19, 2017

R616. Labor Commission, Boiler, Elevator and Coal Mine Safety.
R616-3. Elevator Rules.
R616-3-1. Authority.

This rule is established pursuant to Section 34A-7-201 for the purpose of the Labor Commission ascertaining, fixing, and enforcing reasonable standards regarding elevators for the protection of life, health, and safety of the general public and employees.

R616-3-2. Definitions.

A. "ANSI" means the American National Standards Institute, Inc.

B. "ASME" means the American Society of Mechanical Engineers.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Boiler, Elevator and Coal Mine Safety of the Labor Commission.

E. "Elevator" means a hoisting and lowering mechanism equipped with a car or platform and that moves in guides in a substantially vertical direction.

F. "Escalator" means a stairway, moving walkway, or runway that is power driven, continuous and used to transport one or more individuals.

R616-3-3. Safety Codes for Elevators.

The following safety codes are adopted and incorporated by reference within this rule:

A. ASME A17.1-2016/CSA B44-16, Safety Code for Elevators and Escalators, and amended as follows:

1. Delete 2.2.2.5;

2. Amend 8.6.5.8 as follows: Existing hydraulic cylinders installed below ground when found to be leaking shall be replaced with cylinders conforming to 3.18.3.4 or the car shall be provided with safeties conforming to 3.17.1 and guide rails, guide rail supports and fastenings conforming to 3.23.1. This code is issued every two years. New issues become mandatory only when a formal change is made to these rules. Elevators are required to comply with the A17.1 code in effect at the time of installation.

B. ASME A17.3 - 2015 Safety Code for Existing Elevators and Escalators. This code is adopted for regulatory guidance only for elevators classified as remodeled elevators by the Division of Boiler, Elevator and Coal Mine Safety.

C. ASME A90.1-2015, Safety Standard for Belt Manlifts.

D. ANSI A10.4-2016, Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.

E. ICC/ANSI A117.1 (2009) Accessible and Usable Buildings and Facilities, sections 407 and 408, and 410 approved October 20, 2010.

F. ASME A18.1-2014 Safety Standard For Platform Lifts And Stairway Chairlifts.

G. ASME A17.6-2010 Standard for Elevator Suspension, Compensation, and Governor Systems.

R616-3-4. Inspector Qualification.

A. Any person who performs elevator safety inspections must be a State Elevator Inspector certified by the Division.

B. A State Elevator Inspector is a person who meets the following nationally recognized standards of qualifications for inspectors of elevators and escalators:

(1) Has four or more years of verifiable documented education and experience in the mechanical and/or electrical aspects of the elevator industry and is a person deemed to meet the ASME A17.1 definition of "elevator personnel";

(2) Has two or more years of college courses in an elevator industry-related engineering field; or

(3) Meets the definition of "elevator personnel" in ASME A17.1 and has documented training as one of the following:

(i) an Elevator Inspector performing inspections for an enforcing authority;

(ii) an Elevator Inspector trainee working under the direct supervision of an Elevator Inspector performing inspections for an enforcing authority;

(iii) an Elevator Inspector performing inspections and licensed by or under the jurisdiction of an enforcing authority; or

(vi) an Elevator Inspector trainee licensed by or working under the direct supervision of a licensed Elevator Inspector performing inspections and working under the jurisdiction of an enforcing authority.

C. Prior to a person becoming certified as a State Elevator Inspector, a person must pass a state-issued examination with at least a 70% score which will test the person's knowledge and understanding of the Utah Elevator and Escalator Safety Act, Utah Code Ann. 34A-7-201 et seq.; the Utah Administrative Code sections relating to elevators, R616-3 et seq.; and the national code sections adopted and incorporated by Utah in R616-3-3.

R616-3-5. Modifications and Variances to Codes.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner/user, the Division may allow the owner/user a variance. Variances must be in writing to be effective and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their elevator installation provides safety equivalent to the applicable safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

D. The Commission may, by rule, add or delete from the applicable safety codes for any good and sufficient safety reason.

E. In the event that adopted safety codes are in conflict with one another, the ASME A17.1, Safety Code for Elevators and Escalators will take precedence. The exception to this is for compliance with the accessibility guidelines of Pub. L. No. 101-336 "The Americans with Disability Act of 1990". In this instance, the International Building Code standards adopted in R616-3-3 for accessibility as applied to elevators take precedence over ASME A17.1.

R616-3-6. Exemptions.

A. These rules apply to all elevators in Utah with the following exemptions:

1. Private residence elevators installed inside a single family dwelling. Common elevators which serve multiple private residences are not exempt from these rules.

2. Elevators in buildings owned by the Federal government.

B. Owners of elevators exempted in R616-3-6.A. may request a safety inspection by Division of Boiler, Elevator and Coal Mine Safety inspectors. Code non-compliance items will be treated as recommendations by the inspector with the owner having the option as to which, if any, are corrected. Owners requesting these inspections will be invoiced at the special inspection rate. If the owner requests a State of Utah Certificate to Operate for the elevator, all of the recommendations must be completed to the satisfaction of the inspector and the owner will be invoiced the appropriate certificate fee.

R616-3-7. Inspection of Elevators, Permit to Operate,

Unlawful Operations.

A. It shall be the responsibility of the Division to make inspections of all elevators when deemed necessary or appropriate.

B. Elevator inspectors shall examine conditions in regards to the safety of the employees, public, machinery, drainage, methods of lighting, and into all other matters connected with the safety of persons using or in close proximity to each elevator, and when necessary give directions providing for the better health and safety of persons in or about the same. The owner/user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary.

C. If the Division finds that an elevator complies with the applicable safety codes and rules, the owner/user shall be issued a Certificate of Inspection and Permit to Operate.

1. The Certificate of Inspection and Permit to Operate is valid for 24 months.

2. The Certificate of Inspection and Permit to Operate shall be displayed in a conspicuous location for the entire validation period. If the certificate is displayed where accessible to the general public, as opposed to being in the elevator machine room, it must be protected under a transparent cover.

D. If the Division finds an elevator is not being operated in accordance with the safety codes and rules, the owner/user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the elevator into compliance.

E. Pursuant to Section 34A-7-204, if the improvements or changes are not made within a reasonable time, by agreement of the division and the owner, the elevator is being operated unlawfully.

F. If the owner/user refuses to allow an inspection to be made, the elevator is being operated unlawfully.

G. If the owner/user refuses to pay the required fee, the elevator is being operated unlawfully.

H. If the owner/user operates an elevator unlawfully, the Commission may order the elevator operation to cease pursuant to Section 34A-1-104.

I. If, in the judgment of an elevator inspector, the lives or safety of employees or public are, or may be, endangered should they remain in the danger area, the elevator inspector shall direct that they be immediately withdrawn from the danger area, and the elevator removed from service until repairs have been made and the elevator has been brought into compliance.

R616-3-8. Inclined Wheelchair Lift Headroom Clearance.

A. Headroom clearance for inclined wheelchair lifts throughout the range of travel shall be not less than 80 inches (2032 mm) as measured vertically from the leading edge of the platform floor.

B. For existing facilities only, in the event that it is not technically or economically feasible to provide other means of access for disabled persons, inclined wheelchair lifts may be installed if all of the following conditions are met:

1. The appropriate building inspection jurisdiction approves the use of an inclined wheelchair lift for the specific application.

2. Headroom clearance throughout the range of travel shall be not less than 60 inches as measured vertically from the leading edge of the platform floor.

3. The passenger restriction sign as required by ASME A18.1 3.1.2.3 shall be amended as follows: "PHYSICALLY DISABLED PERSONS ONLY. NO FREIGHT. HEADROOM CLEARANCE IS LIMITED. USE ONLY IN THE SITTING POSITION".

R616-3-9. Valves in Hydraulic Elevator Operating Fluid Systems.

A. Due to the potential loss of pressure retaining capability when over torqued, bronze-bodied valves shall not be installed in the hydraulic systems of a hydraulic elevator.

B. This requirement is in effect for all new installations and remodel installations involving the hydraulic system.

C. If a bronze-bodied valve installed on an existing elevator begins to leak, that valve shall be replaced by a steel-bodied valve.

R616-3-10. Hydraulic Elevator Piping.

A. This rule establishes minimum standards for hydraulic fluid piping in hydraulic elevators. The piping specifications referred to in this rule are governed by ASME or ASTM piping specifications (e.g. ASME Specification SA-53 Table X2.4).

B. Hydraulic elevators not incorporating a safety valve may use schedule 40 piping.

C. For newly installed hydraulic elevators that do incorporate a safety valve:

1. Where piping is protected by the safety valve, schedule 40 piping may be used;

2. Where grooved or threaded connections are used in piping that is unprotected by the safety valve, i.e. between the safety valve and the hydraulic jack(s), nominal pipe size (NPS)3 or schedule 80 piping may be used;

3. Where piping is unprotected by the safety valve, but welded or bolted flange connections are used, schedule 40 piping may be used.

R616-3-11. Shunt Trips in Elevator Systems.

A. The means (shunt trip) to automatically disconnect the main line power supply to the elevator discussed in 2.8.3.3.2 of A17.1 is not required for hydraulic elevators with a rise of 50 feet or less.

R616-3-12. Hoistway Vents.

Hoistway ventilation as outlined in the International Building Code is under the jurisdiction of the local building official.

R616-3-13. Hand Line Control Elevators.

A. Operation of a hand line control elevator is not permitted.

B. Owners of hand line control elevators are required to render the elevator electrically and mechanically incapable of operation.

R616-3-14. Remodeled Elevators.

A. When an elevator is classified as a remodeled (modernized) elevator by the Division, the components of the elevator involved in the modernization must comply with the standards of the latest version of ASME A17.1 and ASME A17.3 in effect at the time the remodeling of the elevator commences.

R616-3-15. Fees.

A. Fees to be charged as provided by Section 34A-1-106 and 63J-1-303 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63J-1-301(2).

B. The fee for the initial certification permit shall be invoiced to and paid by the company or firm installing the elevator.

C. The renewal certification permit shall be invoiced to and paid by the owner/user.

D. Any request for a special inspection shall be invoiced to and paid by the person/company requesting the inspection, at the hourly rate plus mileage and expenses.

R616-3-16. Notification of Installation, Revision or Remodeling.

A. Before any elevator covered by this rule is installed or

a major revision or remodeling begins on the elevator, the Division must be advised at least one week in advance of such installation, revision, or remodeling unless emergency dictates otherwise.

R616-3-17. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the elevator inspector are informal adjudicative actions commenced by the agency per Section 63G-4-201.

R616-3-18. Presiding Officer.

The elevator inspector is the presiding officer referred to in Section 63G-4-201. If an informal hearing is requested pursuant to R616-3-18, the Commission shall appoint the presiding officer for that hearing.

R616-3-19. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63G-4-201(3)(a) and 63G-4-201(3)(b).

R616-3-20. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-3-18 shall be informal and pursuant to the procedural requirements of Section 63G-4-203 and any agency review of the order issued after the hearing shall be per Section 63G-4-302. An informal hearing may be converted to a formal hearing pursuant to Subsection 63G-4-202(3).

KEY: elevators, certification, safety
October 22, 2018 34A-1-101 et seq.
Notice of Continuation August 23, 2016

R657. Natural Resources, Wildlife Resources.
R657-61. Valuation of Real Property Interests for Purposes of Acquisition or Disposal.
R657-61-1. Purpose and Authority.

(1) Pursuant to Utah Code Sections 63-34-21, 23-14-8, and Section 23-21-1, this rule defines the process by which the value of real property is determined for purposes of acquisition or disposal by the Division.

R657-61-2. Definitions.

(1) For purposes of this rule:

(a) "Appraisal" means an independent analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, an identified parcel of real property, and conducted by a state certified general appraiser.

(b) "Value" means as an opinion on the worth of an identified parcel of real property or interest therein at a specific time and may be comprised of one or more of the following values, as commonly understood within the real estate and appraisal services business communities: assessed value, insurable value, use value, investment value, going-concern value, business enterprise value, market value, and public interest value.

R657-61-3. Obtaining an Opinion of Value.

(1) When purchasing or disposing real property interests, the Division shall obtain a written opinion on the value of the property interest in the form of an appraisal.

(a) The division will keep and maintain the written opinion of value in its real property acquisition and disposal files.

(2) An appraisal is not required under the following circumstances:

(a) The market value of the subject property interest is less than One-Hundred Thousand Dollars ($100,000), as estimated by the Division;

(b) The asking price for the property interest is considerably below prevailing market conditions, as estimated by the Division;

(c) The asking price for the property interest is reasonable based upon prevailing market conditions, but the Division will lose the opportunity to purchase the property if time is taken to conduct an appraisal prior to making an offer;

(d) An appraisal has been conducted on the subject property interest within the past twelve months;

(e) The real property interest is a gift, contribution, or donation to the division; or

(f) The real property interest is a right-of-way, lease, or other less-than-fee interest that is not perpetual.

(3) A written opinion of value shall be rendered by a state certified general appraiser conducting an appraisal.

(4) When values other than market value are considered in addition to or in place of an appraisal rendered by a state certified general appraiser the Division shall create and keep a memo-to-file describing:

(a) the Division's consideration of said value(s);

(b) the Division's rationale in said consideration relative to the proposed price and other terms of the purchase, sale, or exchange; and

(c) the acquisition or disposal decision made by the Division.

R657-61-4. Congruency in Value.

(1) Based on the written opinion of value, the Division shall consider and weigh the various economic and social values associated with the real property in an effort to maintain a level of congruency between the compensation for the property and its values.

KEY: wildlife, land sales, property values

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Notice of Continuation October 4, 2018

R657. Natural Resources, Wildlife Resources.
R657-66. Military Installation Permit Program.
R657-66-1. Purpose and Authority.

Under the authority of Sections 23-14-1, 23-14-3, 23-14-18, and 23-14-19, this rule establishes the standards and procedures for providing hunting opportunity on military installations to military installation personnel and to members of the public.

R657-66-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Military Installation" means real property in excess of 10,000 contiguous acres that is:

(i) Owned and managed by a military branch of the Department of Defense, including the Utah National Guard;

(ii) Located within the State of Utah

(iii) Closed to the public for hunting access;

(iv) Has a clearly discernible and described property boundary; and

(v) Supports a huntable population of wildlife.

(b) "Commander" means base commander of a Military Installation.

(c) "Military Installation Unit" or "MIU" means a contiguous area of land located on a Military Installation that is open to hunting because of the Installation's participation in the Military Installation Permit Program.

(d) "Permit voucher" means a document issued by the Division to the Commander which may be assigned to qualifying military installation personnel authorizing that individual to purchase a permit to hunt wildlife on the military installation.

R657-66-3. Creation of a Military Installation Unit.

(1) The Commander may request to create an MIU by submitting a written request to the Division.

(2) If the Division determines that the creation of an MIU will not endanger the wildlife resource and is otherwise in the best interest of the Division and its constituents, the Division and the Commander may enter into a cooperative agreement describing the procedures and restrictions for the creation of the MIU.

(3) The cooperative agreement shall define the following items:

(a) the boundaries of the MIU;

(b) the species which may be hunted;

(c) a description of how Division input and guidance will be used in establishing the requested number of MIU permits;

(d) the weapon types allowed;

(e) the season dates during which the MIU will be open to hunting;

(f) a description of eligibility requirements for military personnel to receive a permit voucher;

(g) the means by which the Commander will distribute permit vouchers;

(h) measures necessary to ensure security of the Military Installation during the hunt; and

(i) other measures necessary deemed appropriate by the Division and the Commander.

(4) An MIU may not be established without the guarantee of public hunting opportunity on the MIU.

(5) The Military Installation, Commander, and agents, employees, personnel and contractors of the same shall not profit off of the creation or operation of an MIU.

R657-66-4. Military Installation Permit Numbers, Permit Boundaries, Season Lengths, and Legal Weapons.

(1) The Commander shall submit requested permit allocations to the Wildlife Board by September 1 annually.

(2) The Wildlife Board shall have authority to approve, reduce, or deny the number of MIU permits available from the number requested by the Commander, consistent with the following:

(a) The number of permit vouchers available shall be based on the species population trend, size, and distribution to protect the long-term health of the population; and

(b) For each MIU having permit vouchers approved by the Wildlife Board, at least one (1) permit per approved species, or 20% of the total number of permits approved per species rounded up to the nearest whole number, whichever is greater, shall be made available to members of the general public via the Division's permit drawing.

(3) The boundaries of the MIU dictated in the cooperative agreement shall be clearly described and discernible on the ground of the military installation and shall be considered the general permit boundaries for hunting permits issued pursuant to this Rule.

(4) The season dates for hunting under a Military Installation Permit shall include a maximum of September 1 to October 31 annually.

(5) Season dates may be shortened and boundaries of the MIU may be modified by definition in the cooperative agreement or by written declaration of the Commander prior to issuance of a Military Installation Permit for the season date in question.

(6) The Commander may further restrict the weapon types allowed on the MIU from what is identified in the cooperative agreement prior to the distribution of the permit vouchers.

(7) All weapons allowed for a Military Installation hunt shall conform to the rules and regulations describing legal weapons used in the taking of protected wildlife.

(8) The Commander is responsible for communicating all modifications of season dates, MIU boundaries, and legal weapon choices to the Division and those participating in an MIU hunt.

R657-66-5. Distribution of Military Installation Permit Vouchers and Permits.

(1) The Division shall distribute permit vouchers approved by the Wildlife Board to the Commander, retaining the number of permits as defined in Utah Administrative Rule R657-66-4(2)(b) to distribute via the Division's annual permit drawing.

(2) The Commander shall assign permit vouchers received from the Division using the scheme described in the cooperative agreement outlining the creation of the MIU.

(3) The distribution scheme used by the Commander shall be fair and equitable and shall comply with state and federal laws.

(4) Neither the Commander nor the Military Installation may sell or receive compensation of any kind for a permit voucher or for allowing hunting access on the Military Installation under this Rule.

(5) MIU permits and permit vouchers may not be donated, auctioned, sold, traded, or otherwise transferred to third parties, except as provided for by state law, administrative rule, or proclamation of the Wildlife Board.

(6) An individual receiving a Military Installation Permit Voucher may redeem the voucher for a Military Installation Permit by:

(a) Paying the appropriate permit fee to the Division;

(b) Possessing a valid Utah hunting or combination license; and

(c) Being otherwise legally qualified to hunt in Utah.

(7) An individual may apply for a Military Installation Permit made available to the public by:

(a) Submitting an application in the permit drawing administered by the Division; and

(b) paying the associated application fee.

(8) An individual who successfully draws a Military Installation Permit in the permit drawing may redeem their permit by:

(a) Paying the appropriate permit fee to the Division;

(b) Possessing a valid Utah hunting or combination license; and

(c) Being otherwise legally qualified to hunt in Utah.

(9) As a condition of being issued an Military Installation Permit, the hunter recognizes the inherent risks associated with Military Installations, and agrees to comply with the terms and conditions established in the cooperative agreement, those issued by the Commander, and the laws and regulations pertaining to hunting in the state of Utah.

(10) Waiting periods and bonus points do not apply to military personnel participating in the distribution scheme administered by the Commander, nor are waiting periods incurred or existing points lost upon obtaining a permit.

(11) Waiting periods and bonus points apply to military personnel and members of the public who apply for a Military Installation Permit through the permit drawing.

(12) A member of the military who may otherwise qualify to receive a Military Installation Permit voucher may apply for a Military Installation Permit through the permit drawing, but becomes subject to the rules and regulations applicable to a member of the general public in the event that they successfully draw a permit.

(13) An individual who harvests an animal during a Military Installation hunt may not harvest another animal of the same species during that license year, except as described in the cooperative agreement establishing the MIU or as provided for by the Wildlife Board.

(14) Either the Division or the Commander can discontinue participation in the Military Installation Permit Program by providing prior written notice to the other party.

R657-66-6. Replacement Vouchers and Permits; Refunds.

(1) Military Installation Permits shall be considered limited entry permits for the purposes of variances, permit surrender, refunds, and accommodations for people with disabilities in the event that a designated recipient of a voucher or permit is unable to participate in the hunting activity.

(2) The Division may reissue an assigned permit voucher to the Commander for issuance to another qualifying person, provided:

(a) The original recipient surrenders to the Division the permit voucher and any corresponding hunting permit; and

(b) The surrender is made prior to the permit holder undertaking any hunting activity.

(3) The Division shall not be responsible for interference with the public's hunt on the MIU by members of the military or other third parties.

(4) In the event that the individual receiving a permit voucher and/or permit under this Rule cannot participate in the hunt due to military service obligations, that individual may pursue a refund for fees paid consistent with Utah Code Ann. Section 23-19-38.2.

R657-66-7. Administrative Access During Hunting Seasons; Collection of Harvest Data.

(1) Division law enforcement officers may access the military installation to regulate hunting related activities thereon.

(2) Those participating in the military installation permit program shall complete a harvest report within 30 days after the hunt ends.

(3) Harvest reporting is required even if an animal is not harvested.

KEY: wildlife, military installations

R895. Technology Services, Administration.
R895-4. Sub-Domain Naming Conventions for Executive Branch Agencies.
R895-4-1. Purpose.

The "utah.gov" identifier is intended to provide the following features to the State of Utah and its agencies.

(1) The ".gov" sub-domain identifier is controlled by the Federal .gov domain registrar, thereby protecting state interests.

(2) The State of Utah, Chief Information Officer's (CIO) office is responsible for issuance of all "utah.gov" sub-domains, further protecting the integrity of the identifier.

(3) The "utah.gov" identifier offers immediate recognition to constituents for developing credibility and confidence through a consistent interface.

(4) The "utah.gov" sub-domain simplifies constituent access to state agency services.

R895-4-2. Authority.

This rule is issued by the Chief Information Officer under the authority of Section 63F-1-206 of the Technology Governance Act, and in accordance with Section 63G-3-201 of the Utah Rulemaking Act, Utah Code Annotated.

R895-4-3. Scope of Application.

All state agencies of the executive branch of the State of Utah government shall comply with this rule, which provides a consistent internet access identifier for the State of Utah through the "utah.gov" sub-domain.

R895-4-4. Definitions.

(1) "Sub-Domain:" A meaningful name or "handle" for addressing computers and information on the Internet. Domain names typically end with a suffix that denotes the type or location of a resource (for instance, ".com" for commercial resources or ".gov" for government resources).

(2) URL: "Uniform Resource Locator" which is an addressing standard used to find documents and media on the Internet.

(3) "Sub-Domain Registrar" Authoritative source within the State of Utah's CIO office, or the Federal .gov registrar.

(4) TLD: Top level domain, including, but not limited to .net, .org, .com, etc.

(5) Publicize: To advertise or otherwise publicly disseminate information regarding a TLD.

R895-4-5. Compliance and Responsibilities.

(1) Any state executive branch agency that develops, hosts, or funds a website shall only register a sub-domain using the "utah.gov" naming convention.

(2) No state executive branch agency may publicize a sub-domain in a TLD such as .org, .net, .com or any other available TLD not conforming to this rule.

R895-4-6. Exceptions.

(1) The requirements of this rule do not apply to funds that are "passed-through" or contracted to a private non-profit or for-profit entity and subsequently used by that entity for its own website or for the purchase of a URL.

(2) The CIO may provide a waiver for an "extraordinary environment" for which it is demonstrated that use of the "utah.gov" identifier would cause demonstrable harm to citizens or business. Requests for waiver must be submitted with justification to the CIO by the requesting agency Executive Director.

(3) Non-Conforming TLDs may be obtained or retained solely for the purpose of re-direction to an approved "utah.gov" TLD, or to retain ownership of the TLD for avoiding identifier misuse, provided the non-conforming TLD is not publicized.

R895-4-7. Rule Compliance Management.

A state executive branch agency executive director, or designee, upon becoming aware of a violation, shall enforce the rule. The CIO may, where appropriate, monitor compliance and report to the executive director any findings or violations of this rule.

The CIO may further enforce this rule by requesting that the entity responsible for providing identifier mapping withhold or remove the offending TLD from state production servers.

KEY: utah.gov
April 15, 2004 63F-1-206
Notice of Continuation October 3, 2018 63G-3-201

R895. Technology Services, Administration.
R895-6. IT Plan Submission Rule for Agencies.
R895-6-1. Purpose.

State agencies are required by statute to submit IT plans for review and approval by the Chief Information Officer (CIO) office. This rule provides the format and content requirements for IT Plan submission.

R895-6-2. Authority.

This rule is issued by the Chief Information Officer under the authority of Section 63F-1-206 of the Technology Governance Act, in accordance with Section 63G-3-201 of the Utah Rulemaking Act, Utah Code Annotated, and section 63F-1-204 of the Utah code, Agency Information Technology Plans.

R895-6-3. Scope of Application.

All state agencies of the executive branch of the State of Utah government shall comply with this rule, which provides a consistent technology planning method for the State of Utah.

R895-6-4. Compliance and Responsibilities.

The following are the compliance issues and the responsibilities for state agencies:

(1) Any state executive branch agency that develops, hosts, or funds information technology projects or infrastructure shall submit a plan following the format outlined in R895-6-5 below.

(2) The CIO office shall provide education and instruction to the agencies to enable consistent response.

(3) Finalized and approved Agency IT Plans shall be delivered to the CIO office, in electronic format, by July 1 of each year.

(4) Agency IT Plans shall use document formatting methods as defined in CIO instruction.

(5) Agency IT Plans at a division level, shall be combined for submission to the CIO office at the Agency/Department level.

(6) Amendments to the IT Plan shall be submitted throughout the fiscal year for any change in a project, any new project, or any removal of a project.

R895-6-5. Agency IT Plan Format.

The following is the IT plan format:

(1) SUBMIT AN EXECUTIVE SUMMARY.

(a) The information technology objectives of the Agency.

(b) Any performance measures used by the Agency for implementing the Agency's technology objectives.

(c) Any planned expenditure related to information technology.

(d) The agency need for appropriations for information technology.

(e) How the agency's development of information technology coordinates with other state and local governmental entities.

(f) Any efforts the agency has taken to develop public and private partnerships to accomplish information technology objectives of the agency.

(g) The efforts the agency has taken to conduct transactions electronically in compliance with Utah Code Section 46-4-503.

(h) The agency's plan for the timing and method of verifying the department's security standards, if an agency intends to verify the department's security standards for the data that the agency maintains or transmits through the department's servers.

(2) IT PLAN DETAILS.

(a) Complete a project description for each information technology project, utilizing the document formatting methods as defined by CIO instruction.

R895-6-6. Exceptions.

Any variance to format or content as established in this rule shall be approved by the CIO office.

R895-6-7. Rule Compliance Management.

The CIO may enforce this rule by non-approval of the IT Plan as defined in Utah Code, Section 63F-1-204.

KEY: IT planning

May 5, 2015	**63F-1-206**
Notice of Continuation October 3, 2018	**63F-1-204**
	63G-3-201

R918. Transportation, Operations, Maintenance.
R918-4. Using Volunteer Groups and Third Party Contractors for the Adopt-a-Highway and Sponsor-a-Highway Litter Pickup Programs.
R918-4-1. Purpose and Authority.

The purpose of this rule is to establish a procedure for using volunteer groups and third party contractors for litter pickup and to provide additional resources to increase UDOT's litter control effort at a minimal cost. This program is not operated for the purpose of providing a highway signing program for a free speech forum. This rule is enacted under the general rulemaking authority in Section 72-1-201.

R918-4-2. Application for the Adopt-A-Highway Program.

(1) A group or person who wishes to participate in a program to pick up litter along UDOT right-of-way may apply with the UDOT Region in which the right-of-way is located. The application shall contain, at a minimum, the name of the organization or person, the right-of-way requested, along with alternatives if desired, the name and address of a contact person, and the name of the sponsoring organization requested to be placed on the Recognition Sign.

(2) If the name of an organization is to appear on the sign, the applicant shall submit, with the application, documentation from the state showing the form, status, and official name of the entity. Only the official name of the organization will be printed on the sign.

(3) UDOT also coordinates a program similar to Adopt-A-Highway, known as Sponsor-A-Highway, wherein a private contractor performs the actual litter pickup on behalf of local businesses or other entities ("sponsors") in return for a sponsorship fee. The sponsoring entity is recognized with a sign. A business, government entity, group, or person who wishes to participate in the Sponsor-A-Highway program may apply to the contractor. The contractor shall submit the name of the entity, sponsorship segment, and proposed Sponsor-A-Highway sign rendering to UDOT for approval.

R918-4-3. Conditions of Adopt-A-Highway Participation.

If the Adopt-A-Highway application is granted, UDOT shall notify the applicant's contact person in writing and promptly send to him or her a contract that sets forth the following basic conditions:

(1) the location of the right-of-way;

(2) a hold harmless agreement, waiver of liability, and indemnification for third-party claims;

(3) safety rules;

(4) information concerning safety apparel that must be used and that is recommended;

(5) the name of the entity or organization that is applying for the permit;

(6) an explanation of the condition in which UDOT expects the applicant to keep the roadway and notification that the decision whether or not the applicant has done so is solely within UDOT's discretion;

(7) notification of reasons for termination, which include failure to comply with any part of the agreement, fraud in the application, failure to follow safety requirements or commands;

(8) a date when the agreement will terminate, along with any automatic renewal provisions;

(9) volunteer groups shall provide a responsible supervisor to properly control the activities of the group, with the expertise and degree of supervision to be decided by UDOT;

(10) no person under the age of eleven years may participate in the litter pick-up program or be on the right-of-way;

(11) volunteers shall accept and receive safety instructions by the Region Safety/Risk Manager, or designee;

(12) volunteers shall stay off the traveled area of the roadway, except when traveled area must be crossed, with any crossing being done by the entire group together along with the signing, flagging, or supervision directed by the Region Safety/Risk Manager or designee;

(13) volunteers shall stay off the traveled areas of Interstate Routes, Freeways, and divided highways at all times, except when crossing in the manner specified in paragraph (12);

(14) in areas where the Region Director or Safety/Risk Manager or Traffic Engineer believes it appropriate, the applicant shall use advance warning signs;

(15) work shall be done during daylight hours;

(16) such other information as UDOT believes may be required to adequately advise the applicant of its responsibilities and provide for the public safety;

(17) clean up the assigned right-of-way at least three times a year as well as when UDOT specifically requests; and

(18) notify the appropriate authorities such as the Health Department or police if they find items that appear suspicious or unsafe, i.e., syringes, drug paraphernalia, or closed containers.

R918-4-4. Conditions of Sponsor-A-Highway Participation.

A business, government entity, group, or person participating in the Sponsor-A-Highway program shall:

(1) be legally empowered to enter a contract in the state of Utah; and

(2) use their legal name or a registered DBA name.

R918-4-5. UDOT discretion to allow use of right-of-way.

(1) Nothing in this rule or other UDOT rule may be construed to require UDOT to make any particular portion of right-of-way available for litter pick up. The decision whether to do so is exclusively within UDOT's discretion. Similarly, the decision to take a route out of the litter pick-up program is also within UDOT's exclusive discretion even if the route is currently available and being used for litter pick-up.

(2) Should UDOT determine that a route no longer qualifies for participation in the Adopt-a-Highway program, UDOT shall notify the person or organization assigned the route of that determination. The notification constitutes termination of the contract, regardless of how much time is left on the contract.

(3) UDOT may also terminate a contract at any time if it determines that continuing the contract would be counterproductive to the program's purpose or have undesirable results such as vandalism, increased litter, or would otherwise jeopardize the safety of the participants, the traveling public, or UDOT employees.

R918-4-6. Recognition Signs.

(1) If the applicant's authorized representative (contact person) signs the contract provided by UDOT, UDOT will place a recognition sign along the route, if all other conditions are met. UDOT will not place either slogans or logos on Adopt-A-Highway signs. The name may be edited to comply with space limitations.

(2) Slogans, DBA names, registered trademarks, and registered service marks may be included on Sponsor-A-Highway signs, subject to UDOT review and approval.

R918-4-7. Replacement of Signs.

(1) Adopt-A-Highway Signs: UDOT will not replace damaged or missing signs unless the damage was due to weather or other natural cause and then only if there is sufficient funding. In no case will UDOT replace a sign more than once every five years.

(2) Sponsor-A-Highway Signs: Sponsor-A-Highway signs remain the property of the Sponsor-A-Highway contractor.

R918-4-8. UDOT's Responsibilities.

UDOT shall:

(1) furnish volunteers with UDOT-standard vests, which, when the contract is terminated shall be returned;

(2) furnish litter bags, which, when filled, shall be placed along the shoulder of the road for collection by UDOT personnel;

(3) furnish advance warning signs in areas where the Region Director, Safety/Risk Manager, or Traffic Engineer believes it appropriate; and

(4) install contractor furnished Sponsor-A-Highway signs at locations designated by the Region Traffic Engineer and maintain the sign base, posts, and mounting hardware.

KEY: adopt-a-highway, sponsor-a-highway, litter, volunteer
March 12, 2012 72-1-201
Notice of Continuation October 8, 2018

R926. Transportation, Program Development.
R926-13. Designated Scenic Byways.
R926-13-1. Purpose.

The purpose of this rule is to identify the following:

(1) The specific highways currently designated as state scenic byways.

(2) The definition of the limits of the individual scenic byways for all purposes related to that designation, including, but not limited to, grant and funding availability, and applicable outdoor advertising regulations.

(3) The specific state scenic byways within the State of Utah currently having also been designated by the National Scenic Byways Program of the Federal Highway Administration as either National Scenic Byways or All-American Roads.

R926-13-2. Authority.

The provisions of this rule are authorized by the following grants of rulemaking authority and provisions of Utah Code: Title 63G, Chapter 3; and the Designation of Highways Act, Title 72, Chapter 4.

R926-13-3. Definitions.

Terms used in this rule are defined in Title 72, Chapter 4 and in Rule 926-14-3. The following additional term is defined for this rule:

(1) "FAS" (with corresponding four-digit number) is a designation given by the department to identify local roadways off the state highway system that are part of the federal aid secondary system because they are functionally classified as minor collectors or higher.

R926-13-4. Highways Within the State That Are Designated as State Scenic Byways.

The following roads are designated as state scenic byways (date of designation is April 9, 1990 unless otherwise specified):

(1) Logan Canyon Scenic Byway. US Route 89, beginning at 1500 East in Logan and running to the intersection of SR-30 in Garden City, excluding a 20-foot segment within Garden City at a location centered at approximately mile point 497.73.

(a) Designated April 9, 1990.

(b) Shortened June 13, 2002 when designated a National Scenic Byway and the portion of US-89 from Garden City to the Utah/Idaho State Line was transferred to the Bear Lake Scenic Byway.

(c) Segment excluded May 13, 2010 by action of the Garden City town council which determined the segment at approximately mile point 497.73 lay adjacent to a non-scenic area.

(2) Bear Lake Scenic Byway. US Route 89, beginning at the Utah/Idaho state line and running to SR-30; and State Route 30, beginning at US-89, and running to East Shore Road in Laketown.

(a) Designated April 9, 1990 as Laketown Scenic Byway.

(b) Extended and renamed June 13, 2002 to include the portion of US-89 originally included in the state designation of the Logan Canyon Scenic Byway that was excluded when that byway was designated a National Scenic Byway.

(3) Ogden River Scenic Byway. State Route 39, beginning at Valley Drive, near the mouth of Ogden Canyon, and running to the eastern Wasatch-Cache Forest boundary near highway milepost 48; and State Route 158 from SR-39, and running to County Road FAS-3468; and the County Road FAS-3468, from SR-158, running to SR-39.

(4) Big Cottonwood Canyon Scenic Byway. State Route 190, beginning at SR-210, and running to the end of the Brighton Loop.

(5) Little Cottonwood Canyon Scenic Byway. State Route 210, beginning at SR-209, and running to the end of state maintenance, near Alta.

(6) Provo Canyon Scenic Byway. US Route 189, beginning at SR-52, and running to SR-113, near Charleston; and State Route 113, from US-189 running to US-40 in Heber City.

(a) Designated April 9, 1990.

(b) Realigned onto SR-113 from the eastern portion of US-189 February 25, 2003.

(7) Mirror Lake Scenic Byway. State Route 150, beginning at SR-32 in Kamas, and running to the Utah/Wyoming State Line.

(8) Flaming Gorge-Uintas Scenic Byway. US Route 191, beginning at US-40 in Vernal, and running to the Utah/Wyoming State Line; State Route 44, from US-191, running to SR-43 in Manila; and State Route 43, from SR-44, running to the Utah/Wyoming state line.

(a) Designated April 9, 1990 on SR-44 and US-191 between SR-44 and Vernal.

(b) Added November 18, 1992 the portion of US-191 between SR-44 and the state line.

(9) Indian Canyon Scenic Byway. US Route 191, beginning at US-6 near Helper, and running to US-40 in Duchesne.

(10) The Energy Loop: Huntington and Eccles Canyons Scenic Byway. State Route 31, beginning at US-89 in Fairview, and running to SR-10 in Huntington; State Route 264, from SR-31, running to SR-96; and State Route 96, from Clear Creek, and running to US-6 near Colton.

(a) Designated April 9, 1990 on SR-31 and SR-264.

(b) Extended circa 1992 to add SR-96 between Clear Creek and Colton.

(c) Extended on February 2, 2011 to include US-6 from SR-96 at Colton (MP 216.17) to the southern boundary of Helper (MP 233.72) and SR-10 from SR-31 (MP 47.58) to the Huntington State Park (MP 49.38).

(11) Nebo Loop Scenic Byway. State Route 115, beginning at I-15 and running to SR-198; State Route 198, from SR-115 running to 600 East in Payson; and along County Road FAS-2822 (600 East) and National Forest Road 015 (FAS-1822 and the portion of FAS-1820 south of FAS-1822) running to SR-132 in Juab County.

(12) Upper Colorado River Scenic Byway. State Route 128, beginning at US-191 near Moab, and running to I-70 West Cisco interchange.

(13) Potash-Lower Colorado River Scenic Byway. State Route 279, beginning at the southwest end of SR-279 near the Potash Plant and running to US-191.

(14) Indian Creek Corridor Scenic Byway. State Route 211, beginning at US-191 and running to County Road FAS-2432; and County Road FAS-2432 from SR-211 running to the Canyonlands National Park Visitor Center.

(15) Bicentennial Highway Scenic Byway. State Route 95, beginning at SR-24, and running to US-191.

(16) Trail of The Ancients Scenic Byway. State Route 95, beginning at SR-275, and running to US-191; State Route 275, from SR-95 and running to Natural Bridges National Monument; US Route 191 from Center Street in Blanding running to SR-162 in Bluff; and State Route 162 from US-191 running to the Utah/Colorado state line.

(a) Designated February 7, 1994 on SR-275, over the eastern portion of the Bicentennial Highway Scenic Byway between SR-275 and US-191, and on US-191 between Blanding and SR-262.

(b) Extended June 6, 2001 to include US-191 between SR-262 and Bluff, and to include SR-162.

(17) Monument Valley to Bluff Scenic Byway. US Route 163, beginning at the Utah/Arizona State Line running to US-191; and US Route 191 from US-163 running to the Cottonwood Wash Bridge in Bluff.

(18) Capitol Reef Country Scenic Byway. State Route 24, beginning at SR-72 in Loa, and running to SR-95 in Hanksville.

(19) Highway 12, A Journey Through Time Scenic Byway. State Route 12, beginning at US-89 near Panguitch, and running to SR-24 near Torrey.

(20) Markagunt High Plateau Scenic Byway. State Route 14, beginning at SR-130 and running to US-89.

(21) Cedar Breaks Scenic Byway. State Route 148, beginning at SR-14, through Cedar Breaks National Monument, running to SR-143.

(22) Brian Head-Panguitch Lake Scenic Byway. State Route 143, beginning at I-15 South Parowan Interchange, and running to US-89 in Panguitch.

(23) Beaver Canyon Scenic Byway. State Route 153, beginning at SR-160 in Beaver, and running to the end of pavement near Elk Meadows.

(24) Mt. Carmel Scenic Byway. US Route 89, beginning at the Kanab north city limit (approximately highway milepost 65), and running to SR-12.

(25) Zion Park Scenic Byway. State Route 9, beginning at I-15 and running to US-89.

(26) Kolob Fingers Road Scenic Byway. The National Park Service Road, beginning at I-15, and running to the Kolob Canyon Overlook.

(27) Dead Horse Mesa Scenic Byway. State Route 313, from US-191 running to Dead Horse Point State Park; and the Island in the Sky Road FAS-1708, from SR-313 running to Grandview Point.

(a) Designated May 16, 2002.

(28) Fishlake Scenic Byway. State Route 25 and County Roads FAS-2554 (comprising Fish Lake Road/Forest Highway 31) and FAS-3268 (Freemont River Road/Forest Highway 42), beginning at SR-24, and running to SR-72.

(a) Designated April 9, 1990, on SR-25 between SR-24 and Johnson Valley Reservoir.

(b) Extended November 18, 1992, along the Fremont River Road between Johnson Valley Reservoir and SR-72 to comprise the southern portion of the Gooseberry/Fremont Road Scenic Backway.

(29) Dinosaur Diamond Prehistoric Highway Scenic Byway. Interstate 70, from the Utah/Colorado state line running to Cisco Exit 214; the County Road FAS-1714 through Cisco, from I-70 running to SR-128; State Route 128, from the Cisco Road running to US-191 near Moab; US Route 191, from SR-128 running to I-70 at Crescent Junction; Interstate 70, from US-191 at Crescent Junction running to US-6 near Green River; US Route 6, from I-70 running to US-191 near Helper; US Route 191, from US-6 near Helper running to US-40 in Duchesne; US Route 40, from US-191 in Duchesne to the Utah/Colorado state line.

(a) Dinosaur Diamond Prehistoric Highway designated in Title 72, Chapter 4, Section 204 in 1998.

(b) Scenic byway route established with National Scenic Byway designation differs from special highway designation in that it includes County Road FAS-1714 and I-70 east of Cisco and does not at this time include those portions located on SR-10, on SR-155, or on US-191 south of SR-128.

(c) Segment excluded June 27, 2013 by action of the Naples City Council which determined the segment on US-40 at approximately mile point 145.87 (300 South) to mile point 148.53 (3000 South) become a non-scenic byway.

(d) Segment excluded July 20, 2015 by action of the Uintah County Commission which determined the segment on US-40 from mile point 153 to 154 become a non-scenic byway.

(e) Segment excluded August 31, 2015 by action of the Uintah County Commission which determined the segment on US-40 from mile point 154 to 156 become a non-scenic byway.

(30) Great Salt Lake Legacy Parkway Scenic Byway. State Route 67, beginning at I-215 and running to I-15.

(a) Designated May 16, 2002.

(b) Name changed July 19, 2018 to Great Salt Lake Scenic Byway.

(c) Extended July 19, 2018 to include the future West Davis Corridor beginning at SR-67 milepost 10 running northwest to State Route 37 milepost 4; State Route 127 from the Junction with the West Davis Corridor running west/southwest to the Antelope Island Marina.

(31) Morgan-Parleys Scenic Byway. State Route 66, beginning at I-84 in Morgan south to the Junction with State Route 65. State Route 65, from the junction with State Route 66 south to I-80 in Parleys Canyon.

(a) Designated December 11, 2017.

R926-13-5. Highways Within the State That Are Designated as National Scenic Byways or All-American Roads.

The following roads are designated by the National Scenic Byways Program as National Scenic Byways or All-American Roads:

(1) Flaming Gorge-Uintas National Scenic Byway.

(a) Comprised of the Flaming Gorge-Uintas State Scenic Byway.

(b) Designated National Scenic Byway June 9, 1998.

(2) Nebo Loop National Scenic Byway.

(a) Comprised of the Nebo Loop State Scenic Byway.

(b) Designated National Scenic Byway June 9, 1998.

(3) The Energy Loop: Huntington and Eccles Canyons National Scenic Byway.

(a) Comprised of the Energy Loop: Huntington and Eccles Canyons State Scenic Byway.

(b) Designated National Scenic Byway June 15, 2000.

(4) Logan Canyon National Scenic Byway.

(a) Comprised of the Logan Canyon State Scenic Byway.

(b) Designated National Scenic Byway June 13, 2002.

(5) Dinosaur Diamond Prehistoric Highway National Scenic Byway.

(a) Comprised of the Dinosaur Diamond Prehistoric Highway Scenic Byway.

(b) Also comprises the Indian Canyon State Scenic Byway and the Upper Colorado River State Scenic Byway (excluding the portion of SR-128 between I-70 and County Road FAS-1714).

(c) Designated NSB June 13, 2002.

(6) Scenic Byway 12 All-American Road.

(a) Comprised of the Highway 12, A Journey Through Time State Scenic Byway.

(b) Designated All-American Road June 13, 2002.

(7) Trail of the Ancients National Scenic Byway.

(a) Comprised of:

(i) The Trail of the Ancients State Scenic Byway,

(ii) The Monument Valley to Bluff State Scenic Byway,

(iii) The section of the Trail of the Ancients State Scenic Backway on SR-261 starting at US-163 and running to SR-95 (but excluding for now that portion on SR-316 between SR 261 and Goosenecks State Park that was accidentally omitted on the NSB application),

(iv) The section of the Trail of the Ancients State Scenic Backway running on SR-262 between US-191 and County Road FAS-2416, and on FAS-2416 starting at SR-262 and running southeasterly to County Road FAS-2422, then northeasterly on FAS-2422 to the Utah/Colorado State Line near Hovenweep National Monument.

(b) Designated National Scenic Byway September 22, 2005.

(8) Utah's Patchwork Parkway National Scenic Byway.

(a) Comprised of Brian Head-Panguitch Lake State Scenic Byway.

(b) Designated National Scenic Byway October 16, 2009.

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