R23. Administrative Services, Facilities Construction and Management.

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

R23-3-1. Purpose and Authority.

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

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

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

(4) This rule is also to provide the rules and standards as required by Section 63A-5-103(2)(e).

(5) The Board's authority to make rules for its duties and those of the Division is set forth in Subsection 63A-5-103(2).

R23-3-2. Definitions.

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

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

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

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

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

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

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

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

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

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

R23-3-3. When Programs Are Required.

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

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

R23-3-4. Authorization of Programs.

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

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

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

R23-3-5. Funding of Programs.

Programs may be funded from one of the following sources.

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

(2) Funds provided by the agency.

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

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

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

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

R23-3-6. Administration of Programming.

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

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

R23-3-7. Restrictions of Programming Firm.

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

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

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

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

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

(a) facility master plans;

(b) programs; and

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

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

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

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

Fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) any land banking requests; and

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

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

(a) existing building deficiencies and life safety concerns;

(b) essential program growth;

(c) cost effectiveness;

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

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

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

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

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

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

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

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

(1) No later than October 1 of each calendar year, each agency shall report operations and maintenance expenditures for state owned facilities covering the prior fiscal year to the Board Director in accordance with Section 63A-5-103(2)(e)(iv) and this rule. All data must be entered into the Riskonnect database by the agency in accordance with the format outlined by the Board Director.

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

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

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

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

(6) The Board Director in the annual capital needs request sent to the agencies, shall provide an adjustment for inflationary costs of goods and services for the previous 12 months from the issuance of the annual needs request. When the annual report of each agency is reviewed by the Board and later submitted to the Office of the Legislative Fiscal Analyst and the Governor's Office of Management and Budget, it shall include the review and adjustment for inflationary costs of goods and services. All matters in this subsection shall be in accordance with Section 63A-5-103(2)(e)(iv) and this rule.

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

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

The purpose of these programs and standards is to outline

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

(1) Documentation.

(a) Architectural and Mechanical.

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

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

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

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

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

(2) Equipment Data Base and Tagging.

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

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

(3) Corrective Maintenance.

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

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

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

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

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

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

(4) Preventive Maintenance.

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

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

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

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

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

(5) Boilers.

(a) Steam Boilers.

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

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

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

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

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

(b) Hot Water And Steam Boilers

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

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

(6) Life Safety.

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

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

(b) Fire Protection Equipment.

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

Utah State Fire Marshal.

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

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

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

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

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

(7) Air Conditioning and Refrigerated Equipment.

(a) Chillers.

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

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

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

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

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

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

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

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

(b) Roof Top and Package Units.

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

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

(iii) Quarterly check filters and replace where necessary.

(c) Small Refrigerated Equipment.

(i) Annually clean condenser coil.

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

(8) Plumbing.

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

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

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

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

(9) Electrical Systems.

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

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

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

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

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

(10) Facility Inspections.

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

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

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

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

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

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

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

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

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

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

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

(11) Indoor Air Quality and Energy Management.

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

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

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

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

(a) A Hazardous Materials Management Plan;

(b) An Asbestos Control and Management Plan;

(c) A Laboratory Hygiene Plan;

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

(e) A Blood Born Pathogen Program;

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

(g) A Respirator Program.

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R23. Administrative Services, Facilities Construction and Management.

R23-29. Delegation of Project Management.

R23-29-1. Purpose.

This rule provides the procedures for delegation of construction projects to the University of Utah, Utah State University, and the Utah Department of Transportation, hereinafter referred to as "Entity" or "Entities." This rule also provides for the use of Partnering Agreements between the Division of Facilities Construction and Management (DFCM) and State Agencies, including the Entities.

R23-29-2. Authority.

This rule is authorized under Subsection 63A-5-103, which directs the Utah State Building Board, hereinafter referred to as "Board" to make rules necessary for the discharge of its duties and the duties of the Division of Facilities Construction and Management.

R23-29-3. Authority and Extent of Categorical Delegation.

(1) Projects Delegated on a Categorical Basis. As permitted by subsection 63A-5-206(4)(a)(i), authority is delegated to the University of Utah, Utah State University, and the Utah Department of Transportation (UDOT), to exercise direct supervision over the design and construction of all projects on their respective properties or facilities up to the dollar amounts stated below.

(2) Delegation Dollar Limitations. The delegation referred to in this Rule is granted to the Entities for projects having a budget for construction, excluding soft costs, consistent with the DFCM Construction Budget Estimate (CBE) form, of:

(a) $4,000,000 or less for Utah State University;

(b) $10,000,000 or less for the University of Utah; and

(c) $350,000 or less for the Utah Department of Transportation.

R23-29-4. When Delegation Above Limits Allowed.

Delegation to the Entities may be allowed above the limits indicated above in this Rule when the Board in a meeting to which the particular Entity and DFCM has an opportunity to provide input, determines that there is a substantial justification that the project should be managed by the particular Entity. The Board may also determine that the particular project should be managed with specific roles defined for DFCM and the particular Entity.

R23-29-5. No Artificial Division of Projects.

Projects may not be divided into multiple projects in order to create projects which are small enough to meet the dollar limits for delegation. Projects that are designed to be constructed in conjunction with each other and are to be constructed by the same construction contractor, including construction manager/general contractor, are projects that are prohibited from being artificially divided under this Rule.

R23-29-6. When Legislative Authorization and a Program Is Required.

When applicable, this delegation authority shall not take effect for a specific project until the following requirements are met:

(1) legislative authorization, when required, for design and construction has been obtained for the construction of all New Facilities; and

(2) the requirements of Rule R23-29-20 below regarding the completion of a DFCM administered architectural program have been satisfied.

R23-29-7. Delegation Agreements.

The Board, at a meeting to which the particular Entity and DFCM has an opportunity to provide input, may require that delegation agreements designating the various responsibilities of the parties be executed prior to the commencement of the project under a project-specific delegation referred to in this Rule. For categorical delegations and project-specific delegations, DFCM and the particular Entity may enter into partnering agreements under Rule R23-29-24.

R23-29-8. Fiduciary Control and Codes.

(1) The Entity to whom control is delegated under this Rule shall assume fiduciary control over project finances, and shall assume all responsibility for project budgets and expenditures.

(2) Delegation of project control does not exempt the Entity from complying with all requirements for design and construction adopted by DFCM or the Board as well as all applicable laws, rules and codes.

(3) The Entity may not access for the delegated project, DFCM's statewide contingency reserve and project reserve authorized in Section 63A-5-209.

R23-29-9. Building Official.

UDOT shall use the DFCM Building Official. The University of Utah and Utah State University shall use an in-house Building Official or contract for a Building Official; all as approved by the DFCM Building Official.

R23-29-10. Procurement.

The Entity shall comply with the Utah Procurement Code, Title 63G, Chapter 6a of the Utah Code and all applicable procurement rules.

R23-29-11. Contract Documents.

The Entity shall utilize substantially the same standard Contract Documents as used by DFCM. Any substantive differences must be approved by DFCM.

R23-29-12. Transfer of State Funds.

(1) To the extent possible, state funds appropriated to DFCM for projects delegated to the Entity shall be transferred to the respective Entity in a timely manner upon the receipt of such funds by DFCM and on a reimbursement basis after providing supporting documents as required by DFCM.

R23-29-13. Contingency Funds, Contingency Reserve and Project Reserve.

The Entity shall be subject to the same laws and rules regarding contingency funds as is DFCM except that:

(1) contingency funds for delegated projects shall be segregated from the contingency funds held by DFCM for non-delegated projects; and

(2) the Entity may not access for the delegated project, DFCM's statewide contingency reserve and project reserve authorized in Section 63A-5-209.

R23-29-14. Space Standards.

The Entity shall comply with the space standards as adopted by the Board. Any significant deviations from these standards must be approved in advance by the Board.

R23-29-15. Design Criteria.

The Entity shall utilize the Design Criteria adopted by the Board. These may be supplemented by special requirements that are unique to each Entity.

R23-29-16. Value Engineering.

The Entity shall comply with applicable laws and rules regarding the value engineering and life cycle costing of facilities. DFCM may assist the Entity as requested in the

performance of these reviews.

R23-29-17. Record Drawings.

At the completion of each delegated project, each Entity shall be responsible for retention of record drawings and shall submit a copy of all record drawings of any new facility to DFCM as well as record drawings for any other project when requested by DFCM.

R23-29-18. Specific Statutory Requirements.

(1) In addition to the statutory requirement specified elsewhere in this rule, each Entity shall comply with the following requirements:

(a) laws relating to retention;

(b) laws relating to the notification to local governments or any person regarding certain types of projects;

(c) the Percent-for-Art program as provided in the Utah Code;

(d) Section 63A-5-206 relating to the reporting of completed projects to the Office of the Legislative Fiscal Analyst;

(e) Section 63A-5-208 relating to the listing and changing of subcontractors and the disclosure of subcontractor bids; and

(f) all applicable constitutional provisions, laws, rules, codes, and regulations.

R23-29-19. Reporting.

(1) The Utah Department of Transportation, the University of Utah and Utah State University shall report monthly to the Board on the status of its delegated projects.

(2) The Board may at any time indicate minimum requirements for reports as well as ask for further information.

(3) The above reports shall be submitted to the Building Board staff in accordance with the schedule established by the Building Board staff.

R23-29-20. Programming for Delegated Projects.

(1) For delegated projects within the definition of "New Facility" as defined in Title 63a, Chapter 5, Utah Code, a facility program shall be developed under the supervision of DFCM unless this requirement is waived by DFCM.

(2) For delegated projects where a program is not required under this Rule, the Entity may determine the extent of programming or scope definition required and supervise the development of these documents.

R23-29-21. Sharing of Resources.

DFCM and the Entity shall coordinate to share personnel resources in order to make sure that all personnel resources from both the DFCM and the Entity are sufficient for the delegated project. The Entity and DFCM shall enter into a separate agreement to accomplish this sharing of resources.

R23-29-22. Review of Delegated Projects.

Upon direction of the Board, DFCM staff may review the management of delegated projects and report its findings to the Board.

R23-29-23. Authority to Modify Delegation.

The Board may modify or repeal the authority delegated under this Rule by amending or repealing this Rule as well as by taking action to remove the delegation for a particular project when necessary to protect the interest of the State of Utah, at a Board meeting to which the applicable Entity and DFCM are given an opportunity to provide input.

R23-29-24. Partnering Agreements.

DFCM may execute partnering agreements with any State entity, or any public entity as allowed by law, in which the responsibilities, terms and conditions of the various parties are described. This may include, but is not limited to, allocation of specific responsibilities associated with the project in order to avoid duplicated efforts.

KEY: buildings, delegation*
June 9, 2014 63A-5-206
Notice of Continuation April 3, 2014

R156. Commerce, Occupational and Professional Licensing.
R156-60. Mental Health Professional Practice Act Rule.
R156-60-101. Title.

This rule is known as the "Mental Health Professional Practice Act Rule."

R156-60-102. Definitions.

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

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

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

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

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

(2) "Client or patient" means an individual who, when competent requests, or when not competent to request is lawfully provided professional services by a mental health therapist when the mental health therapist agrees verbally or in writing to provide professional services to that individual, or without an overt agreement does in fact provide professional services to that individual.

(3) "Direct supervision" of a supervisee in training, as used in Subsection 58-60-205(1)(f), 58-60-305(1)(f), and 58-60-405(1)(f), means:

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

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

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

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

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

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

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

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

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

(ii) the supervisee submits the supervisory agreement to the Division and obtains approval before counting direct supervision completed via live real-time methods toward the 100 hour direct supervision requirement; and

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

(4) "Employee" means an individual who is or should be treated as a W-2 employee by the Internal Revenue Service.

(5) "General supervision" means that the supervisor is available for consultation with the supervisee by personal face to face contact, or direct voice contact by telephone, radio, or some other means within a reasonable time consistent with the acts and practices in which the supervisee is engaged.

(6) "On-the-job training program" means a program that:

(a) is applicable to individuals who have completed all courses required for graduation in a degree or formal training program that would qualify for licensure under this chapter;

(b) starts immediately upon completion of all courses required for graduation;

(c) ends 45 days from the date it begins, or upon licensure, whichever is earlier, and may not be extended or used a second time;

(d) is completed while the individual is an employee of a public or private agency engaged in mental health therapy or substance use disorder counseling; and

(e) is under supervision by a qualified individual licensed under this chapter which includes supervision meetings on at least a weekly basis when the supervisee and supervisor are physically present in the same room at the same time.

R156-60-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 60.

R156-60-104. 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.

R156-60-105. Continuing Education.

A licensee, as part of the continuing education requirement, shall complete two hours of suicide prevention training that meets the requirements of this section.

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

(a) a recognized accredited college or university;

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

(c) a professional association or similar body involved in mental health therapy.

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

(3) The content of the course shall be relevant to mental health therapy, consistent with the laws of this state, and include one or more of the following components:

(a) suicide concepts and facts;

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

(c) evidence-based intervention for suicide risk;

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

(e) therapeutic alliances for intervention in suicide risk.

(4) A licensee shall be responsible for maintaining competent records of completed education for a period of four years following the date of completion.

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

(6) Licensees who lecture in continuing education courses meeting these requirements shall receive two hours of continuing education for each hour spent lecturing. However, no continuing education credit will be given for participation in a panel discussion.

R156-60-205. Qualifications for Licensure as a Clinical Social Worker, Marriage and Family Therapist, Clinical Mental Health Counselor, or Substance Use Disorder Counselor.

The two-hour pre-licensure suicide prevention course required by Subsections 58-60-205(1)(e)(iii), 58-60-305(1)(e)(iv), 58-60-405(1)(e)(iv), and 58-60-506(5)(b)(ii) shall meet the following standards:

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

(a) a recognized accredited college or university;

(b) a county, state, or federal agency; or
(c) a professional association or similar body involved in mental health therapy.
(2) The content of the course shall be relevant to mental health therapy, suicide prevention, consistent with the laws of this state, and include one or more of the following components:
(a) suicide concepts and facts;
(b) suicide risk assessment, crisis intervention, and first aid;
(c) evidence-based intervention for suicide risk;
(d) continuity of care and follow-up services for suicide risk; and
(e) therapeutic alliances for intervention in suicide risk.
(3) Each hour of education shall consist of 50 minutes of education in the form of classroom lectures and discussion, workshops, webinars, online self-paced modules, case study review, and simulations.
(4) A course provider shall document and verify attendance and completion.
(5) An applicant for licensure is responsible for submitting evidence of course completion to the Division as a prerequisite for licensure.

R156-60-502. Unprofessional Conduct.
"Unprofessional conduct" includes when providing services remotely:
(1) failing to practice according to professional standards of care in the delivery of services remotely;
(2) failing to protect the security of electronic, confidential data and information; or
(3) failing to appropriately store and dispose of electronic, confidential data and information.

KEY: licensing, mental health, therapists
September 21, 2015 **58-1-106(1)(a)**
Notice of Continuation February 26, 2019 **58-1-202(1)(a)**
58-60-101

R251. Corrections, Administration.
R251-105. Applicant Qualifications for Employment with Department of Corrections.
R251-105-1. Authority and Purpose.

(1) This rule is authorized by Section 63G-3-201, 64-13-10, and 64-13-25.

(2) The purpose of this rule is to provide policies and procedures for the screening, testing, interviewing, and selecting of applicants for Department of Corrections employment.

R251-105-2. Definitions.

(1) "Department" means Utah Department of Corrections.

(2) "POST" means Peace Officer Standards and Training.

R251-105-3. General Requirements.

It is the policy of the Department that applicants for employment:

(1) shall, for POST-certified positions, be a citizen of the United States;

(2) shall, for POST-certified positions, be a minimum of 21 years of age;

(3) shall, as a minimum, be the holder of a high school diploma or furnish evidence of successful completion of an examination indicating an equivalent achievement;

(4) may be required to pass pre-employment tests depending on position requirements;

(5) shall be free from any physical, emotional, or mental conditions which would prevent the applicant from performing the essential functions of the job;

(6) shall not have been convicted of a crime for which the applicant could have been imprisoned in a penitentiary of this or another state and shall not have been convicted of an offense involving unlawful sexual conduct, physical violence, or the unlawful sale of a controlled substance. This subsection may not apply to all positions;

(7) shall, if required, become a POST-certified officer and maintain certification through successful completion of at least 40 hours of POST training per fiscal year; and

(8) may undergo a background investigation which may include verification of personal history, employment history and criminal records check.

R251-105-4. Disqualification of Applicants.

(1) Applicants may be disqualified for failure:

(a) to meet education or experience qualifications;

(b) to appear for testing or interviews; or

(c) to meet minimum test score requirements.

(2) Applicants may be disqualified if found to be unsuitable for Department employment as indicated by a background investigation or psychological evaluation.

(3) Falsification of application is grounds for denying employment or for terminating employment if discovered after the applicant is hired.

(4) Disqualified applicants shall be notified in writing.

KEY: corrections, employment, prisons
February 11, 2019 **63-46a-3**
Notice of Continuation September 19, 2018 **64-13-10**
64-13-25

R277. Education, Administration.
R277-122. Board of Education Procurement.
R277-122-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Title 63G, Chapter 6a, Utah Procurement Code.

(2) The purpose of this rule is to adopt and incorporate by reference Title R33, Purchasing and General Services, with exceptions as described in this rule.

R277-122-2. Definitions.

(1) "Professional service provider" means a provider of a professional service as defined in Subsection 63G-6a-103(61) and includes an expert in educational instruction and teaching.

(2) "Responsible" means the same as that term is defined in Subsection 63G-6a-103 (75).

(3) "Responsive" means the same as that term is defined in Subsection 63G-6a-103 (76).

(4) "Unsolicited proposal" means the same as that term is defined in Subsection 63G-6a-712(1).

R277-122-3. Incorporation of Title R33 With Exceptions.

(1) The Board adopts and incorporates by reference Title R33, Purchasing and General Services, as in effect on April 1, 2017, with the exceptions described in this section.

(2) The Board does not adopt Section R33-8-101b.

(3) The Board adopts Section R277-122-5 in place of Sections R33-5-104 and R33-5-107.

(4) The Board adopts Section R277-122-6 in place of Section R33-5-108.

(5) The Board adopts Section R277-122-7 in place of Section R33-7-704.

(6) The Board adopts Section R277-122-9 in place of Sections R33-9-102 and R33-9-103.

(7) The Board adopts Section R277-122-10 in place of Section R33-12-201.

(8) The Board adopts Section R277-122-12 in place of Section R33-12-608.

(9) The Board adopts Section R277-122-13 in place of Subsections:

(a) R33-16-101a (2)(a); and

(b) R33-16-301 (4).

R277-122-4. Head of the Procurement Unit Designated.

The Board designates the Board's Director of Purchasing as the head of the procurement unit.

R277-122-5. Small Purchases of Procurement Items Other than Professional Services and Consultants.

(1) The head of the procurement unit shall make small purchases in accordance with the requirements set forth in Section 63G-6a-506 and this Section R277-122-10.

(2) Unless otherwise required as part of another standard procurement process being used in conjunction with a small purchase, the head of the procurement unit need not utilize a solicitation or provide public notice to conduct a small purchase.

(3) The head of the procurement unit may make a small purchase of a procurement item other than a professional service by:

(a) direct award without seeking competitive bids or quotes up to the following threshold amounts:

(i) $10,000 for one or more procurement items purchased at the same time from one source; and

(ii) $75,000 for multiple procurement items purchased in a 12-month period from one source; and

(b) subject to Rule R33-4-109, obtaining quotes from a minimum of two vendors and purchasing the procurement item from the responsible vendor offering the lowest quote for a purchase of up to $75,000 for one or more procurement items purchased at the same time from a single source.

(4) When conducting a purchase under Subsection (3)(b) in conjunction with an approved vendor list, the head of the procurement unit:

(a)(i) may obtain quotes from all the vendors on the approved vendor list; or

(ii) may obtain quotes from a minimum of two vendors on the approved vendor list, using one or more of the following methods to select vendors from whom to obtain quotes:

(A) a rotation system, organized alphabetically, numerically, or randomly;

(B) the geographic area serviced by each vendor;

(C) each vendor's particular expertise or field;

(D) solicitation of an additional quote from the vendor that provided the lowest quote on the most recently completed procurement conducted by the Board using the approved vendor list; or

(E) another method approved by the head of the procurement unit;

(b) shall document that all vendors on the approved vendor list have a fair and equitable opportunity to obtain a contract; and

(c) shall purchase the procurement item from the responsible vendor on the approved list offering the lowest quote.

(5) Whenever practicable, the head of the procurement unit shall use a rotation system or other system designed to allow for competition when using a small purchase process.

(6) In the process of obtaining a competitive quote, the head of the procurement unit shall record and maintain the following as a government record:

(a) the names of the vendors from whom quotes were requested and received; and

(b) the date of receipt and amount of each quote.

(7) The head of the procurement unit shall comply with all applicable laws and rules in the conduct of small purchases, including:

(a) Subsection 63G-6a-506(8);

(b) Title 63G, Chapter 6a, Part 24, Unlawful Conduct and Penalties; and

(c) Sections R33-24-104 through R33-24-106.

R277-122-6. Small Purchases of Professional Service Providers and Consultants.

(1) The head of the procurement unit shall make small purchases of professional services in accordance with the requirements set forth in Section 63G-6a-506 and this Section R277-122-11.

(2) Unless otherwise specifically required in this rule or as part of another standard procurement process being used in conjunction with a small purchase, the head of the procurement unit need not utilize a solicitation or provide public notice to conduct a small purchase of professional services.

(3) The head of the procurement unit may procure professional services:

(a) up to a maximum of $10,000 by direct negotiation with any professional services provider or consultant determined in writing by the head of the procurement unit to be qualified to provide the professional service; and

(b) up to a maximum of $100,000 by:

(i) subject to Rule R33-4-109, obtaining quotes from a minimum of three professional services providers or consultants determined in writing by the head of the procurement unit to be qualified to provide the professional services; and

(ii) making the purchase from the professional service provider or consultant determined in writing by the head of the procurement unit to provide the Board with the best value, comparing qualifications and price.

(4) The head of the procurement unit may utilize the process set forth in Subsection (3)(b) to make purchases from multiple professional service providers or consultants if:

(a) multiple professional service providers or consultants of the same type are required to fulfill the need for the professional service;

(b) the total amount awarded to the selected professional service providers or consultants does not exceed $250,000;

(c) a request for qualifications and quotes is published in accordance with Section 63G-6a-112;

(d) the request for qualifications and quotes states that the Board may make a purchase from multiple professional service providers or consultants; and

(e) all responses received are reviewed and considered when selecting the best value professional service providers or consultants.

(5) The head of the procurement unit shall comply with all applicable laws and rules in the conduct of small purchases for professional services, including:

(a) Subsection 63G-6a-506(8);

(b) Title 63G, Chapter 6a, Part 24, Unlawful Conduct and Penalties; and

(c) Sections R33-24-104 through R33-24-106.

R277-122-7. Scoring of Proposals Against Evaluation Criteria Other Than Cost in the Request for Proposal Process.

(1) The head of the procurement unit shall score proposals against evaluation criteria other than cost in the request for proposal process to:

(a) determine which proposals meet mandatory minimum requirements or minimum score thresholds set forth in a request for proposal; and

(b) assist the head of the procurement unit in selecting the proposal that provides the best value or is the most advantageous to the Board.

(2) The head of the procurement unit shall award points for each applicable evaluation criteria set forth in a request for proposal.

(3) The head of the procurement unit shall evaluate request for proposals based on a ten-point scale consisting of all whole numbers from zero to ten, with scores adhering to the following benchmarks:

(a) Ten points: the proposed solution measurably exceeds requirements and expectations as described in the request for proposal;

(b) Five points: the proposed solution satisfactorily meets requirements and expectations as described in the request for proposal; and

(c) Zero points: the proposed solution does not meet requirements and expectations as described in the request for proposal.

(4) The head of the procurement unit may use an alternative scoring scale if approved in writing by the head of the procurement unit.

R277-122-8. Multiple Category Request for Proposals Process Resulting in a Single Award.

(1) In accordance with Section 63G-6a-710, the head of the procurement unit may conduct a multiple stage process as a multiple category request for proposals process resulting in a single contract award.

(2) The head of the procurement unit may use a multiple category request for proposals process when proposals are accepted in more than one category of solution, and the category of solution providing the best value to the Board is not determined until the final stage of the multiple stage process.

(3) When conducting a multiple category request for proposals process, the head of the procurement unit shall:

(a) comply with all requirements set forth in Title 63G, Chapter 6a, Part 7, Requests for Proposals;

(b) allow offerors to submit proposals in more than one category; and

(c) include in the request for proposals:

(i) the subjective and objective criteria that will be used to evaluate proposals in each category of solution;

(ii) the minimum score thresholds required to advance to subsequent stages of the multiple stage process;

(iii) the method of identifying the best value proposal in each category of solution; and

(iv) the method of identifying the best value category of solution in the final stage of the multiple stage process.

(4) Categories in a multiple category request for proposals may consist of:

(a) different types of solutions addressing the same need;

(b) a base solution and its variants, including add alternates building upon the base solution; or

(c) any other category determined in writing by the head of the procurement unit to be appropriate for use in a multiple category request for proposals.

R277-122-9. Cancellation Before Award.

(1) A solicitation may be cancelled prior to a contract award if:

(a) the Board does not receive any responsive responses to the solicitation; or

(b) the head of the procurement unit determines the cancellation is:

(i) in the best interest of the Board; and

(ii) supported by a reasonable and good faith justification.

(2) The head of the procurement unit shall include notice of the Board's right of cancellation described in Subsection (1) in each Board solicitation.

(3) A solicitation may be re-issued:

(a) with or without modification, if cancelled pursuant to Subsection (1)(a); or

(b) with modification, if cancelled pursuant to Subsection (1)(b).

R277-122-10. Establishment of Terms and Conditions.

The head of the procurement unit shall develop standard terms and conditions for use with Board contracts and agreements.

R277-122-11. Requirements for Cost or Pricing Data.

(1) If cost or pricing data is required by Section 63G-6a-1206 or Section R33-12-601, the head of the procurement unit shall require the person who seeks a cost-based contract to submit:

(a) factual and verifiable information related to the contractor's estimated cost for completing a project on:

(i) the date the contract is signed by both parties; or

(ii) an earlier date agreed to by both parties that is:

(A) as close as practicable to the date described in Subsection (1)(a)(i); and

(B) before prudent buyers and sellers would reasonably expect price negotiations to be affected significantly; and

(b) underlying data related to a contractor's estimate that can be reasonably expected to contribute to the soundness of estimates of future costs and the validity of determinations of costs already incurred, including:

(i) vendor quotations;

(ii) nonrecurring costs;

(iii) information on changes in production methods and in

production or purchasing volume;

(iv) data supporting projections of business prospects and objectives and related operations costs;

(v) unit-cost trends such as those associated with labor efficiency;

(vi) make-or-buy decisions;

(vii) estimated resources to attain business goals; or

(viii) information on management decisions that could have a significant bearing on costs.

(2) Submission of certified cost or pricing data applies to contracts of $50,000.00 or greater if the contract price is not established by:

(a) adequate price competition;

(b) established catalogue or market prices; or

(c) law or regulation.

R277-122-12. Use of Federal Cost Principles.

The head of the procurement unit shall apply the federal cost principles described in 2 CFR Part 200, Subpart E in determining which costs expended under Board contracts are reasonable, allocable, and allowable.

R277-122-13. Grounds for Protest - Intervention in a Protest.

(1) A bidder who files a protest shall include in the bidder's submission a concise statement of the grounds for the protest, which shall include the facts leading the protestor to contend that a grievance has occurred, including but not limited to specifically referencing:

(a) the circumstances described in Subsections R33-16-101a(2)(a) (i) through (iii);

(b) a provision of the solicitation alleged to be:

(i) unduly restrictive;

(ii) anticompetitive; or

(iii) unlawful;

(c) an alleged material error made by the evaluation committee or conducting procurement unit; or

(d) the circumstances described in Subsections R33-16-101a(2)(a)(vi) and (vii).

(2) A motion to intervene in a post-award protest may only be made by the announced awardee.

(3) A person may intervene in a pre-award protest, if the person's proposal:

(a) was evaluated;

(b) found to be responsive; and

(c) the head of the procurement unit finds the person to be responsible.

R277-122-14. Unsolicited Proposals.

The head of the procurement unit may not consider an unsolicited proposal.

KEY: procurement, efficiency
February 7, 2019 **Art X Sec 3**
53A-1-401
63G-6a

R277. Education, Administration. **February 7, 2019** **Art X Sec 3**
R277-308. New Educator Induction and Mentoring. **53E-3-401(4)**
R277-308-1. Authority and Purpose. **53E-6-201**

(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 53E-6-201, which gives the Board power to issue licenses.

(2) The purpose of this rule is to establish requirements for induction of new educators.

R277-308-2. Definitions.

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

(2) "Mentor" means an educator with a professional educator license who is trained to advise, coach, consult, and guide the development of a new educator.

R277-308-3. LEA Induction Programs.

(1) An LEA shall provide an induction program for the LEA's licensed employees if:

(a) an educator holds an associate educator license; or

(b) an educator holds a professional educator license with less than three years experience.

(2) An LEA shall provide an induction program for at least three years for employees with an LEA-specific educator license.

(3) An induction program under this rule shall include, at a minimum:

(a) a documented professional learning plan, appropriate for each educator;

(b) LEA support in meeting the requirements of a professional license for an individual who holds an associate license;

(c) mentor observation and feedback for each educator beginning early in the program;

(d) principal observation and feedback for each educator as required by Rule R277-533; and

(e) assistance in meeting the pedagogical requirements described in Subsection R277-301-5(5).

(4) An induction plan under Subsection (1) shall provide a new educator with a trained mentor educator with a professional educator license.

(5) A trained mentor educator under Subsection (3) shall assist the educator to meet the Utah Effective Educator Standards established in Rule R277-530.

(6) A trained mentor educator may not have responsibility to evaluate a new educator for whom the educator acts as mentor.

(7) An LEA and a Utah approved university-based education preparation program may partner in implementing the induction program required by Subsection (1).

(8) The Superintendent shall:

(a) develop a model induction program, including model competencies for mentors;

(b) provide training for mentors based on the competencies developed in accordance with Subsection (8)(a);

(c) provide training for principals to oversee and support mentor training; and

(d) facilitate the sharing of best practices between LEAs.

R277-308-4. Effective Date.

This rule will be effective beginning July 1, 2020.

KEY: new educators, mentors, programs

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 8, 2019 53E-3-401(4)
53G-4-402(1)(b)

R277. Education, Administration.
R277-404. Requirements for Assessments of Student Achievement.
R277-404-1. 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-4-302, which directs the Board to adopt rules for the administration of statewide assessments;
(c) Subsection 53G-6-803(9)(b), which requires the Board to adopt rules to establish a statewide procedure for exempting a student from taking certain assessments; 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) provide consistent definitions; and
(b) assign responsibilities and procedures for the administration of statewide assessments, as required by state and federal law.

R277-404-2. Definitions.

(1) "Benchmark reading assessment" means the Board approved literacy assessment that is administered to a student in grade 1, grade 2, and grade 3 at the beginning, middle, and end of year.
(2) "College readiness assessment" means the:
(a) same as that term is defined in Section 53E-4-305; and
(b) American College Testing exam, or ACT.
(3) "English Learner" or "EL student" means a student who is learning in English as a second language.
(4) "English language proficiency assessment" means the World-class Instructional Design and Assessment (WIDA) Assessing Comprehension in English State-to-State (ACCESS), which is designed to measure the acquisition of the academic English language for an English Learner student.
(5) "Family Educational Rights and Privacy Act of 1974" or "FERPA," 20 U.S.C. 1232g, means a federal law designed to protect the privacy of students' education records.
(6) "High school assessment":
(a) means the same as that term is defined in Section 53E-4-304;
(b) means the "Utah Aspire Plus"; and
(c) includes the Utah Aspire Plus assessment of proficiency in:
(i) English;
(ii) math;
(iii) science; and
(iv) reading.
(7) "National Assessment of Education Progress" or "NAEP" means the national achievement assessment administered by the United States Department of Education to measure and track student academic progress.
(8) "State required assessment" means an assessment described in Subsection 53G-6-803(9)(a).
(9) "Standards Assessment":
(a) means the same as that term is defined in Section 53E-4-303; and
(b) means the "Readiness Improvement Success Empowerment" or "RISE";
(c) for each school year, includes one writing prompt from the writing portion of the RISE English language arts assessment for grades 5 and 8.
(10) "Statewide assessment" means the:
(a) standards assessment;
(b) high school assessment;
(c) college readiness assessment;
(d) Utah alternative assessment;
(e) benchmark reading assessment; and
(f) English language proficiency assessment.
(11) "Section 504 accommodation plan" means a plan:
(a) required by Section 504 of the Rehabilitation Act of 1973; and
(b) designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.
(12)(a) "Utah alternate assessment" means an assessment instrument:
(i) for a student in special education with a disability so severe the student is not able to participate in a statewide assessment even with an assessment accommodation or modification; and
(ii) that measures progress on the Utah core instructional goals and objectives in the student's IEP.
(b) "Utah alternate assessment" means:
(i) for science, the Utah Alternate Assessment (UAA); and
(ii) for English language arts and mathematics, the Dynamic Learning Maps (DLM).
(13) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows:
(a) an LEA and the Superintendent to electronically exchange an individual detailed student record; and
(b) electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

R277-404-3. Incorporation of Standard Test Administration and Testing Ethics Policy by Reference.

(1) This rule incorporates by reference the Standard Test Administration and Testing Ethics Policy, August 2, 2018, which establishes:
(a) the purpose of testing;
(b) the statewide assessments to which the policy applies;
(c) teaching practices before assessment occurs;
(d) required procedures for after an assessment is complete and for providing assessment results;
(e) unethical practices;
(f) accountability for ethical test administration;
(g) procedures related to testing ethics violations; and
(h) additional resources.
(2) A copy of the Standard Test Administration and Testing Ethics Policy is located at:
(a) https://www.schools.utah.gov/assessment; and
(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

R277-404-4. Superintendent Responsibilities.

(1) The Superintendent shall facilitate:
(a) administration of statewide assessments; and
(b) participation in NAEP, in accordance with Subsection 53E-4-302(1)(b).
(2) The Superintendent shall provide guidelines, timelines, procedures, and assessment ethics training and requirements for all statewide assessments.
(3) The Superintendent shall designate a testing schedule for each statewide assessment and publish the testing window dates on the Board's website before the beginning of the school year.

R277-404-5. LEA Responsibilities - Time Periods for Assessment Administration.

(1)(a) Except as provided in Section (1)(b), (1)(c), and R277-404-7 an LEA shall administer statewide assessments to all students enrolled in the grade level or course to which the assessment applies.
(b) A student's IEP team, English Learner team, or Section

504 accommodation plan team shall determine an individual student's participation in statewide assessments consistent with the Utah Participation and Accommodations Policy.

(2) An LEA shall develop a plan to administer statewide assessments.

(3) The plan shall include:

(a) the dates that the LEA will administer each statewide assessment;

(b) professional development for an educator to fully implement the assessment system;

(c) training for an educator and an appropriate paraprofessional in the requirements of assessment administration ethics; and

(d) training for an educator and an appropriate paraprofessional to use statewide assessment results effectively to inform instruction.

(4) An LEA shall submit the plan to the Superintendent by September 15 annually.

(5) At least once each school year, an LEA shall provide professional development for all educators, administrators, and assessment administrators concerning guidelines and procedures for statewide assessment administration, including educator responsibility for assessment security and proper professional practices.

(6) LEA assessment staff shall use the Standard Test Administration and Testing Ethics Policy in providing training for all assessment administrators and proctors.

(7) An LEA may not release state assessment data publicly until authorized to do so by the Superintendent.

(8) An LEA educator or trained employee shall administer statewide assessments consistent with the testing schedule published on the Board's website.

(9) An LEA educator or trained employee shall complete all required assessment procedures prior to the end of the assessment window defined by the Superintendent.

(10)(a) If an LEA requires an alternative schedule with assessment dates outside of the Superintendent's published schedule, the LEA shall submit the alternative testing plan to the Superintendent by September 15 annually.

(b) The alternative testing plan shall set dates for assessment administration for courses taught face-to-face or online.

R277-404-6. School Responsibilities.

(1)(a) An LEA, school, or educator may not use a student's score on a state required assessment to determine:

(i) the student's academic grade, or a portion of the student's academic grade, for the appropriate course; or

(ii) whether the student may advance to the next grade level.

(b)(i) An LEA may consider, as one of multiple lines of evidence, a student's score on a state required assessment to determine whether a student may enroll in an honors, advanced placement, or International Baccalaureate course.

(ii) An LEA may not prohibit a student from enrolling in an honors, advanced placement, or International Baccalaureate course:

(A) based on a student's score on a state required assessment; or

(B) because the student was exempted from taking a state required assessment.

(c) In accordance with Subsection 53G-6-803(1), an LEA shall reasonably accommodate a parent's or guardian's request to allow a student's demonstration of proficiency on a state required assessment to fulfill a requirement in a course.

(2) An LEA and school shall require an educator, assessment administrator, and proctor to individually sign a document provided by the Superintendent acknowledging or assuring that the educator administers statewide assessments consistent with ethics and protocol requirements.

(3) An educator and assessment administrator shall conduct assessment preparation, supervise assessment administration, and certify assessment results before providing results to the Superintendent.

(4) An educator, assessment administrator, and proctor shall securely handle and return all protected assessment materials, where instructed, in strict accordance with the procedures and directions specified in assessment administration manuals, LEA rules and policies, and the Standard Test Administration and Testing Ethics Policy.

R277-404-7. Student and Parent Participation in Student Assessments in Public Schools; Parental Exclusion from Testing and Safe Harbor Provisions.

(1) As used in this section, "penalize" means to put in an unfavorable position or at an unfair disadvantage.

(2)(a) Parents are primarily responsible for their children's education and have the constitutional right to determine which aspects of public education, including assessment systems, in which their children participate.

(b) Parents may further exercise their inherent rights to exempt their children from a state required assessment without further consequence by an LEA.

(3)(a) A parent may exercise the right to exempt their child from a state required assessment.

(b) Except as provided in Subsection (3)(c), an LEA may not penalize a student who is exempted from a state required assessment under this section.

(c) If a parent exempts the parent's child from the basic civics test required in Sections 53E-4-205 and R277-700-8, the parent's child is not exempt from the graduation requirement in Subsection 53E-4-205(2), and may not graduate without successfully completing the requirements of Sections 53E-4-205 and R277-700-8.

(4)(a) To exercise the right to exempt a child from a state required assessment under this provision and ensure the protections of this provision, a parent shall:

(i) fill out:

(A) the Parental Exclusion from State Assessment Form provided on the Board's website; or

(B) an LEA specific form as described in Subsection (4)(b); and

(ii) submit the form:

(A) to the principal or LEA either by email, mail, or in person; and

(B) on an annual basis; and

(C) except as provided in Subsection (4)(b), at least one day prior to the beginning of the assessment.

(b) An LEA may allow a parent to exempt a student from taking a state required assessment less than one day prior to the beginning of the assessment upon parental request.

(c) An LEA may create an LEA specific form for a parent to fill out as described in Subsection (4)(a)(i)(B) if:

(i) the LEA includes a list of local LEA assessments that a parent may exempt the parent's student from as part of the LEA specific form; and

(ii) the LEA specific form includes all of the information described in the Parental Exclusion from State Assessment Form provided on the Board's website as described in Subsection (4)(a)(i)(A).

(5)(a) A teacher, principal, or other LEA administrator may contact a parent to verify that the parent submitted a parental exclusion form described in Subsection (4)(a)(i).

(b) An LEA may request, but may not require, a parent to meet with a teacher, principal, or other LEA administrator regarding the parent's request to exclude the parent's student from taking a state required assessment.

(6) The administration of any assessment that is not a state

required assessment, including consequences associated with taking or failing to take the assessment, is governed by policy adopted by each LEA.

(7) An LEA shall provide a student's individual test results and scores to the student's parent or guardian upon request and consistent with the protection of student privacy.

(8) An LEA may not reward a student for a student's participation in or performance on a state required assessment.

(9) An LEA shall ensure that a student who has been exempted from participating in a state required assessment under this section is provided with an alternative learning experience if the student is in attendance during test administration.

(10) An LEA may allow a student who has been exempted from participating in a state required assessment under this section to be physically present in the room during test administration.

R277-404-8. Public Education Employee Compliance with Assessment Requirements, Protocols, and Security.

(1) An educator, test administrator or proctor, administrator, or school employee may not:

(a) provide a student directly or indirectly with a specific question, answer, or the content of any specific item in a statewide assessment prior to assessment administration;

(b) download, copy, print, take a picture of, or make any facsimile of protected assessment material prior to, during, or after assessment administration without express permission of the Superintendent and an LEA administrator;

(c) change, alter, or amend any student online or paper response answer or any other statewide material at any time in a way that alters the student's intended response;

(d) use any prior form of any statewide assessment, including pilot assessment materials, that the Superintendent has not released in assessment preparation without express permission of the Superintendent and an LEA administrator;

(e) violate any specific assessment administrative procedure specified in the assessment administration manual, violate any state or LEA statewide assessment policy or procedure, or violate any procedure specified in the Standard Test Administration and Testing Ethics Policy;

(f) fail to administer a statewide assessment;

(g) fail to administer a statewide assessment within the designated assessment window;

(h) submit falsified data;

(i) allow a student to copy, reproduce, or photograph an assessment item or component; or

(j) knowingly do anything that would affect the security, validity, or reliability of statewide assessment scores of any individual student, class, or school.

(2) A school employee shall promptly report an assessment violation or irregularity to a building administrator, an LEA superintendent or director, or the Superintendent.

(3) An educator who violates this rule or an assessment protocol is subject to Utah Professional Practices Advisory Commission or Board disciplinary action consistent with R277-515.

(4) All assessment material, questions, and student responses for required assessments is designated protected, consistent with Section 63G-2-305, until released by the Superintendent.

(5)(a) Each LEA shall ensure that all assessment content is secured so that only authorized personnel have access and that assessment materials are returned to Superintendent following testing, as required by the Superintendent.

(b) An individual educator or school employee may not retain or distribute test materials, in either paper or electronic form, for purposes inconsistent with ethical test administration or beyond the time period allowed for test administration.

R277-404-9. Data Exchanges.

(1) The Board's IT Section shall communicate regularly with an LEA regarding the required format for electronic submission of required data.

(2) An LEA shall update UTREx data using the processes and according to schedules determined by the Superintendent.

(3) An LEA shall ensure that any computer software for maintaining or submitting LEA data is compatible with data reporting requirements established in Rule R277-484.

(4) The Superintendent shall provide direction to an LEA detailing the data exchange requirements for each statewide assessment.

(5) An LEA shall ensure that all statewide assessment data have been collected and certify that the data are ready for accountability purposes no later than July 12.

(6) An LEA shall verify that it has satisfied all the requirements of the Superintendent's directions described in this section.

(7) Consistent with Utah law, the Superintendent shall return assessment results from all statewide assessments to the school before the end of the school year.

KEY: assessments, student achievements
February 22, 2019 Art X Sec 3
Notice of Continuation November 29, 2016 53E-4-3
53E-3-401(4)

R277. Education, Administration.
R277-486. Professional Staff Cost Program.
R277-486-1. Definitions.

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

B. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;
(2) educational background;
(3) endorsements;
(4) employment history;
(5) professional development information; and
(6) a record of disciplinary action taken against the educator.

C. "ESEA" means the Elementary and Secondary Education Act, also known as the No Child Left Behind Act, P.L. 107-110, Title I, Part A, Subpart 1, Sec. 1119, January 8, 2002.

D. "FTE" means full time equivalent.

E. "LEA" means a local education agency, including local school boards/public school districts, and charter schools.

F. "National Board certified educator" means an educator who has been certified by the National Board for Professional Teaching Standards (NBPTS) by successfully completing a three-year process that may include national content-area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience.

G. "USOE" means Utah State Office of Education.

H. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of determining the costs of a program on a uniform basis for each LEA.

R277-486-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board, by Subsection 53F-2-305(2), which authorizes the Board to adopt a rule to require a certain percentage of a LEA's professional staff to be licensed in the area in which the teacher teaches in order for the LEA to receive full funding under the state statutory formula, and by Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to satisfy statutory or federal regulatory percentages of licensed staff and support LEAs in recruiting and retaining highly educated and experienced educators for instructional, administrative and other types of professional employment in public schools.

R277-486-3. Eligibility to Receive WPUs for Professional Staff.

A. LEAs shall receive WPUs in accordance with the formula provided in Subsection 53F-2-305(1)(a):

(1) only for those educators who hold at least a bachelors degree; and

(2) only to the extent that such educators are qualified to work in the area to which they are assigned consistent with R277-520. For example, an educator who is employed full time but is appropriately qualified in only 75% of his assignments would count for only 0.75 FTEs in the calculation of WPUs.

(3) In order to receive full (100%) funding, an LEA shall have an appropriately qualified educator in every assignment.

B. An educator who is identified as qualified under R277-520 is not necessarily highly qualified for ESEA purposes.

C. LEAs shall not receive WPUs for interns in their second or subsequent years nor for paraprofessionals in any assignment.

R277-486-4. Acceptable Experience.

A. Educator experience for purposes of this rule shall be measured in one-year increments.

B. An educator shall be credited by the USOE, for purposes of the professional staff cost calculation, with one year of experience for every school year in which he is employed at least half-time (0.5 FTE) in an instructional or administrative position in any public school in the State of Utah or in any regionally accredited:

(1) public school outside of the State of Utah;
(2) private school; or
(3) institution of higher education.

C. To obtain credit under Subsection B(1) through (3), the LEA which employs the educator shall submit to the USOE acceptable documentation verifying such experience, including documentation of the school's or institution's regional accreditation.

D. Employment in a prekindergarten position shall not be acceptable for this purpose, unless the educator is or was employed in a special education position in an accredited school.

E. Unpaid volunteer service, paid consulting, employment in non-instructional or non-administrative positions in a school setting, and a school internship shall not be acceptable experience under this rule.

F. Documentation of an educator's experience in a private school or institution of higher education may be required by USOE staff to determine relevance of experience.

R277-486-5. Acceptable Training.

Acceptable training under this rule may include:

A. Any degree at the bachelors level or above or credit beyond the current degree from a:

(1) regionally accredited institution of higher education; or

(2) postsecondary degree-granting institution accredited by any of the national accrediting agencies recognized by the United States Department of Education.

B. Any professional development activity consistent with R277-500 and approved in writing by the USOE.

R277-486-6. Mapping Degree Summary Data to Statutory Formula.

A. To ensure consistency in applying data from CACTUS to the formula, the following mapping of the relevant two-digit CACTUS Degree Summary codes to the five columns of the Professional Staff Cost formula table in Subsection 53F-2-305(1)(a) shall be used:

(1) 03 = Bachelor's Degree;
(2) 04 or 05 = Bachelors + 30 quarter hours or 20 semester hours;
(3) 06 = Master's Degree;
(4) 07 or 08 = Master's Degree + 45 quarter hours or 30 semester hours;
(5) 09 = Doctorate.

B. An LEA shall be credited for an individual with National Board certification at the doctorate level.

R277-486-7. Data Sources.

A. For LEAs that were in operation in the prior year, data shall be used from June 30 update of CACTUS as required by R277-484-3C.

B. For LEAs that were not in operation in the prior year, data shall be used from November 15 update of CACTUS as required by R277-484-3M.

KEY: professional staff
June 7, 2012 **Art X Sec 3**
Notice of Continuation February 8, 2019 **53F-2-305(2)**
53E-3-401(4)

R277. Education, Administration.
R277-494. Charter, Online, Home, and Private School Student Participation in Extracurricular or Co-curricular School Activities.
R277-494-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Subsection 53E-3-401(4), which permits the Board to adopt rules in accordance with its responsibilities;

(c) Subsection 53G-6-704(6)(a), which directs the Board to make rules establishing fees for a charter school student's participation in extracurricular or co-curricular activities at certain public schools; and

(d) Subsection 53G-6-705(6), which directs the Board to make rules establishing fees for an online student's participation in extracurricular or co-curricular activities at certain public schools.

(2) The purpose of this rule is to inform school districts, charter and online schools, and parents of:

(a) school participation fees; and

(b) state-determined requirements for a charter school or a public online school student to participate in an extracurricular activity at a student's boundary school.

R277-494-2. Definitions.

(1) "Activity fee" means a fee that:

(a) is approved by a local school board or public school;

(b) is charged to all students to participate in an extracurricular or co-curricular activity sponsored by or through the public school; and

(c) entitles a public school student to:

(i) participate in a school activity;

(ii) try out for an extracurricular or co-curricular school activity;

(iii) receive transportation to an activity; and

(iv) attend a regularly scheduled public school activity.

(2) "Co-curricular activity" means a school district or school activity, course, or experience that includes a required regular school day component and an after school component, including a special program or activity such as a program for a gifted and talented student, a summer program, and a science or history fair.

(3) "Extracurricular activity" means an athletic program or activity sponsored by a public school and offered, competitively or otherwise, to a public school student outside of the regular school day or program.

(4) "Online school" means a formally constituted public school that offers full-time education delivered primarily over the internet.

(5) "Qualifying school" means:

(a) for purposes of a charter school student, a school described in Subsection 53G-6-704(1);

(b) for purposes of an online school student, a school described in Subsection 53G-6-705(2); and

(c) for purposes of a private or home school student, a school described in Subsection 53G-6-703(2)(c).

(6) "School of enrollment" means the public school that maintains the student's cumulative file, enrollment information and transcript for purposes of high school graduation.

(7) "School participation fee" means the fee paid by a charter or online school to a qualifying school consistent with Subsections R277-494-3(2) or R277-494-4(2) for the charter or online school student's participation in an extracurricular or co-curricular activity.

(8) "Student activity specific fee" means the activity fee charged to all participating students by a qualifying school for a designated extracurricular or co-curricular activity consistent with Rule R277-407.

R277-494-3. Charter and Online School Student Participation in Extracurricular Activities at Another Public School.

(1) A charter or online school student may participate in an extracurricular activity at a qualifying school if:

(a) the extracurricular activity is not offered by the student's charter or online school;

(b) the student satisfies:

(i) for a charter school student, the requirements of Subsection 53G-6-704(3);

(ii) for an online school student, the requirements of Subsection 53G-6-705(3); and

(iii) the requirements of this rule;

(c) the student meets the qualifying school's standards and requirements; and

(d) the student's parent agrees to provide the student transportation to the qualifying school for the extracurricular activity.

(2)(a) A charter or online school student's school of enrollment shall pay a one-time annual school participation fee of $75.00 per student to the qualifying school at which the charter or online school student desires to participate.

(b) Upon annual payment of the school participation fee, the student may participate in all extracurricular or co-curricular school activities at the school during the school year for which the student is qualified and eligible.

(3) The school participation fee described in Subsection (2)(a) is in addition to:

(a) a student activity specific fee for a specific extracurricular activity; and

(b) the activity fee charged to all students in a qualifying school to supplement a school activity as assessed by the school consistent with this rule.

(4) Except as provided in Subsection (7), a charter or online school student who participates in an extracurricular activity at a qualifying school shall pay all required student activity specific fees to the qualifying school in accordance with deadlines set by the qualifying school.

(5) All fees, including school participation fees and student activity specific fees shall be paid prior to a charter or online school student's participation in an activity at the qualifying school.

(6) A charter or online school of enrollment shall cooperate fully with all qualifying schools:

(a) regarding students' participation in try-outs, practices, pep rallies, team fund raising efforts, scheduled games, and required travel; and

(b) by providing complete and prompt reports of student academic and citizenship progress or grades, upon request.

(7)(a) If a participating charter or online school student qualifies for a fee waiver, in accordance with Rule R277-470, the charter or online student's school of enrollment shall pay the school participation fee described in Subsection (2)(a) and any waived student activity specific fees to the qualifying school.

(b) A charter or online school that is required to pay a fee waiver student's participation fee or student activity specific fee as described in Subsection (7)(a) shall pay the student participation fee and any student activity specific fees to the qualifying school before the charter or online school student may begin to participate in the extracurricular activity at the qualifying school.

R277-494-4. Charter or Online School Student Participation in Co-Curricular Activities.

(1)(a) A charter or online school student may participate in a co-curricular activity at a qualifying school if:

(i) the co-curricular activity is not offered by the student's

charter or online school;

(ii) the student satisfies:

(A) for a charter school student, the requirements of Subsection 53G-6-704(3);

(B) for an online school student, the requirements of Subsection 53G-6-705(3); and

(C) the requirements of this rule;

(iii) the student meets the qualifying school's standards and requirements; and

(iv) the student's parent agrees to provide the student transportation to the qualifying school for the co-curricular activity.

(b) A charter or online school may negotiate with a public school other than a school described in Subsection (1) to participate in a co-curricular activity at the other public school, including:

(i) a debate, drama, or choral program;

(ii) a specialized course or program offered during the regular school day; and

(iii) a school's sponsored enrichment program or activity.

(c) A student who participates in a co-curricular activity described in Subsection (1)(b) shall meet:

(i) the same attendance, discipline, and course requirements expected of the public school's full-time students;

(ii) for a charter school student, the requirements of Subsection 53G-6-704(3); and

(iii) for an online school student, the requirements of Subsection 53G-6-705(3).

(2)(a) A charter or online school of enrollment shall determine if the school will allow students to participate in co-curricular school activities at qualifying schools.

(b) If a charter or online school allows one student to participate in a co-curricular activity at a qualifying school, the charter or online school shall allow all interested students to participate.

(3)(a) A charter or online school student's school of enrollment shall pay a one-time annual school participation fee of $75.00 per student to the qualifying school at which the charter or online school student desires to participate.

(b) If a charter or online school of enrollment pays a $75.00 school participation fee to a qualifying school as described in Subsection R277-494-3(2)(a), the charter or online school of enrollment is not required to pay an additional $75.00 school participation fee described in Subsection (3)(a) to the qualifying school in the same year.

(4) A charter or online school student participating under this rule shall:

(a) pay the required student activity specific fees for each co-curricular activity; and

(b) meet all eligibility requirements and timelines of the public school.

(5)(a) If a participating charter or online school student qualifies for a fee waiver, in accordance with Rule R277-407, the charter or online student's school of enrollment shall pay any waived student activity specific fees to the qualifying school.

(b) A charter or online school that is required to pay a fee waiver student's activity specific fees as described in Subsection (5)(a), shall pay the student activity specific fees to the qualifying school before the charter or online school student may begin to participate in the co-curricular activity at the qualifying school.

R277-494-5. Private or Home School Student Participation in Extracurricular Activities.

(1) In accordance with Section 53G-6-703, a private or home school student may participate in an extracurricular activity at a qualifying school if:

(a) for a private school student, the extracurricular activity is not offered by the student's private school;

(b) the student satisfies the requirements of:

(i) Section 53G-6-703; and

(ii) this rule; and

(c) the student meets the qualifying school's standards and requirements.

(2) Except as provided in Subsection (3), a private or home school student shall pay the required student activity specific fees for each extracurricular activity to the qualifying school:

(a) before the student may participate in the extracurricular activity at the qualifying school; and

(b) in accordance with deadlines set by the qualifying school.

(3) If a private or home school student qualifies for a fee waiver in accordance with Rule R277-407, the qualifying school shall waive any required student activity specific fees in accordance with the requirements of Rule R277-407, School Fees.

R277-494-6. Private or Home School Student Participation in Co-curricular Activities.

A private or home school student may participate in a co-curricular activity at a public school in accordance with the dual enrollment provisions of rule R277-438.

KEY: extracurricular, co-curricular, activities, student participation

March 9, 2016 **Art X Sec 3**

Notice of Continuation October 15, 2015 **53E-3-401(4)**

53G-6-704(5)

53G-6-705(6)

R277. Education, Administration.
R277-528. 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
Notice of Continuation February 8, 2019 53E-3-401(4)

R277. Education Administration.
R277-910. Underage Drinking Prevention Program.
R277-910-1. 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 53G-10-406 which directs the Board to establish rules regarding:

(i) a requirement that an LEA offer the Underage Drinking Prevention Program each school year to each student in grade 7 or 8, and grade 9 or 10; and

(ii) the criteria for the board to use in selecting a provider for the Underage Drinking Prevention Program.

(2) The purpose of this rule is to establish the criteria for selecting a provider for the Underage Drinking Prevention Program and general requirements of an LEA when offering the program.

R277-910-2. Criteria for Selecting a Provider.

(1) The following criteria, along with the requirements found in 53G-10-406, shall be considered in selecting a provider for the Underage Drinking Prevention Program:

(a) a program that is evidence-based including peer reviewed journals, national registries, and research;

(b) a program that is focused on preventing underage consumption of alcohol through a curriculum, course, or program that is taught through multiple days of instruction and not a one-time presentation.

(c) a program that is delivered in the classroom by the classroom teacher or other trained professional;

(d) a program that addresses behavioral risk factors associated with underage drinking and integrates skills practice into the curriculum; and

(e) a program that aligns with the core standards of the Utah Public School system.

(2) The vendor of the Underage Drinking Prevention Program shall:

(i) have prior experience in successfully reducing underage drinking; and

(ii) be available for deployment beginning in the 2018-19 school year.

R277-910-3. Mandatory Offering of Underage Drinking Prevention Program.

(1) An LEA shall offer to each student in grades 7 or 8 and grades 9 or 10, respectively, the Underage Drinking Prevention Program procured by the Board.

(2) An LEA shall offer the Underage Drinking Prevention Program to students of the grades in subsection (1) of this section beginning in the 2018-19 school year.

R277-910-4. Reporting Requirements.

(1) An LEA shall report to the Superintendent annually regarding the general participation and deployment of the Underage Drinking Prevention Program.

(2) The report shall be made via the Annual Assurances Document described in R277-108 and shall include:

(a) if the Underage Drinking Prevention Program was offered to students each school year in grades 7 or 8 and in grades 9 or 10;

(b) the name of the course where the Underage Drinking Prevention Program was offered including if it was offered as a stand-alone course; and

(c) if the instructor has attended the one time training, including online state level training for the Underage Drinking Prevention Program.

KEY: underage drinking prevention, substance abuse, alcohol
February 7, 2019 **Art X Sec 3**
53E-3-401(4)
53G-10-406

R277. Education, Administration.
R277-912. Law Enforcement Related Incident Reporting.
R277-912-1. 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-3-516 which directs the Board to establish rules regarding a collaborative annual report meeting all the requirements of Subsection 53E-3-516(2).

(2) The purpose of this rule is to generate the report required by Subsection 53E-3-516 and the form that the report may be accessed.

R277-912-2. LEA Reporting Requirements.

(1) An LEA shall work with the Superintendent and the relevant law enforcement agencies and school personnel to collect the following incident data that occurred on school grounds while school is in session or during a school-sponsored activity:

(a) arrests of a minor;

(b) other law enforcement activities as defined in Section 53E-3-516(1);

(c) disciplinary actions as defined in section 53E-3-516(1); and

(d) all other data as outlined in subsection 53E-3-516(3) and (4).

(2) An LEA shall collect the data in a form agreed upon by the Superintendent and the relevant law enforcement agencies.

(3) An LEA shall report the data required to the Superintendent in a timely manner;

(4) Beginning in the 2020-21 school year, an LEA shall report the data compiled for each school year to the Superintendent on or before September 1st of the year in which the school year ended.

(5) An LEA shall report the data to the Superintendent as prescribed by the Superintendent.

R277-912-3. Annual Report Content and Access.

(1) The Superintendent shall compile the data to form an aggregated report consistent with the requirements of Subsection 53E-3-516(3), (4) and (5).

(2) The report shall exclude all identifiable student information and data.

(3) The report shall be compiled no later than November 1st of each year in which the school year ended and provided to the board.

(4) An external entity may request access to the data used to compile the report consistent with Utah Code Title 63G, Chapter 2, Government Records Access Management Act.

(5) The Superintendent shall respond to the request within 15 business days and provide the report within 30 business days of the request by providing the most recent data set available at the time of the request, so long as the data set is aggregated and no student identifiable information is included in the data set.

(6) If the request is for the data being used for an upcoming report that is more than 30 days from being compiled, the Superintendent may wait longer than 30 days to provide the requested report.

KEY: incident reporting; law enforcement
February 7, 2019 **Art X Sec 3**
53E-3-401(3)
53E-3-516

R307. Environmental Quality, Air Quality.
R307-101. General Requirements.
R307-101-1. Foreword.

Chapter 19-2 and the rules adopted by the Air Quality Board constitute the basis for control of air pollution sources in the state. These rules apply and will be enforced throughout the state, and are recommended for adoption in local jurisdictions where environmental specialists are available to cooperate in implementing rule requirements.

National Ambient Air Quality Standards (NAAQS), National Standards of Performance for New Stationary Sources (NSPS), National Prevention of Significant Deterioration of Air Quality (PSD) standards, and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) apply throughout the nation and are legally enforceable in Utah.

R307-101-2. Definitions.

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

"Actual Emissions" means the actual rate of emissions of a pollutant from an emissions unit determined as follows:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The director shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emission unit, other than an electric utility steam generating unit specified in (4), which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the director, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the director if the director determines such a period to be more representative of normal source post-change operations.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Air pollutant" means a substance that qualifies as an air pollutant as defined in 42 U.S.C. Sec. 7602.

"Air Pollutant Source" means private and public sources of emissions of air pollutants.

"Air Pollution" means the presence of an air pollutant in the ambient air in such quantities and duration and under conditions and circumstances, that are injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and regulations adopted by the Air Quality Board (Section 19-2-104).

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-401-8.

"Ambient Air" means that portion of the atmosphere, external to buildings, to which the general public has access. (Section 19-2-102(4)).

"Appropriate Authority" means the governing body of any city, town or county.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the state Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Board" means Air Quality Board. See Section 19-2-102(8)(a).

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Chargeable Pollutant" means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Clean Air Act" means federal Clean Air Act as found in 42 U.S.C. Chapter 85.

"Clean Coal Technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in

the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is provided by the National Weather Service.

"Coating" means a material that can be applied to a substrate and which cures to form a continuous solid film for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, caulks, maskants, inks, and temporary protective coatings.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Composite vapor pressure" means the sum of the partial pressures of the compounds defined as VOCs.

"Condensable PM2.5" means material that is vapor phase at stack conditions, but which condenses and/or reacts upon cooling and dilution in the ambient air to form solid or liquid particulate matter immediately after discharge from the stack.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air pollutant directly or indirectly into the outdoor atmosphere.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Director" means the Director of the Division of Air Quality. See Section 19-1-103(1).

"Division" means the Division of Air Quality.

"Electric Utility Steam Generating Unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emission" means the act of discharge into the atmosphere of an air pollutant or an effluent which contains or may contain an air pollutant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

(1) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air pollutant which has been emitted by the source operation, equipment, or control apparatus;

(2) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air pollutant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

(3) A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board, the director or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k)).

"Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan and R307, any permit requirements established pursuant to 40 CFR 52.21 or R307-401.

"EPA" means Environmental Protection Agency.

"EPA Method 9" means 40 CFR Part 60, Appendix A, Method 9, "Visual Determination of Opacity of Emissions from Stationary Sources," and Alternate 1, "Determination of the opacity of emissions from stationary sources remotely by LIDAR."

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-103(2).

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Filterable PM2.5" means particles with an aerodynamic diameter equal to or less than 2.5 micrometers that are directly emitted by a source as a solid or liquid at stack or release conditions and can be captured on the filter of a stack test train.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"LPG" means liquified petroleum gas such as propane or butane.

"Maintenance Area" means an area that is subject to the provisions of a maintenance plan that is included in the Utah state implementation plan, and that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard.

(a) The following areas are considered maintenance areas for ozone:

(i) Salt Lake County, effective August 18, 1997; and

(ii) Davis County, effective August 18, 1997.

(b) The following areas are considered maintenance areas for carbon monoxide:

(i) Salt Lake City, effective March 22, 1999;

(ii) Ogden City, effective May 8, 2001; and

(iii) Provo City, effective January 3, 2006.

(c) The following areas are considered maintenance areas for PM10:

(i) Salt Lake County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015; and

(ii) Utah County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015; and

(iii) Ogden City, effective on the date that EPA approves the maintenance plan that was adopted by the Board on December 2, 2015.

(d) The following area is considered a maintenance area for sulfur dioxide: all of Salt Lake County and the eastern portion of Tooele County above 5600 feet, effective on the date that EPA approves the maintenance plan that was adopted by the Board on January 5, 2005.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

(1) routine maintenance, repair and replacement;

(2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(3) use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;

(4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) use of an alternative fuel or raw material by a source:

(a) which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or

(b) which the source is otherwise approved to use;

(6) an increase in the hours of operation or in the production rate unless such change would be prohibited under any enforceable permit condition;

(7) any change in ownership at a source

(8) the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the director determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(a) when the director has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any, and

(b) the director determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(9) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) the Utah State Implementation Plan; and

(b) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to R307:

(1) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(a) any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

(b) any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 182 of the federal Clean Air Act; or

(c) any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

(2) any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

(3) the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of these R307 rules whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum or reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;
(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Modification" means any planned change in a source which results in a potential increase of emission.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:
(1) any increase in actual emissions from a particular physical change or change in method of operation at a source; and
(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":
(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.
(b) An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.
(c) An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used to evaluate this increase or decrease.
(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
(e) A decrease in actual emissions is creditable only to the extent that:
(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
(ii) It is enforceable at and after the time that actual construction on the particular change begins; and
(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.
(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means an area designated by the Environmental Protection Agency as nonattainment under Section 107, Clean Air Act for any National Ambient Air Quality Standard. The designations for Utah are listed in 40 CFR 81.345.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by an EPA reference or equivalent method.

"PM2.5 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM2.5.
(1) Specifically, Sulfur dioxide, Nitrogen oxides, Volatile organic compounds and Ammonia are precursors to PM2.5 in any PM2.5 nonattainment area, except where the Administrator of the EPA has approved a demonstration satisfying 40 CFR 51.1006(a)(3) which has, for a particular PM2.5 nonattainment area, determined otherwise.
(2) The following subparagraphs denote specific nonattainment areas (as defined in the July 1, 2017 version of 40 CFR 81.345), within which certain pollutants identified in paragraph (1) are exempted from the definition of PM2.5 precursor for the purposes of 40 CFR 51.165
(a) In the Logan UT-ID PM2.5 nonattainment area - Ammonia is exempted.

"PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10.

"Part 70 Source" means any source subject to the permitting requirements of R307-415.

"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. (Subsection 19-2-103(4)).

"Pollution Control Project" means any activity or project at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(1) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(2) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions;

(3) A permanent clean coal technology demonstration project conducted under Title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Primary PM2.5" means the sum of filterable PM2.5 and condensable PM2.5.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the emission inventory at the time of enactment;

(2) Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Regulated air pollutant" means any of the following:

(a) Nitrogen oxides or any volatile organic compound;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, Stratospheric Ozone Protection;

(e) Any pollutant subject to a standard promulgated under Section 112, Hazardous Air Pollutants, or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including any of the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act, Equivalent Emission Limitation by Permit. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act;

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act (Construction, Reconstruction and Modification) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

"Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(1) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(2) The director shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Clean Air Act.

"Representative Actual Annual Emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of unit, (or a different consecutive two-year period within 10 years after that change, where the director determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the director shall:

(1) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State of Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 6.10 cubic meters or 20 cubic feet, a minimum burn rate less than 5

kilograms per hour or 11 pounds per hour as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kilograms or 362.9 pounds. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Road" means any public or private road.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Secondary PM2.5" means particles that form or grow in mass through chemical reactions in the ambient air well after dilution and condensation have occurred. Secondary PM2.5 is usually formed at some distance downwind from the source.

"Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy);
Nitrogen oxides: 40 tpy;
Sulfur dioxide: 40 tpy;
PM10: 15 tpy;
PM2.5: 10 tpy;
Particulate matter: 25 tpy;
Ozone: 40 tpy of volatile organic compounds;
Lead: 0.6 tpy.

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as dissolvers, viscosity reducers, or cleaning agents.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Temporary" means not more than 180 calendar days.

"Temporary Clean Coal Technology Demonstration Project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Utah State Implementation Plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2009)."

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air pollutant equal to a threshold limit value - ceiling (TLV- C) or threshold limit value -time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"VOC content" means the weight of VOC per volume of material and is calculated by the following equation in gram/liter (or alternately in pound/gallon, or pound/pound):

Grams of VOC per Liter of Material = Ws - Ww - Wes / Vm

Where:
Ws = weight of volatile organic compounds
Ww = weight of water
Wes = weight of exempt compounds
Vm = volume of material

"Volatile Organic Compound (VOC)" means VOC as defined in 40 CFR 51.100(s), effective as of the date referenced in R307-101-3, is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

R307-101-3. Version of Code of Federal Regulations Incorporated by Reference.

Except as specifically identified in an individual rule, the version of the Code of Federal Regulations (CFR) incorporated throughout R307 is dated July 1, 2017.

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Notice of Continuation November 13, 2018

R362. Governor, Energy Development (Office of).
R362-4. High Cost Infrastructure Development Tax Credit Act.
R362-4-1. Purpose.

(1) Pursuant to the High Cost Infrastructure Development Tax Credit Act at Utah Code Section 63M-4-601 et seq. ("the Act"), and in accordance with Utah Code Title 63G, Chapter 3, Utah Administrative Rulemaking Act, this Rule clarifies requirements and establishes procedures for implementation by the Utah Governor's Office of Energy Development ("OED") of the Act.

(2) This Rule clarifies eligibility requirements for high cost infrastructure tax credits; establishes procedures for eligible taxpayers to follow when applying for high cost infrastructure tax credits; clarifies approval, certification and reporting requirements, and provides clarification on how high cost infrastructure tax credits will be calculated.

R362-4-2. Authority.

Pursuant to Utah Code Section 63M-4-6 et seq., OED has authority to establish requirements and procedures for awarding tax credits to qualifying entities.

R362-4-3. Definitions.

(1) Terms in this Rule are defined in Utah Code Section 63M-4-602. The definitions below are in addition to or serve to clarify those found in Utah Code Section 63M-4-602, 63M-4-603, and 63M-4-604.

(a) "Infrastructure" includes an energy delivery project designed to transmit, deliver or otherwise increase the capacity for the delivery of energy to a user.

(b) "Infrastructure-related revenue" means an amount of tax revenue for an entity creating a high cost infrastructure project in a taxable year that is directly attributable to the high cost infrastructure project, under:

(i) Utah Code Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(ii) Utah Code Title 59, Chapter 10, Individual Income Tax Act; and,

(aa) Utah Code Title 59, Chapter 10, Individual Income Tax Act revenue shall be calculated by taking 75% of the employer state tax wage withholdings for the qualifying entity claiming a tax credit in the same taxable year for which the tax credit is being claimed.

(iii) Utah Code Title 59, Chapter 12, Sales and Use Tax Act.

(iv) For a fuel standard compliance project, as defined under Utah Code Section 63M-4-602(2), infrastructure-related revenue means state revenues generated by an applicant after the completion of a fuel standard compliance project under: Title 59, Chapter 7, Corporate Franchise and Income Taxes; Title 59, Chapter 10, Individual Income Tax; and Title 59, Chapter 12, Sales and Use Tax Act.

(c) "Office" means the Governor's Office of Energy Development created under Utah Code Section 63M-4-401.

(d) "Board" means the Utah Energy Infrastructure Authority Board created under Utah Code Section 63H-2-202.

(e) "Tax credit" means a certificate issued by the Office and recognized by the Utah State Tax Commission to an infrastructure cost-burdened entity under Utah Code Section 59-7-619 or Utah Code Section 59-10-1034.

R362-4-4. Eligibility for Tax Credit.

(1) Requirements for establishing tax credit eligibility, include:

(a) Meeting the definition of a high cost infrastructure project under Utah Code Section 63M-4-602;

(i) All high cost infrastructure projects, including fuel standard compliance projects, must be physically located in the State of Utah.

(b) Completing an application approved by the Office, including providing sufficient information to determine applicant eligibility;

(c) Office determination that that applicant meets all eligibility requirements and referral to the Board for Board approval;

(d) Receiving a favorable Board recommendation for granting tax credits to the applicant based on the Board's evaluation of the applicant project's benefit to the State of Utah based on factors described in Utah Code Section 63M-4-603(2); and,

(i) The Board may find the applicant's project sufficiently benefits the State if the project satisfies some or all of the criteria described in Utah Code Section 63M-4-603(2).

(e) Entering into an agreement with the Office described in Utah Code Section 63M-4- 603(3) authorizing a post-performance, non-refundable tax credit calculated in accordance with Utah Code 63M-4-603 and Utah Administrative Rules R362-4-5.

R362-4-5. Calculation of Tax Credit.

(1) An eligible applicant that has a qualifying high cost infrastructure project shall be granted a tax credit, on an annual basis, equal to 30% of the applicant's infrastructure-related revenues reported to the Utah State Tax Commission for the same tax year for which the tax credit is being claimed.

(a) An eligible applicant may continue to receive tax credits for infrastructure-related revenues on an annual basis, as described above, until it has received tax credits totaling 50% of the cost of the infrastructure construction associated with the high cost infrastructure project, unless or until any other time period described in Utah Code Section 63M-4-603(4) has occurred.

(2) An eligible applicant that has completed a fuel standard compliance project shall be granted a tax credit, on an annual basis, not to exceed 30% of applicant's infrastructure-related revenues reported to the Utah State Tax Commission for the same tax year for which the tax credit is being claimed. The exact percentage of the tax credit will be determined by the Board based on criteria described in Utah Code Section 63M-4-603.

(a) An eligible applicant that has completed a fuel standard compliance project may continue to receive tax credits for infrastructure-related revenues on an annual basis, as described above, until it has received tax credits totaling 30% of the cost of the infrastructure construction associated with the high cost infrastructure project, unless or until any other time period described in Utah Code Section 63M-4-603(4) has occurred.

(3) An independent certified public accountant, paid for by the infrastructure cost-burdened entity, shall certify applicant's infrastructure-related revenues reported to the Utah State Tax Commission for the same tax year for which the tax credit is being claimed

R362-4-6. Application Process.

(1) The Office is responsible for certifying the high cost infrastructure project and authorizing any tax credit certificate.

(2) Applications for tax credits are to be made on forms developed by the Office to gather information necessary to certify the high cost infrastructure project and authorize tax credits based on the applicant's infrastructure related revenues.

(3) The Office will evaluate each application according to the definitions and criteria established by statute and by this Rule. If the information contained within an application is inadequate to determine eligibility according to this Rule, the Office reserves the right to request additional information from the applicant. If an applicant is unable or unwilling to provide adequate information needed to determine eligibility, the Office

may deny the application until sufficient information is provided.

(4) In order to verify the information submitted in the application and provided to the Board, the applicant may be required to supply additional information at the request of the Office.

(5) All applicants for a tax credit under this Rule shall provide the following information:

(a) The legal name of the person or entity seeking a tax credit.

(b) The tax identification number of the person or entity seeking the tax credit.

(c) The physical address, plat number, or global positioning satellite coordinates of the property where the high cost infrastructure project will be constructed, or such other information necessary to permit the Office staff to locate the site for on-site verification of the information in the application.

(d) A description of the high cost infrastructure project, including timeline. This description is to be accompanied by an itemized summary of all projected and/or actual costs to be incurred during construction of the high cost infrastructure project.

(e) The applicant shall disclose any other tax credit(s) it has applied for or has received for the infrastructure burdened project when applying for a high cost infrastructure tax credit or during the performance period of a high cost infrastructure tax credit agreement.

(f) The documentation provided shall be sufficient to allow the Office to identify the cost of the infrastructure construction associated with the high cost infrastructure project, both realized and/or anticipated.

(6) Those applicants seeking a tax credit for the development of a fuel standard compliance project shall also include:

(a) A description of their current operation, including the current fuel standards being met by their existing operation.

(b) A description of the fuel standard compliance project to be undertaken by the company to produce fuel at a Utah refinery that will meet Tier 3 gasoline standards under 40 C.F.R. Section 79.54 and 80.1603.

(7) If, after evaluating an application, the Office determines that it meets all eligibility requirements, then it will be referred to the Board for Board approval.

(a) If, after evaluating an application, the Office determines that applicant is not eligible, the Office shall provide the applicant with a letter including an explanation for the denial.

(8) The Board shall consider the application for approval of tax credits at the next regularly scheduled Board meeting.

(9) An eligible applicant who has received a favorable recommendation from the Board for approval of tax credits shall enter into an agreement described in Utah Code Section 63M-4-603(3) with the Office.

R362-4-7. Tax Credit Approval and Certification.

(1) The Office is responsible for certifying high cost infrastructure tax credits.

(2) After receiving a complete application, including all requested documents supporting an applicant's tax credit eligibility, the Office shall determine whether the applicant has met the eligibility requirements described in Utah Code Section 63M-4-603(1) and in this Rule.

(3) If, after evaluating an application, the Office determines that an applicant is eligible for a tax credit, the Office shall refer the applicant to the Board for Board approval of tax credits based on the Board's evaluation of the project's benefit to Utah based on considerations described in Utah Code Section 63M-4-603 and in this Rule.

(a) The Board may find the applicant's project benefits the State if the project satisfies some or all of the criteria described in Utah Code Section 63M-4-603.

(4) If an eligible applicant receives a favorable recommendation from the Board as described in Utah Code Section 63M-4-603(3) and this Rule, the Office will enter into an agreement described in Utah Code Section 63M-4-603(3).

(a) The agreement may include a tax credit authorization based upon the projected cost of the high cost infrastructure project as submitted in the completed application. Nevertheless, the Applicant may only claim a tax credit with a tax credit certificate based on the applicant's actual infrastructure-related revenues reported to the Utah State Tax Commission for the same tax year for which the tax credit is being claimed.

(b) The agreement may contain other terms and conditions necessary to administer the tax credit and satisfy the requirements of the Act, including requiring the Applicant to provide the actual cost to complete the high cost infrastructure project when available to allow the Office to correctly adjust the tax credit authorization.

(c) The agreement may also include conditions under which the agreement and/or the tax credit may be modified or withdrawn, including addressing substantive changes to the Applicant's project not included in the application.

(d) As part of the agreement, applicant must provide the Office annual reports prepared by an independent certified public accountant verifying the high cost infrastructure project's infrastructure-related revenue during the taxable year for which a tax credit is being claimed, as well as granting the Office access to relevant tax records.

(5) Subject to the Act, Rule and agreement, the Office will deliver a tax credit certificate for each qualifying tax year to the applicant or the legal entity the applicant has assigned the tax credit to in accordance with Utah Administrative Rules R362-4-7(6), and provide a copy of the certificate to the Utah State Tax Commission.

(6) Applications for tax credits authorized under this chapter must state the legal entity who will claim the tax credit if other than the Applicant. As part of the tax credit application and approval process, the Office and Board must approve the assignment of the tax credit to the stated recipient.

(a) Any additional assignments and/or transfers of the tax credit are prohibited without the express consent of the Office and Board.

(7) Tax credits authorized by the Office can only be used to offset the applicant's Utah State tax liability under Title 59, Chapter 7, Corporate Franchise and Income Taxes; and, Title 59, Chapter 10, Individual Income Tax.

(8) The Applicant must notify the Office and the Board of other tax credits it has applied for or has received when applying for a high cost infrastructure tax credit or during the performance period of a high cost infrastructure tax credit agreement. Additional tax credits and incentives may be taken into consideration in the Board evaluation of the project's benefit to Utah based on the criteria contained in 63M-4-603.

(a) If the Applicant receives other tax credits or incentives after a high cost infrastructure tax credit Agreement has been established with the Office, the Board may reconsider the project's benefit to Utah based on the criteria contained in 63M-4-603, and the Office may amend the Agreement based on the Board's reconsideration of high cost infrastructure tax credit approval for the project.

R362-4-8. Tax Credit Period and Reporting Requirements.

(1) The first reporting period shall begin on the commencement date of the tax credit period, which will be determined by the Office, and shall continue through December 31 of that calendar year. The remaining tax credit and reporting periods shall each span consecutive calendar years from January 1 until December 31. The final tax credit and reporting period

will start on January 1 of the calendar year and end on the tax credit termination date as determined when any time period described in Utah Code Section 63M-4-603(4) has occurred.

(2) Within 300 days of the end of each reporting period, the infrastructure cost-burdened entity shall provide the Office an annual report. Reasonable extensions to the 300 day reporting requirement may be granted by the Office.

(a) The report must be prepared by an independent certified public accountant.

(b) The report shall include the amount of infrastructure-related revenue that has been generated during the taxable year for which the tax credit will be claimed, the total amount of tax credit that the infrastructure cost burdened entity has received, and the projected economic life of the high cost infrastructure project.

R362-4-9. Confidentiality.

(1) In accordance with requirements laid out in Utah Code Section 63M-4-604, the Office will treat applicant documents as protected records under Utah Code Section 63G-2-305 and 309. Notwithstanding this policy, applicant will be responsible for providing the Office a business confidentiality form for documents submitted to the Office that it wants protected from public disclosure and clearly marking those documents confidential.

(2) Applicant understands and agrees to provide the Office sufficient information to determine eligibility, and the Board sufficient information to make a recommendation, as well as disclose sufficient information for the Office to meet its statutory reporting requirements.

(3) As part of the duties assigned to the Office in administering the tax credit, the Office is required to report to the Revenue and Taxation Interim Committee of the Utah State Legislature information related to the amount of tax credits granted, and the amount of infrastructure-related revenue generated by the high cost infrastructure projects receiving those tax credits.

(4) In accordance with the Utah Open and Public Meetings Act, Board meetings where voting on the approval of tax credits takes place will be open to the public.

R362-4-10. Appeals Procedure.

(1) A denial of an applicant's request for a tax credit may be appealed by written request pursuant to Utah Code Section 63G-4-201, and in accordance with this Rule.

(2) Hearings must be requested within 30 calendar days from the date that the Office sends written notice of its denial of tax credit.

(3) Failure to submit a timely request for a hearing constitutes a waiver of due process rights. The request must explain why the party is seeking agency relief, and the party must submit the request on the "Request for Hearing/Agency Action" form. The party must then mail or fax the form to the address or fax number contained on the denial.

(4) The Board considers a hearing request that a recipient sends via mail to be filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the Board considers the request to be filed on the date that the Board receives it, unless the sender can demonstrate through convincing evidence that it was mailed before the date of receipt.

(5) The Board shall hold informal adjudicative proceedings in accordance with Utah Code Section 63G-4-202 and 203. The Board shall notify the petitioner and Board representative of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be for good cause shown. Failure by any party to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations and the right to the hearing.

(6) The Petitioner named in the notice of agency action and the Board shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply; however,

(a) Testimony may be taken under oath.

(b) All hearings are open to all parties.

(c) Discovery is prohibited; informal disclosures will be ruled on at the pre-hearing conference.

(d) A respondent shall have access to relevant information contained in the Board's files and to material gathered in the investigation of respondent to the extent permitted by law.

(e) The Board may cause an official record of the hearing to be made, at the Board's expense.

(7) Within a reasonable time, not to exceed 60 days after the close of the informal proceeding, the Board shall issue a signed decision in writing that includes a findings of fact and conclusions of law, and time limits for appeals rights, and administrative or judicial review in accordance with Utah Code Section 63G-4-203(i).

KEY: incentives
February 5, 2019 63M-4-601

R384. Health, Disease Control and Prevention, Health Promotion.
R384-100. Cancer Reporting Rule.
R384-100-1. Purpose Statement.

(1) The Cancer Reporting Rule is adopted under authority of sections 26-1-30 and 26-5-3.

(2) Cancers constitute a leading cause of morbidity and mortality in Utah and, therefore, pose an important risk to the public health. Through the routine reporting of cancer cases, trends in cancer incidence and mortality can be monitored and prevention and control measures evaluated.

(3) Cancer records are managed by the Utah Cancer Registry (Registry) on behalf of the Utah Department of Health. This Cancer Reporting Rule is adopted to specify the reporting requirements for cases of cancer to the Registry. The Utah Department of Health retains ownership and all rights to the records.

R384-100-2. Definitions.

As used in this rule:

(1) "Cancer" means all in-situ (with the exception of in-situ cervical cancers) or malignant neoplasms diagnosed by histology, radiology, laboratory testing, clinical observation, autopsy or suggestible by cytology, but excluding basal cell and squamous cell carcinoma of the skin unless occurring in genital sites such as the vagina, clitoris, vulva, prepuce, penis and scrotum.

(2) "Follow-up data" includes date last seen or date of death, status of disease, date of first recurrence, type of recurrence, distant site(s) of first recurrence, and the name of the physician who is following the case.

(3) "Health care provider" includes any person who renders health care or professional services such as a physician, physician assistant, nurse practitioner, registered nurse, licensed practical nurse, dentist, optometrist, podiatric physician, osteopathic physician, osteopathic physician and surgeon, or others rendering patient care.

(4) "Registrar" means a person who:

(a) is employed as a registrar and who has attended a cancer registrar training program;

(b) has two years of experience in medical record discharge analysis, coding, and abstracting, and has successfully completed a course in anatomy, physiology, and medical terminology; or

(c) has successfully passed the Certified Tumor Registrar examination offered by the National Cancer Registrars' Association.

(5) "Reportable benign tumor" means any noncancerous neoplasm occurring in the brain.

R384-100-3. Reportable Cases.

Each case of cancer or reportable benign tumor, as described in R384-100-2, that is diagnosed or treated in Utah shall be reported to the Utah Cancer Registry, 546 Chipeta Way; Suite 2100; Salt Lake City, Utah 84108, telephone number 801-581-8407, FAX number 801-581-4560.

R384-100-4. Case Report Contents.

Each report of cancer or reportable benign tumor shall include information on report forms provided by the Registry. These reports shall be made in the format prescribed by the Registry and shall include items such as the name and address of the patient, medical history, environmental factors, date and method of diagnosis, primary site, stage of disease, tissue diagnosis, laboratory data, methods of treatment, recurrence and follow-up data, and physician names.

R384-100-5. Agencies or Individuals Required to Report Cases.

(1) All hospitals, radiation therapy centers, pathology laboratories licensed to provide services in the state, nursing homes, and other facilities and health care providers involved in the diagnosis or treatment of cancer patients shall report or provide information related to a cancer or reportable benign tumor to the Registry.

(2) Procedures for reporting:

(a) Hospital employed registrars shall report hospital cases.

(b) Registrars employed by radiation therapy centers shall report center cases.

(c) Pending implementation of electronic reporting by pathology laboratories, pathology laboratories shall allow the Registry to identify reportable cases and extract the required information during routine visits to pathology laboratories.

(d) If a health care provider diagnoses a reportable case but does not send a tissue specimen to a pathology laboratory or arrange for treatment of the case at a hospital or radiation therapy center, then the health care provider must report the case to the Registry.

(e) If the Registry has not received complete information on a reportable case from routine reporting sources (hospitals, radiation therapy centers, pathology laboratories), the Registry may contact health care providers and require them to complete a report form.

R384-100-6. Time Requirements.

(1) New Cases:

(a) Hospitals and radiation therapy facilities shall submit reports to the Registry within six months of the date of diagnosis.

(b) Other facilities and health care providers shall submit reportable data to the Registry upon request.

(2) Follow-up Data:

(a) Hospitals and radiation therapy centers shall submit annual follow-up data to the Registry within 13 months of the date the patient was last contacted by hospital or facility personnel.

(b) Physicians shall submit follow-up data to the Registry upon request.

R384-100-7. Reporting Format.

Reports shall be submitted in the standard format designated by the Registry. Report forms can be obtained by contacting the Registry.

R384-100-8. Data Quality Assurance.

Records maintained by hospitals, pathology laboratories, cancer clinics, and physicians are subject to review by Registry personnel acting on behalf of the Department of Health to assure the completeness and accuracy of reported data.

R384-100-9. Confidentiality of Reports.

All reports required by this rule are confidential under the provisions of Title 26, Chapter 3 and are not open to inspection except as allowed by Title 26, Chapter 3. The Registry shall maintain all reports according to the provisions of Title 26, Chapter 3.

R384-100-10. Penalties.

Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Cancer Reporting Rule, are prescribed under Section 26-23-6 and are punishable.

KEY: cancer, reporting requirements and procedures
March 15, 2010 26-1-30
Notice of Continuation February 25, 2019 26-5-3

R384. Health, Disease Control and Prevention, Health Promotion.
R384-200. Cancer Control Program.
R384-200-1. Authority and Purpose.

This rule governs program eligibility, benefits, and administration by the Department for the Utah Cancer Control Program, including breast and cervical cancer, cardiovascular disease risk factor, and colorectal cancer screening services; Breast and Cervical Cancer Control Program; WISEWOMAN (BeWise) Program; and Colorectal Cancer Control Program. It is authorized by Sections 26-5-2 and 26-1-5.

R384-200-2. Definitions.

The following definitions apply to this rule:

(1) "Department" means the Utah Department of Health.

(2) "Client" means an individual who meets the eligibility criteria and is enrolled in the Utah Cancer Control Program pursuant to the provisions of this rule.

R384-200-3. Nature of Program and Benefits.

(1) The Utah Cancer Control Program provides reimbursement to providers for services rendered to individuals who meet the eligibility requirements. The Utah Cancer Control Program provides limited cancer screening and cardiovascular health services as described in this rule. The Department provides reimbursement coverage under the program only for services for each program:

(a) as provided by Public Law 101-354, 42 U.S.C. Section 300k, which established the National Breast and Cervical Cancer Early Detection Program (NBCCEDP) and by ongoing CDC program guidance;

(2) Within available funding, the Department provides the following services under the Utah Cancer Control Program;

(a) The Breast and Cervical Cancer Control Program pays for the following services related to breast cancer:

(i) Screening: Clinical Breast Exam and screening mammography.

(ii) Diagnostic: diagnostic unilateral and bilateral mammograms; ultrasound; stereotactic localization for breast biopsy, each lesion; radiological supervision and interpretation; preoperative placement of needle localization wire, breast radiological supervision, and interpretation; radiological examination and surgical specimen; ultrasonic guidance for needle biopsy, radiological supervision, and interpretation; fine needle aspiration with or without imaging guidance; aspiration of cyst of breast; biopsy of breast; incisional biopsy of breast; percutaneous, needle core, using imaging guidance; percutaneous, automated vacuum assisted or rotating biopsy device, using imaging guidance; excision of cyst, fibroadenoma, or other benign or malignant tumor aberrant breast tissue, duct lesion or nipple lesion; excision of breast lesion identified by pre-operative placement of radiological marker-single lesion; pre-operative placement of needle localization wire; and image guided placement metallic localization clip, percutaneous, during breast biopsy.

(iii) Surgical: surgical service, such as a breast biopsy, as an outpatient procedure and anesthesia.

(iv) Pathology: immediate cytohistologic study to determine adequacy of specimen of fine needle aspiration (FNA), interpretation and report of FNA, breast biopsy interpretation, and excision of breast lesion.

(b) The Breast and Cervical Cancer Control Program pays for the following services related to cervical cancer:

(i) Screening: clinical Pap test and HPV Test.

(ii) Diagnostic: colposcopy with or without biopsy; colposocopy of the cervix with loop electrode biopsy of the cervix; colposocpy with loop electrode conization of the cervix; biopsy, single or multiple, or local excision of lesion, with or without fulguration; excision, endocervical curettage; conization of cervix; Loop Electrode Excision; and endometrial sampling with or without biopsy, without cervical dilation.

(iii) Pathology: cytopathology; cytopathology, cervical or vaginal, requiring interpretation by physician; colposcopy biopsy interpretation; and surgical pathology, first tissue block, with frozen section, single specimen.

(iv) Office Visits: new patient office visit and established patient office visit for both breast and cervical clients.

(v) The program does not pay for any services once a woman is diagnosed with breast cancer or cervical cancer, including cervical precancerous lesions.

(c) The WISEWOMAN Program, known as BeWise, pays for the following services:

(i) A basic metabolic profile; comprehensive metabolic panel; lipid panel; total cholesterol; quantative, blood, and reagent strip glucose tests; hemoglobin, glycated (HbA1c), which is used in lieu of other glucose testing for those with previous diagnosis of diabetes; HDL cholesterol test; office visit for new patient--problem focus 10, 20, or 30 minutes face-to-face; office visit for established patient, 5, 10, or 15 minutes face-to-face; routine venipuncture; preventive medicine counseling or risk factor reduction intervention(s) provided to an individual 15, 30, 45, or 60 minutes; and preventive medicine counseling or risk factor reduction intervention(s) provided to individuals in a group setting, 30 or 60 minutes.

(ii) The program does not pay for treatment services such as medication, medical nutrition therapy, and other highly specialized counseling such as diabetes-education programs.

(d) The Colorectal Cancer Control Program pays for the following:

(i) Screening Tests and Procedures: colonoscopy every ten years, biopsy/polypectomy during colonoscopy, moderate sedation for colonoscopy, the use of propofol only if prior approval is obtained, and office visits related to the tests listed above.

(ii) Diagnostic Follow-up Services: office visits related to screening and diagnostic tests, total colon exam with colonoscopy, biopsy/polypectomy during colonoscopy, moderate sedation for colonoscopy, the use of propofol only if prior approval is obtained, and pathology fees.

(iii) Surveillance: surveillance colonoscopies will be reimbursed at appropriate intervals as determined by the recommending clinician, the program, or the program's Medical Advisory Board (MAB).

(iv) The program does not pay for CT Colonography, or virtual colonoscopy, as a primary screening test; Computed Tomography Scans, known as CTs or CAT scans, requested for staging or other purposes; surgery or surgical staging, unless specifically required and approved by the program's MAB to provide a histological diagnosis of cancer; any treatment related to the diagnosis of colorectal cancer; any care or services for complications that result from screening or diagnostic tests provided by the program; evaluation of symptoms for clients who present for CRC screening but are found to have gastrointestinal symptoms; diagnostic services for clients who had an initial positive screening test performed outside of the program; management of medical conditions, including Inflammatory Bowel Disease using surveillance colonoscopies and medical therapy for management; genetic testing for clients who present with a history suggestive of a hereditary non-polyposis colorectal cancer (HNPCC) or familial adenomatous polyposis (FAP); and the use of propofol as anesthesia during endoscopy, unless specifically required and approved by the program's MAB in cases where the client cannot be sedated with standard moderate sedation.

(3) The Department may adjust the services available to meet current needs and fluctuations in available funding.

(4) The Utah Cancer Control Program is not health insurance. A relationship with the Department as the insurer

and the client as the insured is not created under this program.

R384-200-4. Providers.

The Department reimburses only providers and Local Health Departments who contract with the Department to provide services under the program.

R384-200-5. Reimbursement.

(1) The Department shall reimburse providers with whom it contracts to provide services as limited in manuals that form part of its Provider Agreements or contracts with providers.

(2) The Department shall reimburse providers according to the fee schedule or schedules that are made part of its agreements or contracts with providers.

(3) Payment for services by the Department and client co-payment, if any, constitutes full payment for services. A provider may not bill or collect any additional monies for services rendered pursuant to an agreement or contract to provide services under the Utah Cancer Control Program.

(4) The Department does not pay for services under the Utah Cancer Control Program for which an individual is eligible to receive under Medicaid or any other primary payer source.

R384-200-6. Utah Cancer Control Program Eligibility.

(1) To be eligible to receive services from the Breast and Cervical Cancer Control Program, an individual:

(a) must be aged 50 to 64 years old;

(b) must have income at or below 250% of Federal Poverty Level;

(c) must have no insurance, inadequate insurance coverage that does not pay for these services, or cannot afford the insurance co-pay.

(d) must be a current Utah resident.

(2) To be eligible to receive services from the WISEWOMAN (BeWise) Program, an individual:

(a) must be enrolled and remain eligible to participate in the breast and cervical screening program

(b) must have income at or below 250% of the Federal Poverty Level

(c) must have no insurance, inadequate insurance coverage that does not pay for these services, or cannot afford the insurance co-pay.

(d) must be unable to pay the premium to enroll in Medicare Part B if eligible for Medicare. Medicare part B requires the participant to pay a monthly premium of $99.00 and a late enrollment fee of +10% for each full 12-month period the participant could have had Part B, but didn't sign up for it.

(3) To be eligible to receive services from the Colorectal Cancer Control Program, an individual:

(a) must be aged 50 to 64 years old;

(b) must have income at or below 200% of the Federal Poverty Level;

(c) must have no health insurance coverage;

(d) must be a documented resident of the United States;

(e) must be a current Utah resident;

(f) must be at average risk or have a family history of colorectal cancer;

(g) must have no symptoms of colorectal cancer or other bowel condition;

(h) must never have had a colonoscopy.

KEY: breast and cervical cancer screening, colorectal cancer screening, Utah Cancer Control Program
March 21, 2014 26-1-5
Notice of Continuation February 25, 2019 26-5-2

R384. Health, Disease Control and Prevention; Health Promotion.

R384-203. Prescription Drug Database Access.

R384-203-1. Authority and Purpose.

This rule establishes procedures and application processes pursuant to Title 58-37f-301(2)(d) for Utah Department of Health Executive Director to allow access to the Prescription Drug database by a designated and assigned person to conduct scientific studies regarding the use or abuse of controlled substances, who is not an employee of the Department of Health.

R384-203-2. Definitions.

The following definitions apply to this rule:

(1) "Department" means the Utah Department of Health.

(2) "Director" means the Utah Department of Health Executive Director.

(3) "Prescription Drug Database" means the Utah Controlled Substance Database.

(4) "Research facility" means a research facility associated with a university or college in the state accredited by the Northwest Commission on Colleges and Universities.

(5) "Institutional Review Board" means a board that is approved for human subject research by the United States Department of Health and Human Services.

(6) "Designee" means a person designated and assigned by the Director to have access to the Prescription Drug database in order to conduct scientific studies regarding the use or abuse of controlled substances, who is not an employee of the Department.

(7) "Business associate" means a business associate as defined under the HIPAA privacy, security, and breach notification rules in 45 CFR 164.502(a), 164.504(e), and 164.532(d) and (e).

(8) "De-identified" means information as defined in 45 CFR 164.502(d) and 164.514(a), (b), and (c).

R384-203-3. Criteria for Application to Access Prescription Drug Database.

(1) The study must fit within the responsibilities of the Department for health and welfare.

(2) De-identified prescriber, patient and pharmacy data will meet the research needs.

(3) The research facility designee must provide:

(a) written assurances that the studies are not conducted for and will not be used for profit or commercial gain;

(b) written assurances that the designee shall protect the information as a business associate of the Department of Health; and

(c) documentation of an Institutional Review Board approval.

R384-203-4. Research Application Process.

(1) The research facility designee will prepare and submit for Department approval an application as designated by the Department detailing explicit information regarding the scientific studies to be conducted including the:

(a) purpose of the study;

(b) research protocol for the project;

(c) description of the data needed from the database to conduct that research;

(d) plan that demonstrates all database information will be maintained securely, with access being strictly restricted to the designee and research study staff; and

(e) provisions for electronic data to be stored on a secure database computer system with access being strictly restricted to the designee and research study staff.

(2) Application will be reviewed by the Department's Institutional Review Board and recommendation made to the director for or against approval.

(3) Director will determine approval status of the application.

(4) Designee will sign the Department's data sharing agreement if application is approved by the Director.

R384-203-5. Data Provision and Fees.

(1) Department will obtain, de-identify and provide the data set requested in the application.

(2) Research facility and designee shall pay all relevant expenses for data transfer and manipulation.

R384-203-6. Audit Provisions.

Research facility and designee shall submit, upon request, to a Department audit of the recipients' compliance with the terms of the data sharing agreement.

KEY: prescription drug database, controlled substances, substance abuse database

March 1, 2014 58-37f-301(2)(d)

Notice of Continuation February 25, 2019

R392. Health, Disease Control and Prevention, Environmental Services.
R392-303. Public Geothermal Pools and Bathing Places.
R392-303-1. Authority and Purpose.

This rule is authorized under Section 26-15-2. It establishes minimum standards for the design, construction, operation and maintenance of public geothermal pools and public geothermal bathing places.

R392-303-2. Definitions.

The following definitions apply in this rule.

(1) "Bather load" means the number of persons allowed by the operator to use a geothermal pool or geothermal bathing place at any one time or specified period of time.

(2) "Department" means the Utah Department of Health.

(3) "Executive Director" means the Executive Director of the Utah Department of Health, or his designated representative.

(4) "Flow-through" means water that is fed by a continuous supply into a pool or bathing place that causes an equal rate of flow to discharge from the pool or bathing place to waste.

(5) "Geothermal bathing place" means a natural bathing place or semi-artificial bathing place with an impoundment of geothermal water.

(6) "Geothermal pool" means a man-made basin, chamber, receptacle, tank, or tub which is filled with geothermal water or a mixture of geothermal and non-geothermal water that creates an artificial body of water.

(7) "Geothermal water" means ground water that is heated in the earth by the earth's interior.

(8) "Living unit" means one or more rooms or spaces that are, or can be, occupied by an individual, group of individuals, or a family, temporarily or permanently for residential or overnight lodging purposes. Living units include motel and hotel rooms, condominium units, travel trailers, recreational vehicles, mobile homes, single family homes, and individual units in a multiple unit housing complex.

(9) "Local Health Officer" means the health officer of the local health department having jurisdiction, or his designated representative.

(10) "Natural bathing place" means a lake, pond, river, stream, swimming hole, or hot springs which has not been modified by man.

(11) "Semi-artificial bathing place" means a natural bathing place that has been modified by man.

(12) "Soaking pool" means a geothermal pool or geothermal bathing place that is 4 feet, 122 centimeters, or less deep and is designed exclusively for sitting or reclining.

(13) "Soaking tub" means a geothermal pool or geothermal bathing place that has a depth of 2 feet, 61 centimeters, or less and a volume of 300 gallons, 1,136 liters, or less.

R392-303-3. General Requirements.

(1) This rule applies to geothermal pools and geothermal bathing places that:

(a) are partially or completely filled with geothermal water that has a source temperature of at least 70 degrees Fahrenheit, 21.1 degrees Celsius; and

(b) are offered to the public for bathing or recreation.

(2) This rule does not apply to an unsupervised geothermal bathing place that the owner explicitly or tacitly allows anyone at any time to use without a fee.

(3) This rule does not apply to a geothermal pool or geothermal bathing place that is used only by a single household or only by a single group of multiple living units of four or fewer households.

(4) Except as otherwise stated in this rule, geothermal pools and geothermal bathing places , are exempt from the requirements of R392-302.

(5) This rule does not require an owner or operator to modify any portion of an existing geothermal pool facility or existing geothermal bathing place. If an owner or operator modifies any system or part of a geothermal pool or geothermal bathing place, the modified system or part must meet the requirements of this rule. However, if the Executive Director or the Local Health Officer determines that any facility is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health or property, the Executive Director or the Local Health Officer may order modification consistent with the requirements of this rule.

R392-303-4. Drinking Water Supply.

(1) The owner of a geothermal pool or geothermal bathing place shall assure that all plumbing fixtures including drinking fountains, lavatories and showers at the public geothermal pool or geothermal bathing place facility are connected to a drinking water system that meets the requirements for drinking water established by the Utah Department of Environmental Quality.

(2) The owner of a geothermal pool or geothermal bathing place shall protect the connected drinking water system against back flow of contamination or back flow of water from the geothermal water source.

R392-303-5. Geothermal Source Water Quality.

(1)(a) The owner of a geothermal pool or geothermal bathing place shall install a tap or sampling point that provides the operator with the ability to sample the geothermal source water before it enters the geothermal pool or geothermal bathing place impoundment.

(b) If it is impractical to directly sample the geothermal source water, the operator may sample water directly from the pool or impoundment. However, at least sixteen hours must have passed since any person has been in the pool and the sample shall be taken as close to the geothermal source water inlet as practical.

(2) The operator of a geothermal pool or geothermal bathing place shall collect samples of the geothermal source water and of any other water source used to fill the pool that is not approved for drinking water by Utah Division of Drinking Water. The operator shall submit the samples for analysis to a laboratory certified under R444-14. The operator shall have the analysis performed initially and every five years thereafter to determine the levels of constituents listed in Table 1. If a geothermal pool or geothermal bathing place is in existence prior to the adoption of this rule, the owner of the facility shall submit to the local health department the results of initial source water tests within six months after the adoption of the rule. The permit applicant of a newly permitted public geothermal pool or geothermal bathing place shall submit the results of the initial source water analyses to the local health department with his application for a permit. The operator shall submit five-year samples to the local health department within six months prior to the end of the five year period.

(3) If the geothermal source water analysis required in R392-303-5(2) reports that any constituents fails any of the standards in Table 1, the owner shall do one of the following:

(a) not use the source water;

(b) implement an ongoing treatment process approved by the Department to provide source water that meets the requirements in Table 1; or

(c) at a minimum, post a caution sign outlined in R392-303-22, to notify swimmers that the water does not meet the EPA recommended drinking water standard and they swim at their own risk. The caution sign shall include the name of the constituent that does not meet the EPA standard and that there may be a health risk associated with bathing in water that contains high levels of the constituent. Based on research funded by or guidelines issued by a competent authority,

including the Centers for Disease Control and Prevention or the Environmental Protection Agency, the Local Health Officer may require the operator to post the maximum recommended bathing period or to post other recommended restrictions.

TABLE 1

Geothermal Source Water Constituents

Constituent	Maximum	Minimum
pH	8.0	7.0
Fluoride	4.0 milligrams per liter	None
Nitrate	10 milligrams per liter	None
Nitrite	1 milligrams per liter	None
Antimony	0.006 milligrams per liter	None
Arsenic	0.010 milligrams per liter	None
Barium	2 milligrams per liter	None
Beryllium	0.004 milligrams per liter	None
Cadmium	0.005 milligrams per liter	None
Chromium	0.1 milligrams per liter	None
Copper	1.3 milligrams per liter	None
Cyanide (as free cyanide)	0.2 milligrams per liter	None
Lead	0.015 milligrams per liter	None
Mercury	0.002 milligrams per liter	None
Selenium	0.05 milligrams per liter	None
Thallium	0.002 milligrams per liter	None

R392-303-6. General Safety Requirements.

(1) Geothermal pools shall meet the requirements of R392-302-11, except a soaking tub shall neither be required to have a "NO DIVING" sign, a "NO HEAD-FIRST ENTRY" sign, nor a no diving icon.

(2) Head-first entry is not permitted at a geothermal bathing place except where the operator has demonstrated to the local health officer that the water depth and underwater obstructions at the entire geothermal bathing place pose no greater risk than at a diving-permitted section of a swimming pool as allowed in R392-302-11. Diving with a self-contained underwater breathing apparatus (SCUBA) is allowed at geothermal bathing places. Where head-first entry is not permitted, the operator shall place a sign that states "NO HEAD-FIRST ENTRY" in accordance with R392-303-22, 23 and 24.

(3) Geothermal pools and geothermal bathing places shall meet R392-302-14 (fencing), R392-302-22 (safety requirements and lifesaving equipment), R392-302-23 (lighting, ventilation and electrical requirements), and R392-302-30 (supervision of bathers) with the following exceptions:

(a) The local health officer may grant exceptions to the height requirements in R392-302-14 for fences or barriers in consideration of natural features for geothermal bathing places;

(b) A geothermal bathing place under 5 feet, 1.52 meters, deep is exempt from R392-302-22 except for subsection (3);

(c) A soaking tub is exempt from the underwater lighting requirements of R392-302-32 when used at night but shall have at least 5 horizontal foot candles of light per square foot, 929 square centimeters, over the surface of the tub from overhead luminaries;

(d) Soaking pools and soaking tubs are exempt from the requirements of R392-302-30 (4) through (6), but the lifeguard may not allow any person to use a soaking pool or soaking tub unless there is another person in attendance capable of alerting the lifeguard if the lifeguard's help is needed and the lifeguard must always be on the premises and no more than a minute away if needed at any time; and

(e) Geothermal bathing places used only for SCUBA diving or snorkeling are exempt from the requirements of R392-302-30 (4) through (6), but the lifeguard may not allow any person to SCUBA dive or snorkel in the bathing place unless there is another person in attendance capable of alerting the lifeguard if the lifeguard's help is needed, the lifeguard must always be on the premises and no more than a minute away if needed at any time, and the owner of geothermal bathing places shall require patrons to sign a form that informs the patron that constant lifeguard surveillance will not be provided and that the patron must be accompanied by another diver at all times.

R392-303-7. Bather Facilities.

Geothermal pools and geothermal bathing places shall meet the following sections of R392-302:

(1) R392-302-24 Dressing Rooms
(2) R392-302-25 Toilets and Showers
(3) R392-302-26 Visitors and Spectator Areas

R392-303-8. Construction Materials.

(1) Geothermal pools shall meet the requirements of R392-302-6. However, a geothermal pool with a volume less than or equal to 3,000 gallons, 11,355 liters, and a maximum depth less than 4 feet, 1.22 meters, is exempt from the color requirement of R392-302-6(5).

(2) The owner or operator of a geothermal bathing place shall notify bathers of and protect them from safety hazards by methods such as altering surfaces or structures, barricading or roping off problem areas, and posting warning signs.

R392-303-9. Bather Load.

(1) Geothermal pools and geothermal bathing places shall meet the bather load requirements in R392-302-7.

(2) If a geothermal pool or geothermal bathing place is unable to meet bacteriological water quality by other means, the owner or operator shall reduce the allowed bather load in order to meet the requirements R392-303-19.

R392-303-10. Design Detail and Structural Stability.

(1) With the exception of the provisions listed in R392-302-8(3) and R392-302-8(5), geothermal pools shall meet the provisions of R392-302-8.

(2) The owner shall submit plans for a new geothermal pool or a geothermal bathing place or the renovation or the remodeling of a geothermal pool or a geothermal bathing place to the local health department for approval based upon compliance to this rule. Renovation or remodeling includes the replacement or modification of equipment that may affect the ability of a geothermal pool or a geothermal bathing place to meet the safety and water quality standards of this rule.

(3) Geothermal bathing places used only for SCUBA diving or snorkeling are exempt from requirements of R392-303-11 through 15 and the clarity requirement in R392-303-19 if each patron signs a document acknowledging that the patron has read the list of inherent physical and environmental dangers that the geothermal bathing place has not complied with in R392-303-11 through 15 and 19, and to which the patron is exposed upon entering or using the geothermal bathing place.

R392-303-11. Depths and Floor Slopes.

(1) Geothermal pools shall meet the requirements of R392-302-9.

(2) The owner of a geothermal bathing place shall protect bathers from uneven bottoms, sudden changes in depth, and other bottom anomalies by altering the pool bottom, posting signs about the dangers, providing barriers around hazards, or roping off areas.

R392-303-12. Walls.

(1) Geothermal pools shall meet the requirements of R392-302-10.

(2) The owner of a geothermal bathing place shall protect bathers from uneven walls, submerged projections, or submerged ledges by methods such as posting signs notifying patrons of the dangers, providing barriers around hazards, or roping off areas,

R392-303-13. Ladders, Recessed Steps, and Stairs.

(1) Geothermal pools shall meet the requirements of R392-302-12.

(2) The owner of a geothermal bathing place shall provide a means of entrance into and exit from the water that include handholds and steps where needed to provide for bather safety.

R392-303-14. Decks and Walkways.

(1) Geothermal pools shall meet the requirements of R392-302-13 except soaking pools and soaking tubs shall meet the decking requirements of a spa pool in R392-302-32 (2) (f), the pool curb of a soaking tub may be any width, and the rim of a soaking tub may be up to 24 inches, 61 centimeters, above the deck level.

(2) The owner of a geothermal bathing place shall provide safe walkways leading to the bathing place that are free of trip hazards and provide handholds where there are ramps or steps.

R392-303-15. Depth Markings and Safety Ropes.

(1) Geothermal pools shall meet the requirements of R392-302-15.

(2) The owner of a geothermal bathing place shall protect bathers from unexpected deep water by means such as posting pool depth signs, providing barriers around deep areas, or roping off areas.

R392-303-16. Circulation Systems.

(1) Geothermal pools that transport source, pool, or discharge water through pipes shall meet the requirements of R392-302-16 for piping, pipe labeling, velocity in pipes, adequate space in equipment areas, valves, and air induction systems. Geothermal pools shall meet the requirements of R392-302-16 for normal water level and vacuum cleaning systems; except a vacuum cleaning system is not required if an operator keeps the pool clean by draining the pool and cleaning it while it is empty.

(2) The owner or operator of a geothermal pool or geothermal bathing place shall maintain flow-through 24 hours a day during the operating season, except for periods of maintenance. If the pool is drained and cleaned each day prior to use, flow-through is only required during the period that the geothermal pool is in use.

(3) A geothermal pool or geothermal bathing place with a volume greater than 3,000 gallons, 11,355 liters, shall have a flow-through rate greater than or equal to one-fourth the pool volume every hour. A geothermal pool or geothermal bathing place with a volume less than or equal to 3,000 gallons, 11,355 liters, shall have a flow-through rate greater than or equal to the pool volume every 30 minutes.

(a) If the results of any three of the last five E. Coli or fecal coliform samples taken from the pool exceed 63 per 50 milliliters, the owner or operator shall either increase the rate of flow-through, reduce bather load as provided in R392-303-9(2), or both increase the flow rate and reduce the bather load. The owner or operator shall adjust the bather load or the flow-through rate to a level that consistently produces E. Coli or fecal coliform levels less than 63 per 50 milliliters. If any E. Coli or fecal coliform sample exceeds 63 per 50 milliliters, the owner shall keep the pool closed until sample results for the pool are less than 63 per 50 milliliters as required in R392-303-19(3).

(b) The Local Health Officer may approve a reduced flow rate if the owner or operator of the geothermal pool or geothermal bathing place can demonstrate that the required bacteriological level can be maintained at the reduced flow rate.

(c) If the operator of a geothermal bathing place is unable to control the flow-through rate, the operator may meet the bacteriologic water quality standards in section R392-303-19 by controlling bather load.

(d) If the operator of a geothermal pool maintains the disinfectant levels, chloramine levels, and pH levels within the values allowed in Table 6 of R392-302 and operates a recirculation system in the pool in compliance with the requirements of R392-302-16, the pool is exempt from the flow-through rate requirements of R392-303-16(3) except the operator shall maintain a flow-through with a maximum turnover time of 48 hours, and shall meet the bacteriologic requirements of R392-302-27(5)(d).

(4) A geothermal pool that has pumped flow shall meet the inlet requirements of R392-302-17. Geothermal bathing places and geothermal pools that have gravity flow inlets, shall either meet the requirements of R392-302-17 or the owner or operator of the pool shall demonstrate to the local health department that the inlet system provides uniform distribution of fresh water throughout the pool. A demonstration of uniform distribution includes computer simulation or a dye test witnessed by a representative of the local health department.

(5) A geothermal pool shall have a drain that allows complete emptying of the pool. Geothermal pool and geothermal bathing place submerged drain grates and covers shall meet the requirements of R392-302-18. Geothermal pool and geothermal bathing place submerged drains shall meet the anti-entrapment requirements of R392-302-18.

(6) A geothermal pool shall have overflow gutters or skimming devices that meet the applicable requirements of R392-302-19.

(7) Geothermal pools and geothermal bathing places shall have a method to determine accurate rate-of-flow in gallons per minute. If the rate-of-flow method is a rate-of flow indicator manufactured by a third party, it shall be properly installed and located according to the manufacturer's recommendations. If a field-fabricated rate-of-flow indicator such as a calibrated weir or flume is used, it shall be designed and calibrated under the direction of a licensed professional engineer. The rate-of-flow indicator must be located in a place and positioned where it can be easily read by the operator as required in R392-303-21(2). The Local Health Officer may exempt a geothermal pool or geothermal bathing place from the requirement for a rate-of-flow indicator if the rate of flow is not adjustable or if there is no practical way to measure flow.

(8) Each geothermal pool and geothermal bathing place shall have a temperature measuring device. The operator shall measure the temperature of the pool at the warmest point. The device shall be accurate to within one degree Fahrenheit (0.6 degrees Celsius). The operator shall calibrate the thermometer in accordance with the manufacturer's specifications as necessary to ensure its accuracy.

R392-303-17. Filtration.

The owner of a flow-through geothermal pool or geothermal bathing place is not required to filter the water in the pool or bathing place, except as may be necessary to meet safety and water quality requirements. Filters shall meet the requirements of R392-302-20.

R392-303-18. Disinfectant and Chemical Feeders.

Chemical feeders or disinfectant residuals are not required in geothermal pools or geothermal bathing places, except as may be necessary to meet water quality requirements. If the operator uses any chemical, the operator shall meet the requirements of R392-302-21 for that particular chemical.

R392-303-19. Pool Water Quality.

(1) The water in a geothermal pool or geothermal bathing place must have sufficient clarity at all times so that a black disc 6 inches, 15.24 centimeters, in diameter, is readily visible if placed on a white field at the deepest point of the pool (or at 12 feet, 3.66 meters, deep for pools over 12 feet, 3.66 meters, deep). The owner or operator shall close the pool or bathing place immediately if this requirement is not met. A soaking tub

is exempt from the clarity requirements of this subsection.

(2) The local health department or pool sampler contracted by the local health department shall collect routine bacteriological samples of the pool water at least once per month and at least two weeks apart. The local health department or their contractor may collect additional samples for investigative purposes or as a follow-up of unsatisfactory samples. The Local Health Officer shall choose or approve the dates and times that the samples are collected based on when a representative level of bacteria would likely be found. The local health department or person sampling the pool shall submit the bacteriological samples to a laboratory approved by under R444-14 to perform E. coli or fecal coliform testing.

(a) The local health department or its contracted pool sampler, as required by local health department, shall have the laboratory analyze the sample for either E. coli or fecal coliform.

(b) If the pool sampler submits the sample as required by local health department, the sampler shall require the laboratory to report sample results within five working days to the local health department and operator.

(3) If the E. coli or fecal coliform levels are found to be greater than the maximum level of 63 per 50 milliliters, the owner or operator shall close the pool until sample results show the level is below 63. As an alternative to closing the pool until sample results show acceptable bacteriological levels, the operator may temporarily close the pool and commence feeding a disinfectant to the pool water, meeting the requirements of R392-303-18 and the disinfectant concentration and pH requirements of R392-302-27, and then reopen the pool at least 45 minutes after the required disinfectant level has been achieved. The feeding of disinfectant to the pool must continue until samples of pool water and the source water pass the bacteriological standards required for disinfected pools in R392-302-27 (5) (d) (ii).

(4) If E. coli or fecal coliform levels are greater than one per 50 milliliters, the pool operator shall post the level found as required in R392-303-22.

(5) The owner or operator of a geothermal pool or geothermal bathing place should maintain the pool water temperature at a maximum of 104 degrees Fahrenheit, 40 degrees Celsius. A geothermal pool or geothermal bathing place that exceeds 104 degrees Fahrenheit, 40 degrees Celsius, at the minimum required turnover rate shall have, and employ when necessary, a method of temperature reduction in the pool or bathing place that maintains the minimum flow-through rate required under R392-303-16(3). An approved method of temperature reduction may include methods such as the introduction of cool water from a source that has been analyzed and approved according to R392-303-5(2) or approved for drinking water by the Utah Division of Drinking Water, or such as the direct cooling of the geothermal source water by a heat exchanger, or the diversion of the geothermal source water to allow it to cool prior to entering the pool or impoundment. The temperature reduction method shall be capable of reducing the temperature of the pool within 2 hours of activation from the maximum anticipated temperature to below 104 degrees Fahrenheit, 40 degrees Celsius. If the temperature of the source water or cooling rate of the pool is difficult to control, a temperature drift of up to four degrees Fahrenheit, 2.2 degrees Celsius, is allowed if the owner or operator has activated the temperature reduction measure. The owner or operator of a geothermal pool or geothermal bathing place shall not permit bathers to use the pool if the temperature is above 108 degrees Fahrenheit, 42.2 degrees Celsius, except the owner may allow a bather to use a soaking tub or similar fixture with a volume of 70 gallons or less and a water temperature less than or equal to 110 degrees Fahrenheit, 43.3 degrees Celsius.

R392-303-20. Cleaning Pools.

(1) The owner or operator of a geothermal pool shall remove any visible dirt on the bottom of the pool at least once every 24 hours or more frequently as needed to keep the pool free of dirt and debris.

(2) The owner or operator of a geothermal pool or geothermal bathing place shall clean the water surface of the pool as often as needed to keep the pool free of scum or floating matter.

(3) The owner or operator of a geothermal pool shall keep pool surfaces, decks, handrails, floors, walls, and ceilings of rooms enclosing pools, dressing rooms and equipment rooms clean, sanitary, and in good repair. The owner or operator of a geothermal bathing place shall keep handholds, handrails, entrance points, walkways, dressing rooms, and equipment rooms clean and in good repair.

R392-303-21. Supervision of Pools and Bathing Places.

(1) Geothermal pools and geothermal bathing places shall meet the requirements of R392-302-29(1).

(2) The operator of a geothermal pool or geothermal bathing place shall record the flow-through rate and pool temperature prior to opening the pool or bathing place each day. To verify bather load, the operator shall record the number of patrons at the geothermal bathing place or pool every four hours that the geothermal bathing place or pool is open for use or shall record the time of day that each user checks in. If a pool uses disinfection or filtration, the operator shall keep the disinfection and filtration records required in R392-302-29. The Local Health Officer may reduce the requirement for the frequency of record keeping if a decreased frequency is more reasonable considering the likelihood of a change in the values recorded. The owner or operator shall make the records required by this section available for inspection by representatives of the local health department and shall retain the records for at least three years.

R392-303-22. Caution Sign Content.

(1)(a) The operator of a geothermal pool or a geothermal bathing place in which the requirements of Table 6 in R392-302-27 are not met for disinfectant residual shall post a caution sign with the following bulleted points:

-WATER IN THIS POOL CONTAINS NO DISINFECTANT

-BATHING IN THIS POOL MAY INCREASE YOUR RISK OF INFECTIOUS DISEASE

-PERSONS SUFFERING FROM A COMMUNICABLE DISEASE TRANSMISSIBLE BY WATER SHALL NOT ENTER THE WATER

-KEEP POOL WATER OUT OF YOUR MOUTH AND NOSE.

(b) The operator shall post an additional sign or an addition to the sign required by this section that describes the results of the sample using a changeable element such as a "white board" or attachable digits. The sign shall state:

-THE MOST RECENT BACTERIAL RESULT OF WATER FROM THIS POOL WAS (the changeable element shall be placed at this point with the most recent fecal coliform or E. coli count per 50 milliliters posted). FOR COMPARISON, A NON-GEOTHERMAL POOL CANNOT EXCEED 1

(c) If ozone or ultraviolet light is used to treat the water, the following statement may be added to the sign; the statement shall be verbatim and state the method of treatment:

-TREATED WITH (UV LIGHT or OZONE or UV LIGHT AND OZONE if both are used)-PROVIDES SHORT-TERM DISINFECTION ONLY.

(2) If a geothermal pool or geothermal bathing place is operated at a temperature greater than or equal to 100 degrees Fahrenheit, 37.8 degrees Celsius, the operator shall post a

separate caution sign that includes the following bulleted points:

-POOL WATER MAY EXCEED 100 DEGREES F. (37.8 DEGREES C.)

-CONSULT A PHYSICIAN IF YOU: ARE ELDERLY OR PREGNANT; HAVE HEART DISEASE, DIABETES, OR HIGH BLOOD PRESSURE; OR USE PRESCRIPTION MEDICATION

-DO NOT USE POOL IF ALONE OR UNDER THE INFLUENCE OF ANY IMPAIRING SUBSTANCE

-DO NOT USE POOL FOR MORE THAN 15 MINUTES AT A TIME

-CHILDREN UNDER 5 ARE PROHIBITED; CHILDREN UNDER 14 MUST BE WITH A PERSON OVER 18 YEARS

(3) Except at a geothermal pool or a geothermal bathing place where head-first entry is permitted, the operator shall post a warning sign that states, "NO HEAD-FIRST ENTRY" in accordance with R392-303-23 and 24.

(4) If the geothermal pool or bathing place source water fails any of the standards found in Table 1, the operator shall post a warning sign that states the following:

-POOL WATER DOES NOT MEET EPA DRINKING WATER STANDARDS FOR (the failed constituent or constituents listed in Table 1).

-(The analytical result of each failed constituent and the value of the Table 1 standard that has not been met.) For example: ARSENIC IN THE POOL IS 35 PARTS PER BILLION; EPA STANDARDS ALLOW ONLY 10.

-THERE MAY BE HEALTH RISKS ASSOCIATED WITH BATHING IN THIS WATER.

- USE AT YOUR OWN RISK

R392-303-23. Caution Sign Placement.

(1) The operator of a geothermal pool or geothermal bathing place shall post caution and warning signs that meet the requirements of this rule in conspicuous locations that are in the line of sight of a persons using the premises and readily visible so that all persons are alerted to potential hazards and informed before using the geothermal pool or geothermal bathing place.

(a) The operator shall place the caution sign required in subsection R392-303-22(1) at the reception or sales counter and no more than 10 feet from where a person checks in or pays for the use of the pool. The sign shall be visible to potential customers before they pay for entry or pass the reception or sales counter. If there are multiple geothermal pools or geothermal bathing places at the facility, the operator shall display on the caution sign at the reception or sales counter the bacterial count of the geothermal pool or geothermal bathing place in the facility that had the highest level of E. coli or fecal coliform found in the most recent sampling event.

(b) The operator shall place any caution sign required in subsection R392-303-22(2) either:

(i) next to the sign required in subsection R392-303-22(1) if the pool or any pool may exceed 100 degrees Fahrenheit, 37.8 degrees Celsius; or

(ii) within 10 feet of the entrance or entrances to each pool that is operated at a temperature greater than or equal to 100 degrees Fahrenheit, 37.8 degrees Celsius.

(c) The operator shall place any warning sign required in subsection R392-303-22(3) either:

(i) next to the sign(s) required in subsection R392-303-22(1) if the pool or all pools do not permit head-first entry; or

(ii) within 10 feet of the entrance or entrances to each pool that does not permit head-first entry.

(d) The operator shall place any warning sign required in subsection R392-303-22(4) either:

(i) next to the sign(s) required in subsection R392-303-22(1); or

(ii) within 10 feet of the entrance or entrances to each pool.

(2) In lieu of meeting the signage requirements listed in R392-303-22 and 23(1), the operator may have the patron sign a document that contains the same language as required for the signs required in R392-303-22. The signature is to acknowledge that the patron has received the information. The document shall disclose the most recent bacteriologic analysis results. The operator shall make a copy of the document available to each patron upon request. The operator shall retain the disclosure documents for at least one year and make them available for inspection by public health officials.

R392-303-24. Caution Sign Format Requirements.

(1) The caution sign required by R392-303-22(1) and R392-303-22(2) shall meet the following requirements:

(a) The signs shall be at least 24 inches, 61 centimeters, by 18 inches, 46 centimeters, on a white background. If the sign is larger than 24 inches, 61 centimeters, by 18 inches, 46 centimeters, the sizes of the other elements of the sign shall be proportionally larger.

(b) All lettering shall be in a sans serif font proportional thickness to height so as to be easily readable. Acceptable fonts are arial bold, folio medium, franklin gothic, helvetica, helvetica bold, meta bold, news gothic bold, poster gothic, and universe. In addition, the letters shall be:

(i) black in color;

(ii) capital letters; and

(iii) adequately spaced and not crowded.

(c) There must be a panel at the top of the sign. The background of the panel shall be safety yellow in color and shall:

(i) be at least 3.3 centimeters, high and 44 centimeters wide, including a black line border that is 0.16 centimeters wide surrounding the safety yellow background;

(ii) have the word "CAUTION" in capital letters that are two centimeters high; and

(iii) have an internationally recognized safety alert symbol that is two centimeters high and placed immediately to the left of the word "CAUTION".

(d) The safety alert symbol shall be black with a yellow field.

(e) The word "CAUTION" and the symbol shall be vertically and horizontally centered within the yellow panel.

(f) The letters in the body of the sign shall be legible, at least one centimeter high, and clearly visible.

(g) The body of the sign required in subsection R392-303-22(1) shall list the bulleted statements required in that section.

(h) The body of the sign required in subsection R392-303-22(2) shall list the bulleted statements required in that section.

(2) The warning sign required by R392-303-22(3) and R392-303-22(4) shall meet the following requirements:

(a) The signs shall be at least 17 inches, 43 centimeters, by 11 inches, 28 centimeters, on a white background. If the sign is larger than 17 inches, 43 centimeters, by 11 inches, 28 centimeters, the sizes of the other elements of the sign shall be proportionally larger.

(b) All lettering shall be in a sans serif font proportional thickness to height so as to be easily readable. Acceptable fonts are arial, arial bold, folio medium, franklin gothic, helvetica, helvetica bold, meta bold, news gothic bold, poster gothic, and universe. In addition, the letters shall be:

(i) black in color;

(ii) capital letters; and

(iii) adequately spaced and not crowded.

(c) There must be a panel at the top of the sign. The background of the panel shall be safety orange in color and shall:

(i) be at least 3.3 centimeters, high and 41 centimeters wide, including a black line border that is 0.16 centimeters wide surrounding the safety orange background;

(ii) have the word "WARNING" in capital letters that are two centimeters high; and

(iii) have an internationally recognized safety alert symbol that is two centimeters high and placed immediately to the left of the word "WARNING".

(d) The safety alert symbol shall be black with a safety orange field.

(e) The word "WARNING" and the symbol shall be vertically and horizontally centered within the orange panel.

(f) The letters in the body of the sign shall be legible, at least one inch (2.54 centimeters) high, and clearly visible

(g) The body of the sign required in subsection R392-303-22(3) shall display the text "NO HEAD-FIRST ENTRY". The text on the body shall be centered vertically and horizontally in the space below the orange panel with "NO HEAD-FIRST" on one line and "ENTRY" on the line below.

(h) The body of the sign required in subsection R392-303-22(4) shall list the bulleted statements required in that section.

R392-303-25. Enforcement and Penalties.

A person who violates a provision of this rule is subject to a civil penalty of up to $10,000 for each offense as provided in Section 26-23-6.

KEY: geothermal pools, geothermal natural bathing places, hot springs, geothermal spas
February 24, 2014 26-15-2
Notice of Continuation February 5, 2019

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.
R398-10. Autism Spectrum Disorders and Intellectual Disability Reporting.
R398-10-1. Authority and Purpose.

(1) This rule is authorized by Subsections 26-1-30(5), (6), (7), (8), (9), 53E-9-308(6)(b), 26-5-3, 26-5-4, and 26-7-4.

(2) This rule establishes reporting requirements for autism spectrum disorder (ASD) and intellectual disability and related screening and test results in individuals.

R398-10-2. Definitions.

As used in this rule:

(1) "Autism Spectrum Disorder" or "ASD" means a pervasive developmental disorder described by the American Psychiatric Association or the World Health Organization diagnostic manuals as: Autistic disorder, Atypical autism, Asperger Syndrome, Rett Syndrome, Childhood Disintegrative Disorder, or Pervasive Developmental Disorder-Not Otherwise Specified; or a special education classification for autism or other disabilities related to autism.

(2) "Intellectual Disability" means a condition marked by an intelligence quotient of less than or equal to 70 on the most recently administered psychometric test (or for infants, a clinical judgment of significantly subaverage intellectual functioning) and concurrent deficits or impairments in adaptive functioning in at least two of the following areas: communication, self-care, home living, social and interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety. This condition must have its onset before age 18 years.

(3) "Qualified professional" means a medical, clinical or educational professional in a position to observe children with developmental disabilities, including, psychologists, physicians, teachers, speech/language pathologists, occupational therapists, physical therapists, nurses, and social workers.

R398-10-3. Reporting by Diagnostic, Treatment or Educational Facilities.

Diagnostic, treatment or educational facilities which provide specialized care or individualized education programs for ASD and related disorders shall report or cause to report the following to the Department within thirty days of making an ASD diagnosis or special education classification for autism or other disabilities related to autism:

(1) patient's name;
(2) patient's date of birth;
(3) patient's address;
(4) home phone;
(5) patient's sex;
(6) mother's name;
(7) mother's date of birth;
(8) provider name;
(9) provider degree;
(10) provider specialty;
(11) provider address;
(12) provider phone number;
(13) diagnosis of autistic disorder, atypical autism, pervasive developmental disorder-not otherwise specified, Asperger's syndrome, or special education classification which makes the individual eligible to receive special education services; and
(14) date of diagnosis.

R398-10-4. ASD and Intellectual Disability Records Review.

Upon Department request, qualified professionals and diagnostic, treatment or educational facilities which provide specialized care or individualized education programs for ASD and related disorders shall allow the Department or its agents to review medical and educational records of individuals with ASD, intellectual disability, and related disorders to clarify duplicate names and to collect demographic characteristics, medical and educational histories, and assessments.

R398-10-5. Confidentiality of Reports.

All reports herein required are confidential and are not open to public inspection. The confidentiality of personal information obtained under this rule shall be maintained according to the provisions of Utah Code, Title 26, Chapter 3.

R398-10-6. Liability.

As provided in Title 26, Chapter 25, persons who report information covered by this rule may not be held liable for reporting the information to the Department of Health.

KEY: autism spectrum, intellectual disability, reporting
September 24, 2018 **26-1-30(5)**
Notice of Continuation February 25, 2019 **26-1-30(6)**
26-1-30(7)
26-1-30(8)
26-1-30(9)
53E-9-308(6)(b)
26-5-3
26-5-4
26-7-4

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-61. Home and Community-Based Services Waivers.
R414-61-1. Introduction and Authority.

(1) This rule establishes authority for the Department of Health to administer all Section 1915(c) waivers.

(2) The rule is authorized by Section 26-18-3 and Section 1915(c) of the Social Security Act.

R414-61-2. Incorporation by Reference.

The Department incorporates by reference the following home and community-based services waivers:

(1) Waiver for Technology Dependent/Medically Fragile Individuals, effective July 1, 2018;

(2) Waiver for Individuals Age 65 or Older, effective July 1, 2015;

(3) Waiver for Individuals with Acquired Brain Injuries, effective July 1, 2014;

(4) Waiver for Individuals with Physical Disabilities, effective July 1, 2016;

(5) Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, effective July 1, 2015;

(6) New Choices Waiver, effective July 1, 2015;

(7) Medicaid Autism Waiver, effective October 1, 2015; and

(8) Medically Complex Children's Waiver, effective October 1, 2018.

These documents are available for public inspection during business hours at the Utah Department of Health, Division of Medicaid and Health Financing, located at 288 North 1460 West, Salt Lake City, UT, 84114-3102.

KEY: Medicaid
February 15, 2019 26-18-3
Notice of Continuation October 30, 2014

R432. Health, Family Health and Preparedness, Licensing.
R432-7. Specialty Hospital - Psychiatric Hospital Construction.
R432-7-1. Legal Authority.
This rule is promulgated pursuant to Title 26, Chapter 21.

R432-7-2. Purpose.
The purpose of this rule is to establish construction standards for a specialty hospital for psychiatric services.

R432-7-3. General Design Requirements.
R432-4-1 through R432-4-22 apply to this rule with the following modifications.

R432-7-4. General Construction, Ancillary Support Facilities.
R432-4-23 (1) through (20) applies with the following modifications:

(1) Leaf width for patient room doors and doors to patient treatment rooms shall be a minimum of three feet.

(2) Corridors in patient use areas shall be a minimum of six feet wide.

(3) Grab Bars. Where grab bars are provided, the space between the bar and the wall shall be filled. Bars, including those which are part of such fixtures as soap dishes, shall be sufficiently anchored to sustain a concentrated load of 250 pounds. Grab bars shall meet the requirements of ADA/ABA-AG.

(4) Emergency Electrical Service. An on-site emergency generator shall be provided connecting the following services:

(a) life safety branch, as defined in section 517-32 of the National Electric Code NFPA 70;

(b) critical branch, as defined in 517-33 of the National Electric Code NFPA 70;

(c) equipment system, as defined in 517-34 of the National Electric Code NFPA 70;

(d) telephone;

(e) nurse call;

(f) heating equipment necessary to provide heating space to house all patients under emergency conditions;

(g) one duplex convenience outlet in each patient bedroom;

(h) one duplex convenience outlet at each nurses station; and

(i) duplex convenience outlets in the emergency heated part at a ratio of one for each ten patients.

(5) Nurse Call System. A nurse call system is optional. If installed, provisions shall be made for the easy removal or covering of call buttons.

(6) X-ray Equipment. If installed, fixed and mobile x-ray equipment shall conform to Articles 517 and 660 of NFPA 70.

(7) Security glazing. Security glazing and other security features shall be used at all windows of the nursing unit and other patient activity and treatment areas to reduce the possibility of patient injury or escape.

R432-7-5. General Construction, Patient Facilities.
(1) The requirements of R432-4-24 and Sections 2.1 and 2.5, of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition (Guidelines) shall be met except as modified in this rule. Where a modification is cited, the modification supersedes conflicting requirements of R432-4-24 and the Guidelines.

(2) Patient Rooms.

(a) At least two single bed rooms with a private toilet room shall be provided for each nursing unit.

(b) Minimum clear dimensions of closets in patient rooms shall be 22 inches deep and 36 inches wide. The clothes rod shall be of the breakaway type.

(3) Patient bathing facilities, Guidelines Section 2.5-2.2.2.7, is modified as follows:

(a) Each bathtub or shower shall be in an individual room or enclosure sized to allow staff assistance and designed to provide privacy during bathing, drying, and dressing.

(b) At least one shower in central bathing facilities shall be designed in accordance with the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADA/ABA-AG) for use by a person with a wheelchair.

(c) A toilet room with direct access from the bathing area, shall be provided at each central bathing area.

(d) Doors to toilet rooms shall comply with ADA/ABA-AG. The doors shall be equipped with hospital privacy locks or other hardware that protects patient privacy and permits access from outside in case of an emergency without the use of keys or tools.

(e) A handwashing fixture shall be provided in each toilet room.

(f) At least one patient toilet room in each nursing unit shall contain a shower or tub in addition to the toilet and lavatory. Fixtures shall be wheelchair accessible with wheelchair turning space within the room.

(4) Child Psychiatric Unit, Guidelines Section 2.5-2.3, is modified as follows:

(a) Pediatric and adolescent nursing units shall be physically separated from adult nursing units.

(b) Examination and treatment rooms shall be provided for pediatric and adolescent patients separate from adult rooms.

(i) Each room shall provide a minimum of 100 square feet of usable space exclusive of fixed cabinets, fixtures, and equipment.

(ii) Each room shall contain a work counter, storage facilities, and lavatory equipped for handwashing.

(c) Separate activity areas shall be provided for pediatric and adolescent nursing units.

(5) In addition to the service area requirements, individual rooms or a multipurpose room shall be provided for dining, education, and recreation.

(a) Insulation, isolation, and structural provisions shall minimize the transmission of impact noise through the floor, walls, or ceiling of these multipurpose rooms.

(b) Service rooms may be shared by more than one pediatric or adolescent nursing unit, but shall not be shared with adult nursing units.

(6) A patient toilet room, in addition to those serving bed areas, shall be conveniently accessible from multipurpose rooms.

(7) Storage closets or cabinets for toys, educational, and recreational equipment shall be provided.

(8) Linen services shall comply with R432-4-24(8).

R432-7-6. Exclusions to the Guidelines.
The following sections of the Guidelines do not apply:

(1) Linen services, section 2.5-5.2.

R432-7-7. Penalties.
The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health care facilities
February 21, 2012 26-21-5
Notice of Continuation February 27, 2019 26-21-2.1

26-21-20

R432. Health, Family Health and Preparedness, Licensing.
R432-8. Specialty Hospital - Chemical Dependency/Substance Abuse Construction.
R432-8-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-8-2. Purpose.

This rule applies to a hospital that chooses to be licensed as a specialty hospital and which has as its major single service the treatment of patients with chemical dependency or substance abuse. The rule identifies the construction standards for a specialty hospital, if the hospital chooses to have a dual major service, e.g., chemical dependency or substance and psychiatric care, then both of the appropriate specialty hospital construction rules apply.

R432-8-3. General Design Requirements.

See R432-4-1 through R432-4-22.

R432-8-4. General Construction, Ancillary Support Facilities.

R432-4-23 applies with the following modifications:

(1) Corridors. Corridors in patient use areas shall be a minimum six feet wide.

(2) Door leaf width for patient room doors and doors to patient treatment rooms shall be a minimum three feet.

(3) Ceiling finishes. Ceiling construction in patient and seclusion rooms shall be monolithic.

(4) Bed pan flushing devices are optional.

(5) Windows, in rooms intended for 24-hour occupancy, shall be operable.

(6) Emergency Electrical Service.

(a) An on-site emergency generator shall be provided.

(b) The following services shall be connected to the emergency generator:

(i) life safety branch, as defined in section 517-32 of the National Electric Code NFPA 70;

(ii) critical branch, as defined in 517-33 of the National Electric Code NFPA 70;

(iii) equipment system, as defined in 517-34 of the National Electric Code NFPA 70;

(iv) telephone;

(v) nurse call;

(vi) heating equipment necessary to provide adequate heated space to house all patients under emergency conditions;

(vii) one duplex convenience outlet in each patient bedroom;

(viii) one duplex convenience outlet at each nurse station;

(ix) duplex convenience outlets in the emergency heated area at a ratio of one for each ten patients.

(6) Nurse Call System.

(a) A nurse call system is optional.

(b) If a nurse call system is installed, provisions shall be made for the easy removal or covering of call buttons.

R432-8-5. General Construction, Patient Service Facilities.

(1) The requirements of R432-4-24 and the requirements of Sections 2.1 and 2.5 of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition (Guidelines) shall be met. Where a modification is cited, the modification supersedes conflicting requirements of R432-4-24 and the Guidelines.

(2) The environment of the nursing unit shall give a feeling of openness with emphasis on natural light and exterior views.

(a) Interior finishes, lighting, and furnishings shall suggest a residential rather than an institutional setting.

(b) Security and safety devices shall be presented in a manner which will not attract or challenge tampering by patients.

(3) Patient rooms.

(a) At least two single-bed rooms, with private toilet rooms, shall be provided for each nursing unit.

(b) Minimum patient room areas, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, shall be 100 square feet in single-bed rooms and 80 square feet per bed in multiple-bed rooms. The areas listed are minimum and do not prohibit larger rooms.

(c) Patient rooms shall include a wardrobe, closet, or locker, having minimum clear dimensions of 22 inches deep by 36 inches wide, suitable for hanging full-length garments. A break-away clothes rod and adjustable shelf shall be provided.

(d) Visual privacy is not required in all multiple-bed rooms, however privacy curtains shall be provided in five percent of multiple-bed rooms for use in treating detoxification patients.

(4) Laundry facilities shall be available to patients, including an automatic washer and dryer.

(5) Bathing facilities shall be provided in each nursing unit at a ratio of one bathing facility for each six beds not otherwise served by bathing facilities within individual patient rooms.

(a) Each bathtub or shower shall be in an individual room or enclosure adequately sized to allow staff assistance and designed to provide privacy during bathing, drying, and dressing.

(b) At least one shower in central bathing facilities shall be designed in accordance with ADA/ABA-AG for use by a wheelchair patient.

(6) A toilet room with direct access from the bathing area shall be provided at each central bathing area.

(a) Doors to toilet rooms shall comply with ADA/ABA-AG. The doors shall permit access from the outside in case of an emergency.

(b) A handwashing fixture shall be provided for each toilet in each toilet room.

(c) At least one patient toilet room in each nursing unit shall contain a shower or tub in addition to the toilet and lavatory. Fixtures shall be wheel chair accessible.

(7) There shall be at least one seclusion room for each 24 beds, or a fraction thereof, located for direct nursing staff supervision or equipped with a closed circuit television system with a monitor at the nursing station.

(a) Each seclusion room shall be designed for occupancy by one patient. The room shall have an area of at least 60 square feet and shall be constructed to prevent patient hiding, escape, injury, or suicide.

(b) If a facility has more than one nursing unit, the number of seclusion rooms shall be a function of the total number of beds in the facility.

(c) Seclusion rooms may be grouped in a common area.

(d) Special fixtures and hardware for electrical circuits shall be used to provide safety for the occupant.

(e) Doors shall be 44 inches wide and shall permit staff observation of the patient while providing patient privacy.

(f) Seclusion rooms shall be accessed through an anteroom or vestibule which also provides direct access to toilet rooms. The toilet and anteroom shall be large enough to safely manage the patient.

(g) Seclusion rooms including floor, walls, ceiling, and all openings, shall be protected with not less than one-hour-rated construction.

R432-8-6. Additional Specific Category Requirements.

(1) Dining, Recreation and Day Space. The facility layout shall include a minimum total inpatient space for dining, recreation, and day use computed on the basis of 30 square feet per bed.

(a) The facility shall include a minimum of 200 square feet for outpatients and visitors when dining is part of a day

treatment program.

(b) If dining is not part of a day treatment program, the facility shall provide a minimum of 100 square feet of additional outpatient day space.

(c) Enclosed storage space for recreation equipment and supplies shall be provided in addition to the requirements of day use.

(2) Recreation and Group Therapy Space. At least two separate social areas, one designed for noisy activities and one designed for quiet activities, shall be provided as follows:

(a) At least 120 square feet shall be provided for each area.

(b) The combined area of the two areas shall be at least 40 square feet per patient.

(c) Activity areas may be utilized for dining activities and may serve more than one adult nursing unit.

(d) Activity areas shall be provided for pediatric and adolescent nursing units which are separate from adult areas.

(e) Space for group therapy shall be provided and activity spaces may be used for group therapy activities.

(3) Examination and treatment rooms shall be provided except when all patient rooms are single-bed rooms.

(a) An examination and treatment room may be shared by multiple nursing units.

(b) If provided, the room shall have a minimum floor area of 110 square feet, excluding space for vestibules, toilet, closets, and work counters, whether fixed or movable.

(c) The minimum allowable floor dimension shall be ten feet.

(d) The room shall contain a lavatory or sink equipped for handwashing, work counter, storage facilities, and a desk, counter, or shelf space for writing.

(4) A consultation room shall be provided.

(a) Rooms shall have a minimum floor space of 100 square feet, and be provided at a room-to-bed ratio of one consultation room for each 12 beds.

(b) They shall be designed for acoustical and visual privacy and constructed using wall construction assemblies with a minimum STC rating of 50.

(c) They shall provide appropriate space for evaluation of patient needs and progress, including work areas for evaluators and work space for patients.

(5) A multipurpose room for staff and patient conferences, education, demonstrations, and consultation, shall be provided.

(a) It shall be separate from required activity areas defined in R432-8-6(2).

(b) If provided in the administration area, it may be utilized for this requirement if it is conveniently accessible from a patient-use corridor.

(6) If child education is provided through facility-based programs, a room shall be provided in the adolescent unit for this purpose. The room shall contain at least 20 square feet per pediatric and adolescent bed, but not less than 250 square feet. Multiple use rooms may be used, but must be available for educational programs on a first priority basis.

(7) Pediatric and adolescent nursing units shall be physically separated from adult nursing units and examination and treatment rooms. In addition to the requirements of R432-8-6(1) through (5), individual rooms or a multipurpose room shall be provided for dining, education, and recreation. Insulation, isolation, and structural provisions shall minimize the transmission of impact noise through the floor, walls, or ceiling of these multipurpose rooms. Service rooms may be shared by more than one pediatric or adolescent nursing unit, but shall not be shared with adult nursing units.

(a) A patient toilet room, in addition to those serving bed areas, shall be conveniently accessible from multipurpose rooms.

(b) Storage closets or cabinets for toys, educational, and recreational equipment shall be provided.

R432-8-7. Exclusions From the Standard.

The following sections of the Guidelines do not apply:

(1) Linen Services, Section 2.5-5.2.

R432-8-8. Penalties.

The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

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26-21-20

R432. Health, Family Health and Preparedness, Licensing.
R432-9. Specialty Hospital - Rehabilitation Construction Rule.
R432-9-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-9-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment of construction standards for rehabilitation hospitals.

R432-9-3. General Design Requirements.

R432-4-1 through 22 apply to this rule.

R432-9-4. General Construction Ancillary Support Facilities.

R432-4-23 applies with the following modifications:

(1) Corridors in patient use areas shall be a minimum eight feet wide.

(2) Handrails shall comply with the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines and located on both sides of hallways and corridors used by patients.

(a) The top of the rail shall be 34-38 inches above the floor, except for areas serving children and other special care areas.

(b) Ends of handrails and grab bars shall be constructed to prevent persons from snagging their clothes.

(3) Standards for the Disabled. All fixtures in all toilet and bath rooms, except those in the activities for daily living unit, shall be wheelchair accessible with wheelchair turning space within the room.

(4) Plumbing.

(a) Oxygen and suction systems shall be installed to serve 25 percent of all patient beds.

(b) Installation shall be in accordance with R432-4 and NFPA 99.

(c) Systems serving additional patient beds are optional.

(5) Emergency Electrical Service.

(a) An on-site emergency generator shall be provided.

(b) The following services shall be connected to the emergency generator:

(i) life safety branch, as defined in section 517-32 of the National Electric Code NFPA 70;

(ii) critical branch, as defined in 517-33 of the National Electrical Code NFPA 70;

(iii) equipment system, as defined in section 517-34 of the National Electric Code NFPA 70;

(iv) telephone;

(v) nurse call;

(vi) heating equipment necessary to provide adequate heated space to house all patients under emergency conditions;

(vii) one duplex convenience outlet in each patient room;

(viii) one duplex convenience outlet at each nurse station;

(ix) duplex convenience outlets in the emergency heated area at a ratio of one for each ten patients.

R432-9-5. General Construction, Patient Facilities.

(1) The requirements of R432-4-24 and the requirements of Sections 2.1 and 2.6 of Guidelines for Design and Construction of Health Care Facilities (Guidelines) 2010 edition shall be met except as modified in this rule. Where a modification is cited, the modification supersedes conflicting requirements of R432-4-24 and the Guidelines.

(2) Other Required Units, Guidelines section 2.6-3.2 is modified to allow psychological services, social services, and vocational services to share the same office space when the licensee provides evidence in the functional program that the needs of the population served are met in the proposed space arrangement.

(3) Rehabilitation Nursing Unit, Section 2.6-2.2 is modified as follows:

(a) Fixtures in patient rooms shall be wheelchair accessible.

(b) Patient rooms shall contain space for wheelchair storage separate from normal traffic flow areas.

(c) Toilet room doors shall swing out from the toilet room or shall be double acting.

(d) Patient rooms shall provide each patient a wardrobe, closet, or locker, having minimum clear dimensions of 22 inches by 36 inches, suitable for hanging full-length garments. A clothes rod and adjustable shelf shall be provided.

(4) A clean workroom or clean holding room shall be provided for preparing patient care items which shall contain a counter, handwashing facilities, and storage facilities. The work counter and handwashing facilities may be omitted in rooms used only for storage and holding, as part of a larger system for distribution of clean and sterile supply materials.

(5) A soiled workroom shall be provided containing a clinical sink, a sink equipped for handwashing, a work counter, waste receptacles, and a linen receptacle. The work counter and handwashing facilities may be omitted in rooms used only for storage and holding.

(6) In addition to Guideline Section 2.6-2.2.6.6, the medicine preparation room or unit shall be under visual control of the nursing staff and have the following:

(a) a minimum area of 50 square feet,

(b) a locking mechanism to prohibit unauthorized access.

(7) Each nursing unit shall have equipment to provide ice for patient treatment and nourishment.

(a) Ice-making equipment may be located in the clean workroom or at the nourishment station if access is controlled by staff.

(b) Ice intended for human consumption shall be dispensed by self-dispensing ice makers.

(8) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing through building rooms or corridors.

R432-9-6. Exclusions from the Guidelines.

The following sections of the Guidelines do not apply:

(1) Linen services, Section 2.6-5.2.

(2) Patient Storage section 2.6-2.2.2.8(2).

R432-9-7. Penalties.

The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

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26-21-20

R432. Health, Family Health and Preparedness, Licensing.
R432-270. Assisted Living Facilities.
R432-270-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-270-2. Purpose.

This rule establishes the licensing and operational standards for assisted living facilities Type I and Type II. Assisted living is intended to enable persons experiencing functional impairments to receive 24-hour personal and health-related services in a place of residence with sufficient structure to meet the care needs in a safe manner.

R432-270-3. Definitions.

(1) The terms used in these rules are defined in R432-1-3.
(2) In addition:
(a) "Assessment" means documentation of each resident's ability or current condition in the following areas:
(i) memory and daily decision making ability;
(ii) ability to communicate effectively with others;
(iii) physical functioning and ability to perform activities of daily living;
(iv) continence;
(v) mood and behavior patterns;
(vi) weight loss;
(vii) medication use and the ability to self-medicate;
(viii) special treatments and procedures;
(ix) disease diagnoses that have a relationship to current activities of daily living status, behavior status, medical treatments, or risk of death;
(x) leisure patterns and interests;
(xi) assistive devices; and
(xii) prosthetics.
(b) "Activities of daily living (ADL)":
(i) means those personal functional activities required for an individual for continued well-being, including:
(A) personal grooming, including oral hygiene and denture care;
(B) dressing;
(C) bathing;
(D) toileting and toilet hygiene;
(E) eating/nutrition;
(F) administration of medication; and
(G) transferring, ambulation and mobility.
(ii) are divided into the following levels:
(A) "Independent" means the resident can perform the ADL without help.
(B) "Assistance" means the resident can perform some part of an ADL, but cannot do it entirely alone.
(C) "Dependent" means the resident cannot perform any part of an ADL; it must be done entirely by someone else.
(c) Certification in Cardiopulmonary Resuscitation (CPR) refers to certification issued after completion of a course that is consistent with the most current version of the American Heart Association Guidelines for Health Care Provider CPR.
(d) "Home-like" as used in statute and this rule means a place of residence which creates an atmosphere supportive of the resident's preferred lifestyle. Home-like is also supported by the use of residential building materials and furnishings.
(e) "Hospice patient" means an individual who is admitted to a hospice program or agency.
(f) "Legal representative" means an individual who is legally authorized to make health care decisions on behalf of another individual.
(g) "Monitoring device":
(i) means a video surveillance camera or a microphone or other device that captures audio; and
(ii) does not include:
(A) a device that is specifically intended to intercept wire, electronic, or oral communication without notice to or the consent of a party to the communication; or
(B) a device that is connected to the Internet or that is set up to transmit data via an electronic communication.
(h) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice registered nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.
(i) "Responsible person" means an individual who:
(i) is designated in writing by a resident to receive communication on behalf of the resident; or
(ii) a legal representative.
(j) "Self-direct medication administration" means the resident can:
(i) recognize medications offered by color or shape; and
(ii) question differences in the usual routine of medications.
(k) "Service Plan" means a written plan of care for services which meets the requirements of R432-270-13.
(l) "Services" means activities which help the residents develop skills to increase or maintain their level of psycho-social and physical functioning, or which assist them in activities of daily living.
(m) "Significant change" means a major change in a resident's status that is self-limiting or impacts on more than one area of the resident's health status.
(n) "Significant assistance" means the resident is unable to perform any part of an ADL and is dependent upon staff or others to accomplish the ADL as defined in R432-270-3(2)(b).
(o) "Social care" means:
(i) providing opportunities for social interaction in the facility or in the community; or
(ii) providing services to promote independence or a sense of self-direction.
(p) "Unit" means an individual living space, including living and sleeping space, bathroom, and optional kitchen area.

R432-270-4. Licensing.

(1) A person that offers or provides care to two or more unrelated individuals in a residential facility must be minimally licensed as an assisted living facility if:
(a) the individuals stay in the facility for more than 24 hours; and
(b) the facility provides or arranges for the provision of assistance with one or more activity of daily living for any of the individuals.
(2) An assisted living facility may be licensed as a Type I facility if:
(a) the individuals under care are capable of achieving mobility sufficient to exit the facility without the assistance of another person.
(3) An assisted living facility must be licensed as a Type II facility if the individuals under care are capable of achieving mobility sufficient to exit the facility only with the limited assistance of one person;.
(4) A Type I assisted living facility shall provide social care to the individuals under care.
(5) A Type II assisted living facility shall provide care in a home-like setting that provides an array of coordinated supportive personal and health care services available 24 hours per day to residents who need any of these services as required by department rule.
(6) Type I and II assisted living facilities must provide each resident with a separate living unit. Two residents may share a unit upon written request of both residents.
(7) An individual may continue to remain in an assisted living facility provided:
(a) the facility construction can meet the individual's

needs;

(b) the individual's physical and mental needs are appropriate to the assisted living criteria; and

(c) the facility provides adequate staffing to meet the individual's needs.

(8) Assisted living facilities may be licensed as large, small or limited capacity facilities.

(a) A large assisted living facility houses 17 or more residents.

(b) A small assisted living facility houses six to 16 residents.

(c) A limited capacity assisted living facility houses two to five residents.

R432-270-5. Licensee.

(1) The licensee must:

(a) ensure compliance with all federal, state, and local laws;

(b) assume responsibility for the overall organization, management, operation, and control of the facility;

(c) establish policies and procedures for the welfare of residents, the protection of their rights, and the general operation of the facility;

(d) implement a policy which ensures that the facility does not discriminate on the basis of race, color, sex, religion, ancestry, or national origin in accordance with state and federal law;

(e) secure and update contracts for required services not provided directly by the facility;

(f) respond to requests for reports from the Department; and

(g) appoint, in writing, a qualified administrator who shall assume full responsibility for the day-to-day operation and management of the facility. The licensee and administrator may be the same person.

(2) The licensee shall implement a quality assurance program to include a Quality Assurance Committee. The committee must:

(a) consist of at least the facility administrator and a health care professional, and

(b) meet at least quarterly to identify and act on quality issues.

(3) If the licensee is a corporation or an association, it shall maintain an active and functioning governing body to fulfill licensee duties and to ensure accountability.

R432-270-6. Administrator Qualifications.

(1) The administrator shall have the following qualifications:

(a) be 21 years of age or older;

(b) have knowledge of applicable laws and rules;

(c) have the ability to deliver, or direct the delivery of, appropriate care to residents;

(d) successfully complete the criminal background screening process defined in R432-35; and

(e) for all Type II facilities, complete a Department approved national certification program within six months of hire.

(2) In addition to R432-270-6(1) the administrator of a Type I facility shall have an associate degree or two years experience in a health care facility.

(3) In addition to R432-270-6(1) the administrator of a Type II small or limited-capacity assisted living facility shall have one or more of the following:

(a) an associate degree in a health care field;

(b) two years or more management experience in a health care field; or

(c) one year's experience in a health care field as a licensed health care professional.

(4) In addition to R432-270-6(1) the administrator of a Type II large assisted living facility must have one or more of the following:

(a) a State of Utah health facility administrator license;

(b) a bachelor's degree in a health care field, to include management training or one or more years of management experience;

(c) a bachelor's degree in any field, to include management training or one or more years of management experience and one year or more experience in a health care field; or

(d) an associates degree and four years or more management experience in a health care field.

R432-270-7. Administrator Duties.

(1) The administrator must:

(a) be on the premises a sufficient number of hours in the business day, and at other times as necessary, to manage and administer the facility;

(b) designate, in writing, a competent employee, 21 years of age or older, to act as administrator when the administrator is unavailable for immediate contact. It is not the intent of this subsection to permit a de facto administrator to replace the designated administrator.

(2) The administrator is responsible for the following:

(a) recruit, employ, and train the number of licensed and unlicensed staff needed to provide services;

(b) verify all required licenses and permits of staff and consultants at the time of hire or the effective date of contract;

(c) maintain facility staffing records for the preceding 12 months;

(d) admit and retain only those residents who meet admissions criteria and whose needs can be met by the facility;

(e) review at least quarterly every injury, accident, and incident to a resident or employee and document appropriate corrective action;

(f) maintain a log indicating any significant change in a resident's condition and the facility's action or response;

(g) complete an investigation whenever there is reason to believe that a resident has been subject to abuse, neglect, or exploitation;

(h) report all suspected abuse, neglect, or exploitation in accordance with Section 62A-3-305, and document appropriate action if the alleged violation is verified.

(i) notify the resident's responsible person within 24 hours of significant changes or deterioration of the resident's health, and ensure the resident's transfer to an appropriate health care facility if the resident requires services beyond the scope of the facility's license;

(j) conduct and document regular inspections of the facility to ensure it is safe from potential hazards;

(k) complete, submit, and file all records and reports required by the Department;

(l) participate in a quality assurance program; and

(m) secure and update contracts for required professional and other services not provided directly by the facility.

(3) The administrator's responsibilities shall be included in a written and signed job description on file in the facility.

R432-270-8. Personnel.

(1) Qualified competent direct-care personnel shall be on the premises 24 hours a day to meet residents needs as determined by the residents' assessment and service plans. Additional staff shall be employed as necessary to perform office work, cooking, housekeeping, laundering and general maintenance.

(2) The services provided or arranged by the facility shall be provided by qualified persons in accordance with the resident's written service plan.

(3) All personnel who provide personal care to residents

in a Type I facility shall be at least 18 years of age or be a certified nurse aide and shall have related experience in the job assigned or receive on the job training.

(4) Personnel who provide personal care to residents in a Type II facility must be certified nurse aides or complete a state certified nurse aide program within four months of the date of hire.

(5) Personnel shall be licensed, certified, or registered in accordance with applicable state laws.

(6) The administrator shall maintain written job descriptions for each position, including job title, job responsibilities, qualifications or required skills.

(7) Facility policies and procedures must be available to personnel at all times.

(8) Each employee must receive documented orientation to the facility and the job for which they are hired. Orientation shall include the following:

(a) job description;

(b) ethics, confidentiality, and residents' rights;

(c) fire and disaster plan;

(d) policy and procedures;

(e) reporting responsibility for abuse, neglect and exploitation; and

(f) dementia specific training including:

(i) communicating with dementia patients and their caregivers;

(ii) communication methods and when they are appropriate;

(iii) types and stages of dementia including information on the physical and cognitive declines as the disease progresses;

(iv) person centered care principles; and

(v) how to maintain safety in the dementia patient environment.

(9) Each employee shall receive documented in-service training. The training shall be tailored to annually include all of the following subjects that are relevant to the employee's job responsibilities:

(a) principles of good nutrition, menu planning, food preparation, and storage;

(b) principles of good housekeeping and sanitation;

(c) principles of providing personal and social care;

(d) proper procedures in assisting residents with medications;

(e) recognizing early signs of illness and determining when there is a need for professional help;

(f) accident prevention, including safe bath and shower water temperatures;

(g) communication skills which enhance resident dignity;

(h) first aid;

(i) resident's rights and reporting requirements of Section 62A-3-201 to 312; and

(j) Dementia/Alzheimer's specific training.

(10) The facility administrator shall annually receive a total of 4 hours of Dementia/Alzheimer's specific training.

(11) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for that reason alone.

(12) The facility shall establish a personnel health program through written personnel health policies and procedures which protect the health and safety of personnel, residents and the public.

(13) The facility must complete an employee placement health evaluation to include at least a health inventory when an employee is hired. Facilities may use their own evaluation or a Department approved form.

(a) A health inventory shall obtain at least the employee's history of the following:

(i) conditions that may predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions that may prevent the employee from performing certain assigned duties satisfactorily.

(b) The facility shall develop employee health screening and immunization components of the personnel health program.

(c) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(d) All infections and communicable diseases reportable by law shall be reported to the local health department in accordance with the Communicable Disease Rule, R386-702-3.

(14) The facility shall develop and implement policies and procedures governing an infection control program to protect residents, family and personnel; which includes appropriate task related employee infection control procedures and practices.

(15) The facility shall comply with the Occupational Safety and Health Administration's Blood-borne Pathogen Standard.

R432-270-9. Residents' Rights.

(1) Assisted living facilities shall develop a written resident's rights statement based on this section.

(2) The administrator or designee shall give the resident a written description of the resident's legal rights upon admission, including the following:

(a) a description of the manner of protecting personal funds, in accordance with Section R432-270-20; and

(b) a statement that the resident may file a complaint with the state long term care ombudsman and any other advocacy group concerning resident abuse, neglect, or misappropriation of resident property in the facility.

(3) The administrator or designee shall notify the resident or the resident's responsible person at the time of admission, in writing and in a language and manner that the resident or the resident's responsible person understands, of the resident's rights and of all rules governing resident conduct and responsibilities during the stay in the facility.

(4) The administrator or designee must promptly notify in writing the resident or the resident's responsible person when there is a change in resident rights under state law.

(5) Resident rights include the following:

(a) the right to be treated with respect, consideration, fairness, and full recognition of personal dignity and individuality;

(b) the right to be transferred, discharged, or evicted by the facility only in accordance with the terms of the signed admission agreement;

(c) the right to be free of mental and physical abuse, and chemical and physical restraints;

(d) the right to refuse to perform work for the facility;

(e) the right to perform work for the facility if the facility consents and if:

(i) the facility has documented the resident's need or desire for work in the service plan,

(ii) the resident agrees to the work arrangement described in the service plan,

(iii) the service plan specifies the nature of the work performed and whether the services are voluntary or paid, and

(iv) compensation for paid services is at or above the prevailing rate for similar work in the surrounding community;

(f) the right to privacy during visits with family, friends, clergy, social workers, ombudsmen, resident groups, and

advocacy representatives;

(g) the right to share a unit with a spouse if both spouses consent, and if both spouses are facility residents;

(h) the right to privacy when receiving personal care or services;

(i) the right to keep personal possessions and clothing as space permits;

(j) the right to participate in religious and social activities of the resident's choice;

(k) the right to interact with members of the community both inside and outside the facility;

(l) the right to send and receive mail unopened;

(m) the right to have access to telephones to make and receive private calls;

(n) the right to arrange for medical and personal care;

(o) the right to have a family member or responsible person informed by the facility of significant changes in the resident's cognitive, medical, physical, or social condition or needs;

(p) the right to leave the facility at any time and not be locked into any room, building, or on the facility premises during the day or night. Assisted living Type II residents who have been assessed to require a secure environment may be housed in a secure unit, provided the secure unit is approved by the fire authority having jurisdiction. This right does not prohibit the locking of facility entrance doors if egress is maintained;

(q) the right to be informed of complaint or grievance procedures and to voice grievances and recommend changes in policies and services to facility staff or outside representatives without restraint, discrimination, or reprisal;

(r) the right to be encouraged and assisted throughout the period of a stay to exercise these rights as a resident and as a citizen;

(s) the right to manage and control personal funds, or to be given an accounting of personal funds entrusted to the facility, as provided in R432-270-20 concerning management of resident funds;

(t) the right, upon oral or written request, to access within 24 hours all records pertaining to the resident, including clinical records;

(u) the right, two working days after the day of the resident's oral or written request, to purchase at a cost not to exceed the community standard photocopies of the resident's records or any portion thereof;

(v) the right to personal privacy and confidentiality of personal and clinical records;

(w) the right to be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(x) the right to be fully informed in a language and in a manner the resident understands of the resident's health status and health rights, including the following:

(i) medical condition;

(ii) the right to refuse treatment;

(iii) the right to formulate an advance directive in accordance with UCA Section 75-2a; and

(iv) the right to refuse to participate in experimental research.

(6) The following items must be posted in a public area of the facility that is easily accessible by residents:

(a) the long term care ombudsmen's notification poster;

(b) information on Utah protection and advocacy systems; and

(c) a copy of the resident's rights.

(7) The facility shall have available in a public area of the facility the results of the current survey of the facility and any plans of correction.

(8) A resident may organize and participate in resident groups in the facility, and a resident's family may meet in the facility with the families of other residents.

(a) The facility shall provide private space for resident groups or family groups.

(b) Facility personnel or visitors may attend resident group or family group meetings only at the group's invitation.

(c) The administrator shall designate an employee to provide assistance and to respond to written requests that result from group meetings.

R432-270-10. Admissions.

(1) The facility shall have written admission, retention, and transfer policies that are available to the public upon request.

(2) Before accepting a resident, the facility must obtain sufficient information about the person's ability to function in the facility through the following:

(a) an interview with the resident and the resident's responsible person; and

(b) the completion of the resident assessment.

(3) If the Department determines during inspection or interview that the facility knowingly and willfully admits or retains residents who do not meet license criteria, then the Department may, for a time period specified, require that resident assessments be conducted by an individual who is independent from the facility.

(4) A Type I facility:

(a) shall accept and retain residents who meet the following criteria:

(i) are ambulatory or mobile and are capable of taking life saving action in an emergency without the assistance of another person;

(ii) have stable health;

(iii) require no assistance or only limited assistance in the activities of daily living (ADL); and

(iv) do not require total assistance from staff or others with more than three ADLs.

(b) may accept and retain residents who meet the following criteria:

(i) are cognitively impaired or physically disabled but able to evacuate from the facility without the assistance of another person; and

(ii) require and receive intermittent care or treatment in the facility from a licensed health care professional either through contract or by the facility, if permitted by facility policy.

(5) A Type II facility may accept and retain residents who meet the following criteria:

(a) require total assistance from staff or others in more than three ADLs, provided that:

(i) the staffing level and coordinated supportive health and social services meet the needs of the resident; and

(ii) the resident is capable of evacuating the facility with the limited assistance of one person.

(b) are physically disabled but able to direct their own care; or

(c) are cognitively impaired or physically disabled but able to evacuate from the facility with the limited assistance of one person.

(6) Type I and Type II assisted living facilities shall not admit or retain a person who:

(a) manifests behavior that is suicidal, sexually or socially inappropriate, assaultive, or poses a danger to self or others;

(b) has active tuberculosis or other chronic communicable diseases that cannot be treated in the facility or on an outpatient basis; or may be transmitted to other residents or guests through the normal course of activities; or

(c) requires inpatient hospital, long-term nursing care or 24-hour continual nursing care that will last longer than 15 calendar days after the day on which the nursing care begins.

(7) Type I and Type II assisted living facilities shall not deny an individual admission to the facility for the sole reason that the individual or the individual's legal representative requests to install or operate a monitoring device in the individual's room in accordance with UCA Section 26-21-304.

(8) The prospective resident or the prospective resident's responsible person must sign a written admission agreement prior to admission. The admission agreement shall be kept on file by the facility and shall specify at least the following:

(a) room and board charges and charges for basic and optional services;

(b) provision for a 30-day notice prior to any change in established charges;

(c) admission, retention, transfer, discharge, and eviction policies;

(d) conditions under which the agreement may be terminated;

(e) the name of the responsible party;

(f) notice that the Department has the authority to examine resident records to determine compliance with licensing requirements; and

(g) refund provisions that address the following:

(i) thirty-day notices for transfer or discharge given by the facility or by the resident,

(ii) emergency transfers or discharges,

(iii) transfers or discharges without notice, and

(iv) the death of a resident.

(9) A type I assisted living facility may accept and retain residents who have been admitted to a hospice program, under the following conditions:

(a) the facility keeps a copy of the physician's diagnosis and orders for care;

(b) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and

(c) a facility may retain hospice patient residents who are not capable of exiting the facility without assistance with the following conditions:

(i) the facility must assure that a worker or an individual is assigned solely to each specific hospice patient and is on-site to assist the resident in emergency evacuation 24 hours a day, seven days a week;

(ii) the facility must train the assigned worker or individual to specifically assist in the emergency evacuation of the assigned hospice patient resident;

(iii) the worker or individual must be physically capable of providing emergency evacuation assistance to the particular hospice patient resident; and

(iv) hospice residents who are not capable of exiting the facility without assistance comprise no more than 25 percent of the facility's resident census.

(10) A type II assisted living facility may accept and retain hospice patient residents under the following conditions:

(a) the facility keeps a copy of the physician's diagnosis and orders for care;

(b) the facility makes the hospice services part of the resident's service plan which shall explain who is responsible to meet the resident's needs; and

(c) if the hospice patient resident cannot evacuate the facility without significant assistance, the facility must:

(i) develop an emergency plan to evacuate the hospice resident in the event of an emergency; and

(ii) integrate the emergency plan into the resident's service plan.

R432-270-11. Transfer or Discharge Requirements.

(1) A resident may be discharged, transferred, or evicted for one or more of the following reasons:

(a) The facility is no longer able to meet the resident's needs because the resident poses a threat to health or safety to self or others, or the facility is not able to provide required medical treatment.

(b) The resident fails to pay for services as required by the admission agreement.

(c) The resident fails to comply with written policies or rules of the facility.

(d) The resident wishes to transfer.

(e) The facility ceases to operate.

(2) Prior to a facility initiated transfer or discharge of a resident, the facility shall serve a transfer or discharge notice upon the resident and the resident's responsible person.

(a) The notice shall be either hand-delivered or sent by certified mail.

(b) The notice shall be made at least 30 days before the day on which the facility plans to transfer or discharge the resident, unless;

(i) notice for a shorter period of time is necessary to protect:

(A) the safety of individuals in the facility from endangerment due to the medical or behavioral status of the resident;

(B) the health of the individuals in the facility from endangerment due to the resident's continued residency;

(C) an immediate transfer or discharge is required by the resident's urgent medical needs; or

(D) the resident has not resided in the facility for at least 30 days.

(3) The notice of transfer or discharge shall:

(a) be in writing with a copy placed in the resident file;

(b) be phrased in a manner and in a language that is most likely to be understood by the resident and the resident's responsible person;

(c) detail the reasons for transfer or discharge;

(d) state the effective date of transfer or discharge;

(e) state the location to which the resident will be transferred or discharged, if known;

(f) state that the resident may request a conference to discuss the transfer or discharge; and

(g) contain the following information:

(i) the name, mailing address, email address and telephone number of the State Long Term Care Ombudsman;

(ii) for facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(iii) for facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(4) The facility shall:

(i) update the transfer or discharge notice as soon as practicable before the transfer or discharge if information in the notice changes before the transfer or discharge;

(ii) orally explain to the resident, the services available through the ombudsman and the contact information for the ombudsman;

(iii) send a copy, in English, of the notice described in Subsection (2) to the State Long Term Care Ombudsman:

(A) on the same day on which the facility delivers the notice described in Subsection (2) to the resident and the resident's responsible person; and

(B) provide the notice described in Subsection (2) at least 30 days before the day on which the resident is transferred or discharged, unless notice for a shorter period of time is necessary to protect the safety of individuals in the facility from

endangerment due to the medical or behavioral status of the resident.

(5) The facility shall provide and document the provisions of preparation and orientation, in a language and manner the resident is most likely to understand, for a resident to ensure a safe and orderly transfer or discharge from the facility.

(6) The resident or the resident's responsible person may contest a transfer or discharge. If the transfer or discharge is contested, the facility shall provide an informal conference, except where undue delay might jeopardize the health, safety, or well-being of the resident or others.

(a) The resident or the resident's responsible person must request the conference within five calendar days of the day of receipt of notice of discharge to determine if a satisfactory resolution can be reached.

(b) Participants in the conference shall include the facility representatives, the resident or the resident's responsible person, and any others requested by the resident or the resident's responsible person.

(7) In the event of a facility closure, provide written notification of the closure to the State Long Term Care Ombudsman, each resident of the facility, and each resident's responsible person.

(8) The facility may not discharge a resident for the sole reason that the resident or the resident's legal representative requests to install or operate a monitoring device in the individual's room in accordance with UCA Section 26-21-304.

R432-270-12. Resident Assessment.

(1) A signed and dated resident assessment shall be completed on each resident prior to admission and at least every six months thereafter.

(2) In Type I and Type II facilities, the initial and six-month resident assessment must be completed and signed by a licensed health care professional.

(3) The resident assessment must accurately reflect the resident's status at the time of assessment.

(4) The resident assessment must include a statement signed by the licensed health care professional completing the resident assessment that the resident meets the admission and level of assistance criteria for the facility.

(5) The facility shall use a resident assessment form that is approved and reviewed by the Department to document the resident assessments.

(6) The facility shall revise and update each resident's assessment when there is a significant change in the resident's cognitive, medical, physical, or social condition and update the resident's service plan to reflect the change in condition.

R432-270-13. Service Plan.

(1) Each resident must have an individualized service plan that is consistent with the resident's unique cognitive, medical, physical, and social needs, and is developed within seven calendar days of the day the facility admits the resident. The facility shall periodically revise the service plan as needed.

(2) The facility shall use the resident assessment to develop, review, and revise the service plan for each resident.

(3) The service plan shall include a written description of the following:

(a) what services are provided;

(b) who will provide the services, including the resident's significant others who may participate in the delivery of services;

(c) how the services are provided;

(d) the frequency of services; and

(e) changes in services and reasons for those changes.

R432-270-14. Service Coordinator.

(1) If the administrator appoints a service coordinator, the service coordinator must have knowledge, skills and abilities to coordinate the service plan for each resident.

(2) The duties and responsibilities of the service coordinator must be defined by facility policy and included in the designee's job description.

(3) The service coordinator is responsible to document that the resident or resident's designated responsible person is encouraged to actively participate in developing the service plan.

(4) The administrator and designated service coordinator are responsible to ensure that each resident's service plan is implemented by facility staff.

R432-270-15. Nursing Services.

(1) The facility must develop written policies and procedures defining the level of nursing services provided by the facility.

(2) A Type I assisted living facility must employ or contract with a registered nurse to provide or delegate medication administration for any resident who is unable to self-medicate or self-direct medication management.

(3) A Type II assisted living facility must employ or contract with a registered nurse to provide or supervise nursing services to include:

(a) a nursing assessment on each resident;

(b) general health monitoring on each resident; and

(c) routine nursing tasks, including those that may be delegated to unlicensed assistive personnel in accordance with the Utah Nurse Practice Act R156-31B-701.

(4) A Type I assisted living facility may provide nursing care according to facility policy. If a Type I assisted living facility chooses to provide nursing services, the nursing services must be provided in accordance with R432-270-15(3)(a) through (c).

(5) Type I and Type II assisted living facilities shall not provide skilled nursing care, but must assist the resident in obtaining required services. To determine whether a nursing service is skilled, the following criteria shall apply:

(a) The complexity or specialized nature of the prescribed services can be safely or effectively performed only by, or under the close supervision of licensed health care professional personnel.

(b) Care is needed to prevent, to the extent possible, deterioration of a condition or to sustain current capacities of a resident.

(6) At least one certified nurse aide must be on duty in a Type II facility 24 hours per day.

R432-270-16. Secure Units.

(1) A Type II assisted living facility with approved secure units may admit residents with a diagnosis of Alzheimer's/dementia if the resident is able to exit the facility with limited assistance from one person.

(2) Each resident admitted to a secure unit must have an admission agreement that indicates placement in the secure unit.

(a) The secure unit admission agreement must document that a wander risk management agreement has been negotiated with the resident or resident's responsible person.

(b) The secure unit admission agreement must identify discharge criteria that would initiate a transfer of the resident to a higher level of care than the assisted living facility is able to provide.

(3) There shall be at least one staff with documented training in Alzheimer's/dementia care in the secure unit at all times.

(4) Each secure unit must have an emergency evacuation plan that addresses the ability of the secure unit staff to evacuate the residents in case of emergency.

R432-270-17. Arrangements for Medical or Dental Care.

(1) The facility shall assist residents in arranging access for ancillary services for medically related care including physician, dentist, pharmacist, therapy, podiatry, hospice, home health, and other services necessary to support the resident.

(2) The facility shall arrange for care through one or more of the following methods:

(a) notifying the resident's responsible person;

(b) arranging for transportation to and from the practitioner's office; or

(c) arrange for a home visit by a health care professional.

(3) The facility must notify a physician or other health care professional when the resident requires immediate medical attention.

R432-270-18. Activity Program.

(1) Residents shall be encouraged to maintain and develop their fullest potential for independent living through participation in activity and recreational programs.

(2) The facility shall provide opportunities for the following:

(a) socialization activities;

(b) independent living activities to foster and maintain independent functioning;

(c) physical activities; and

(d) community activities to promote resident participation in activities away from the facility.

(3) The administrator shall designate an activity coordinator to direct the facility's activity program. The activity coordinator's duties include the following:

(a) coordinate all recreational activities, including volunteer and auxiliary activities;

(b) plan, organize, and conduct the residents' activity program with resident participation; and

(c) develop and post monthly activity calendars, including information on community activities, based on residents' needs and interests.

(4) The facility shall provide sufficient equipment, supplies, and indoor and outdoor space to meet the recreational needs and interests of residents.

(5) The facility shall provide storage for recreational equipment and supplies. Locked storage must be provided for potentially dangerous items such as scissors, knives, and toxic materials.

R432-270-19. Medication Administration.

(1) A licensed health care professional must assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided shall be documented on each resident's assessment.

(2) Each resident's medication program must be administered by means of one of the methods described in (a) through (f) in this section:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the facility must assess each person's ability to safely have medications in the unit. If safety is a factor, a resident shall keep his medication in a locked container in the unit.

(b) The resident is able to self-direct medication administration. Facility staff may assist residents who self-direct medication administration by:

(i) reminding the resident to take the medication;

(ii) opening medication containers; and

(iii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(c) Family members or a designated responsible person may administer medications. If a family member or designated responsible person assists with medication administration, they shall sign a waiver indicating that they agree to assume the responsibility to fill prescriptions, administer medication, and document that the medication has been administered. Facility staff may not serve as the designated responsible person.

(d) For residents who are unable to self-administer or self-direct medications, facility staff may administer medications only after delegation by a licensed health care professional under the scope of their practice.

(i) If a licensed health care professional delegates the task of medication administration to unlicensed assistive personnel, the delegation shall be in accordance with the Nurse Practice Act and R156-31B-701.

(ii) The medications must be administered according to the prescribing order.

(iii) The delegating authority must provide and document supervision, evaluation, and training of unlicensed assistive personnel assisting with medication administration.

(iv) The delegating authority or another registered nurse shall be readily available either in person or by telecommunication.

(e) Residents may independently administer their own personal injections if they have been assessed to be independent in that process. This may be done in conjunction with the administration of medication in methods (a) through (d) of this section.

(f) home health or hospice agency staff may provide medication administration to facility residents exclusively, or in conjunction with (a) through (e) of this section.

(3) The facility must have a licensed health care professional or licensed pharmacist review all resident medications at least every six months.

(4) Medication records shall include the following:

(a) the resident's name;

(b) the name of the prescribing practitioner;

(c) medication name including prescribed dosage;

(d) the time, dose and dates administered;

(e) the method of administration;

(f) signatures of personnel administering the medication; and

(g) the review date.

(5) The licensed health care professional or licensed pharmacist should document any change in the dosage or schedule of medication in the medication record. When changes in the medication are documented by the facility staff the licensed health care professional must co-sign within 72 hours. The licensed health care professional must notify all unlicensed assistive personnel who administer medications of the medication change.

(6) The facility must have access to a reference for possible reactions and precautions for all prescribed medications in the facility.

(7) The facility must notify the licensed health care professional when medication errors occur.

(8) Medication error incident reports shall be completed when a medication error occurs or is identified.

(9) Medication errors must be incorporated into the facility quality improvement process.

(10) Medications stored in a central storage area shall be:

(a) locked to prevent unauthorized access; and

(b) available for the resident to have timely access to the medication.

(11) Medications that require refrigeration shall be stored separately from food items and at temperatures between 36 - 46 degrees Fahrenheit.

(12) The facility must develop and implement policies governing the;

(a) security and disposal of controlled substances by the licensee or facility staff which shall be consistent with the provisions of 21 CFR 1307.21; and

(b) destruction and disposal of unused, outdated, or recalled medications.

(13) The facility shall document the return of resident's medication to the resident or to the resident's responsible person upon discharge.

R432-270-20. Management of Resident Funds.

(1) Residents have the right to manage and control their financial affairs. The facility may not require residents to deposit their personal funds or valuables with the facility.

(2) The facility need not handle residents' cash resources or valuables. However, upon written authorization by the resident or the resident's responsible person, the facility may hold, safeguard, manage, and account for the resident's personal funds or valuables deposited with the facility, in accordance with the following:

(a) The licensee shall establish and maintain on the residents' behalf a system that assures a full, complete, and separate accounting according to generally accepted accounting principles of each resident's personal funds entrusted to the facility. The system shall:

(i) preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident, and preclude facility personnel from using residents' monies or valuables as their own;

(ii) separate residents' monies and valuables intact and free from any liability that the licensee incurs in the use of its own or the facility's funds and valuables;

(iii) maintain a separate account for resident funds for each facility and not commingle such funds with resident funds from another facility;

(iv) for records of residents' monies which are maintained as a drawing account, include a control account for all receipts and expenditures and an account for each resident and supporting receipts filed in chronological order;

(v) keep each account with columns for debits, credits, and balance; and

(vi) include a copy of the receipt that it furnished to the residents for funds received and other valuables entrusted to the licensee for safekeeping.

(b) The facility shall make individual financial records available on request through quarterly statements to the resident or the resident's legal representative.

(c) The facility shall purchase a surety bond or otherwise provide assurance satisfactory to the Department that all resident personal funds deposited with the facility are secure.

(d) The facility shall deposit, within five days of receipt, all resident monies that are in excess of $150 in an interest-bearing bank account, that is separate from any of the facility's operating accounts, in a local financial institution.

(i) Interest earned on a resident's bank account shall be credited to the resident's account.

(ii) In pooled accounts, there shall be a separate accounting for each resident's share, including interest.

(e) The facility shall maintain a resident's personal funds that do not exceed $150 in a non-interest-bearing account, interest-bearing account, or petty cash fund.

(f) Upon discharge of a resident with funds or valuables deposited with the facility, the facility shall that day convey the resident's funds, and a final accounting of those funds, to the resident or the resident's legal representative. Funds and valuables kept in an interest-bearing account shall be accounted for and made available within three working days.

(g) Within 30 days following the death of a resident, except in a medical examiner case, the facility shall convey the resident's valuables and funds entrusted to the facility, and a final accounting of those funds, to the individual administering the resident's estate.

R432-270-21. Facility Records.

(1) The facility must maintain accurate and complete records. Records shall be filed, stored safely, and be easily accessible to staff and the Department.

(2) Records shall be protected against access by unauthorized individuals.

(3) The facility shall maintain personnel records for each employee and shall retain such records for at least three years following termination of employment. Personnel records must include the following:

(a) employee application;

(b) date of employment;

(c) termination date;

(d) reason for leaving;

(e) documentation of CPR and first aid training;

(f) health inventory;

(g) food handlers permits;

(h) TB skin test documentation; and

(i) documentation of criminal background screening.

(4) The facility must maintain in the facility a separate record for each resident that includes the following:

(a) the resident's name, date of birth, and last address;

(b) the name, address, and telephone number of the person who administers and obtains medications, if this person is not facility staff;

(c) the name, address, and telephone number of the individual to be notified in case of accident or death;

(d) the name, address, and telephone number of a physician and dentist to be called in an emergency;

(e) the admission agreement;

(f) the resident assessment; and

(g) the resident service plan.

(5) Resident records must be retained for at least three years following discharge.

(6) There shall be written incident and injury reports to document consumer death, injuries, elopement, fights or physical confrontations, situations which require the use of passive physical restraint, suspected abuse or neglect, and other situations or circumstances affecting the health, safety or well-being of residents. The reports shall be kept on file for at least three years.

R432-270-22. Food Services.

(1) Facilities must have the capability to provide three meals a day, seven days a week, to all residents, plus snacks.

(a) The facility shall maintain onsite a one-week supply of nonperishable food and a three day supply of perishable food as required to prepare the planned menus.

(b) There shall be no more than a 14 hour interval between the evening meal and breakfast, unless a nutritious snack is available in the evening.

(c) The facility food service must comply with the following:

(i) All food shall be of good quality and shall be prepared by methods that conserve nutritive value, flavor, and appearance.

(ii) The facility shall ensure food is palatable, attractively served, and delivered to the resident at the appropriate temperature.

(iii) Powdered milk may only be used as a beverage, upon the resident's request, but may be used in cooking and baking.

(2) The facility shall provide adaptive eating equipment and utensils for residents as needed.

(3) A different menu shall be planned and followed for each day of the week.

(a) All menus must be approved and signed by a certified

dietitian.

(b) Cycle menus shall cover a minimum of three weeks.

(c) The current week's menu shall be posted for residents' viewing.

(d) Substitutions to the menu that are actually served to the residents shall be recorded and retained for three months for review by the Department.

(4) Meals shall be served in a designated dining area suitable for that purpose or in resident rooms upon request by the resident.

(5) Residents shall be encouraged to eat their meals in the dining room with other residents.

(6) Inspection reports by the local health department shall be maintained at the facility for review by the Department.

(7) If the facility admits residents requiring therapeutic or special diets, the facility shall have an approved dietary manual for reference when preparing meals. Dietitian consultation shall be provided at least quarterly and documented for residents requiring therapeutic diets.

(8) The facility shall employ food service personnel to meet the needs of residents.

(a) While on duty in food service, the cook and other kitchen staff shall not be assigned concurrent duties outside the food service area.

(b) All personnel who prepare or serve food shall have a current Food Handler's Permit.

(9) Food service shall comply with the Utah Department of Health Food Service Sanitation Regulations, R392-100.

(10) If food service personnel also work in housekeeping or provide direct resident care, the facility must develop and implement employee hygiene and infection control measures to maintain a safe, sanitary food service.

R432-270-23. Housekeeping Services.

(1) The facility shall employ housekeeping staff to maintain both the exterior and interior of the facility.

(2) The facility shall designate a person to direct housekeeping services. This person shall:

(a) post routine laundry, maintenance, and cleaning schedules for housekeeping staff.

(b) ensure all furniture, bedding, linens, and equipment are clean before use by another resident.

(3) The facility shall control odors by maintaining cleanliness.

(4) There shall be a trash container in every occupied room.

(5) All cleaning agents, bleaches, insecticides, or poisonous, dangerous, or flammable materials shall be stored in a locked area to prevent unauthorized access.

(6) Housekeeping personnel shall be trained in preparing and using cleaning solutions, cleaning procedures, proper use of equipment, proper handling of clean and soiled linen, and procedures for disposal of solid waste.

(7) Bathtubs, shower stalls, or lavatories shall not be used as storage places.

(8) Throw or scatter rugs that present a tripping hazard to residents are not permitted.

R432-270-24. Laundry Services.

(1) The facility shall provide laundry services to meet the needs of the residents, including a sufficient supply of linens.

(2) The facility shall inform the resident or the resident's responsible person in writing of the facility's laundry policy for residents' personal clothing.

(3) Food may not be stored, prepared, or served in any laundry area.

(4) The facility shall make available for resident use at least one washing machine and one clothes dryer.

R432-270-25. Maintenance Services.

(1) The facility shall conduct maintenance, including preventive maintenance, according to a written schedule to ensure that the facility equipment, buildings, fixtures, spaces, and grounds are safe, clean, operable, in good repair and in compliance with R432-6.

(a) Fire rated construction and assemblies must be maintained in accordance with R710-3, Assisted Living Facilities.

(b) Entrances, exits, steps, and outside walkways shall be maintained in a safe condition, free of ice, snow, and other hazards.

(c) Electrical systems, including appliances, cords, equipment call lights, and switches shall be maintained to guarantee safe functioning.

(d) Air filters installed in heating, ventilation and air conditioning systems must be inspected, cleaned or replaced in accordance with manufacturer specifications.

(2) A pest control program shall be conducted in the facility buildings and on the grounds by a licensed pest control contractor or a qualified employee, certified by the State, to ensure the absence of vermin and rodents. Documentation of the pest control program shall be maintained for Department review.

(3) The facility shall document maintenance work performed.

(4) Hot water temperature controls shall automatically regulate temperatures of hot water delivered to plumbing fixtures used by residents. The facility shall maintain hot water delivered to public and resident care areas at temperatures between 105 - 120 degrees Fahrenheit.

R432-270-26. Disaster and Emergency Preparedness.

(1) The facility is responsible for the safety and well-being of residents in the event of an emergency or disaster.

(2) The licensee and the administrator are responsible to develop and coordinate plans with state and local emergency disaster authorities to respond to potential emergencies and disasters. The plan shall outline the protection or evacuation of all residents, and include arrangements for staff response or provisions of additional staff to ensure the safety of any resident with physical or mental limitations.

(a) Emergencies and disasters include fire, severe weather, missing residents, death of a resident, interruption of public utilities, explosion, bomb threat, earthquake, flood, windstorm, epidemic, or mass casualty.

(b) The emergency and disaster response plan shall be in writing and distributed or made available to all facility staff and residents to assure prompt and efficient implementation.

(c) The licensee and the administrator must review and update the plan as necessary to conform with local emergency plans. The plan shall be available for review by the Department.

(3) The facility's emergency and disaster response plan must address the following:

(a) the names of the person in charge and persons with decision-making authority;

(b) the names of persons who shall be notified in an emergency in order of priority;

(c) the names and telephone numbers of emergency medical personnel, fire department, paramedics, ambulance service, police, and other appropriate agencies;

(d) instructions on how to contain a fire and how to use the facility alarm systems;

(e) assignment of personnel to specific tasks during an emergency;

(f) the procedure to evacuate and transport residents and staff to a safe place within the facility or to other prearranged locations;

(g) instructions on how to recruit additional help, supplies,

and equipment to meet the residents' needs after an emergency or disaster;

(h) delivery of essential care and services to facility occupants by alternate means;

(i) delivery of essential care and services when additional persons are housed in the facility during an emergency; and

(j) delivery of essential care and services to facility occupants when personnel are reduced by an emergency.

(4) The facility must maintain safe ambient air temperatures within the facility.

(a) Emergency heating must have the approval of the local fire department.

(b) Ambient air temperatures of 58 degrees F. or below may constitute an imminent danger to the health and safety of the residents in the facility. The person in charge shall take immediate action in the best interests of the residents.

(c) The facility shall have, and be capable of implementing, contingency plans regarding excessively high ambient air temperatures within the facility that may exacerbate the medical condition of residents.

(5) Personnel and residents shall receive instruction and training in accordance with the plans to respond appropriately in an emergency. The facility shall:

(a) annually review the procedures with existing staff and residents and carry out unannounced drills using those procedures;

(b) hold simulated disaster drills semi-annually;

(c) hold simulated fire drills quarterly on each shift for staff and residents in accordance with Rule R710-3; and

(d) document all drills, including date, participants, problems encountered, and the ability of each resident to evacuate.

(6) The administrator shall be in charge during an emergency. If not on the premises, the administrator shall make every effort to report to the facility, relieve subordinates and take charge.

(7) The facility shall provide in-house all equipment and supplies required in an emergency including emergency lighting, heating equipment, food, potable water, extra blankets, first aid kit, and radio.

(8) The following information shall be posted in prominent locations throughout the facility:

(a) The name of the person in charge and names and telephone numbers of emergency medical personnel, agencies, and appropriate communication and emergency transport systems; and

(b) evacuation routes, location of fire alarm boxes, and fire extinguishers.

R432-270-27. First Aid.

(1) There shall be one staff person on duty at all times who has training in basic first aid, the Heimlich maneuver, certification in cardiopulmonary resuscitation and emergency procedures to ensure that each resident receives prompt first aid as needed.

(2) First aid training refers to any basic first aid course.

(3) The facility must have a first aid kit available at a specified location in the facility.

(4) The facility shall have a current edition of a basic first aid manual approved by the American Red Cross, the American Medical Association, or a state or federal health agency.

(5) The facility must have a clean up kit for blood borne pathogens.

R432-270-28. Pets.

(1) The facility may allow residents to keep household pets such as dogs, cats, birds, fish, and hamsters if permitted by local ordinance and by facility policy.

(2) Pets must be kept clean and disease-free.

(3) The pets' environment shall be kept clean.

(4) Small pets such as birds and hamsters shall be kept in appropriate enclosures.

(5) Pets that display aggressive behavior are not permitted in the facility.

(6) Pets that are kept at the facility or are frequent visitors must have current vaccinations.

(7) Upon approval of the administrator, family members may bring residents' pets to visit.

(8) Each facility with birds shall have procedures which prevent the transmission of psittacosis. Procedures shall ensure the minimum handling and placing of droppings into a closed plastic bag for disposal.

(9) Pets are not permitted in central food preparation, storage, or dining areas or in any area where their presence would create a significant health or safety risk to others.

R432-270-29. Respite Services.

(1) Assisted Living facilities may offer respite services and are not required to obtain a respite license from the Utah Department of Health.

(2) The purpose of respite is to provide intermittent, time limited care to give primary caretakers relief from the demands of caring for a person.

(3) Respite services may be provided at an hourly rate or daily rate, but shall not exceed 14-days for any single respite stay. Stays which exceed 14 days shall be considered a non-respite assisted living facility admission, subject to the requirements of R432-270.

(4) The facility shall coordinate the delivery of respite services with the recipient of services, case manager, if one exists, and the family member or primary caretaker.

(5) The facility shall document the person's response to the respite placement and coordinate with all provider agencies to ensure an uninterrupted service delivery program.

(6) The facility must complete a service agreement to serve as the plan of care. The service agreement shall identify the prescribed medications, physician treatment orders, need for assistance for activities of daily living and diet orders.

(7) The facility shall have written policies and procedures approved by the Department prior to providing respite care. Policies and procedures must be available to staff regarding the respite care clients which include:

(a) medication administration;

(b) notification of a responsible party in the case of an emergency;

(c) service agreement and admission criteria;

(d) behavior management interventions;

(e) philosophy of respite services;

(f) post-service summary;

(g) training and in-service requirement for employees; and

(h) handling personal funds.

(8) Persons receiving respite services shall be provided a copy of the Resident Rights documents upon admission.

(9) The facility shall maintain a record for each person receiving respite services which includes:

(a) a service agreement;

(b) demographic information and resident identification data;

(c) nursing notes;

(d) physician treatment orders;

(e) records made by staff regarding daily care of the person in service;

(f) accident and injury reports; and

(g) a post-service summary.

(10) Retention and storage of respite records shall comply with R432-270-21(1), (2), and (5).

(11) If a person has an advanced directive, a copy shall be filed in the respite record and staff shall be informed of the

advanced directive.

R432-270-29b. Adult Day Care Services.

(1) Assisted Living Facilities Type I and II may offer adult day care services and are not required to obtain a license from Utah Department of Human Services. If facilities provide adult day care services, they shall submit policies and procedures for Department approval.

(2) "Adult Day Care" means the care and support to three or more functionally impaired adults through a comprehensive program that provides a variety of social, recreational and related support services in a licensed health care setting.

(3) A qualified Director shall be designated by the governing board to be responsible for the day to day program operation.

(4) The Director shall have written records on-site for each consumer and staff person, to include the following:

(a.) Demographic information;

(b.) An emergency contact with name, address and telephone number;

(c.) Consumer health records, including the following:

(i) record of medication including dosage and administration;

(ii) a current health assessment, signed by a licensed practitioner; and

(iii) level of care assessment.

(d.) Signed consumer agreement and service plan.

(e) Employment file for each staff person which includes:

(i) health history;

(ii) background clearance consent and release form;

(iii) orientation completion, and

(iv) in-service requirements.

(5) The program shall have written eligibility, admission and discharge policy to include the following:

(a) Intake process;

(b) Notification of responsible party;

(c) Reasons for admission refusal which includes a written, signed statement;

(d) Resident rights notification; and

(e) Reason for discharge or dismissal.

(6) Before a program admits a consumer, a written assessment shall be completed to evaluate current health and medical history, immunizations, legal status, and social psychological factors.

(7) A written consumer agreement, developed with the consumer, the responsible party and the Director or designee, shall be completed, signed by all parties include the following:

(a) Rules of the program;

(b) Services to be provided and cost of service, including refund policy; and

(c) Arrangements regarding absenteeism, visits, vacations, mail, gifts and telephone calls.

(8) The Director, or designee, shall develop, implement and review the individual consumer service plan. The plan shall include the specification of daily activities and services. The service plan shall be developed within three working days of admission and evaluated semi-annually.

(9) There shall be written incident and injury reports to document consumer death, injuries, elopement, fights or physical confrontations, situations which require the use of passive physical restraint, suspected abuse or neglect, and other situations or circumstances affecting the health, safety or well-being of a consumer while in care. Each report will be reviewed by the Director and responsible party. The reports will be kept on file.

(10) There shall be a daily activity schedule posted and implemented as designed. (11) Consumers shall receive direct supervision at all times and be encouraged to participate in activities.

(12) There shall be a minimum of 50 square feet of indoor floor space per consumer designated for adult day care during program operational hours.

(a) Hallways, office, storage, kitchens, and bathrooms shall not be included in computation.

(b) All indoor and outdoor areas shall be maintained in a clean, secure and safe condition.

(c) There shall be at least one bathroom designated for consumers use during business hours. For facilities serving more than 10 consumers, there shall be separate male and female bathrooms designated for consumer use.

(13) Staff supervision shall be provided continually when consumers are present.

(a) When eight or fewer consumers are present, one staff person shall provide direct supervision.

(b) When 9-16 consumers are present, two staff shall provide direct supervision at all time. The ratio of one staff per eight consumers will continue progressively.

(c) In all programs where one-half or more of the consumers are diagnosed by a physician's assessment with Alzheimer, or related dementia, the ratio shall be one staff for each six consumers.

R432-270-30. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in Section 26-21-16.

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R501. Human Services, Administration, Administrative Services, Licensing.
R501-7. Child Placing Adoption Agencies.
R501-7-1. Authority and Purpose.

(1) This rule is authorized under Section 62A-2-106.

(2) This rule establishes standards for licensing agencies to provide child placing adoption services.

R501-7-2. Definitions.

(1) "Adoption" is defined in Section 78B-6-103.

(2) "Adoptive Parent" also means potential adoptive parent(s).

(3) "Child Placing" is defined in 62A-2-101.

(4) "Child Placing Adoption Agency" means an individual, agency, firm, corporation, association, or group children's home that engages in child placing for the purpose of finding a person to adopt a child or placing a child in a home for adoption.

(5) "Adoption Related Expenses" are defined in 76-7-203.

(6) "Adoption Services" is defined in 62A-4a-101(2).

(7) "Adoption Related Counseling" includes clinical counseling and psycho educational counseling that is specific to adoption and includes the counseling provided to pre-existing parent(s) as required by circumstances and 78B-6-119.

(8) "Agency" means a child placing adoption agency.

(9) "Allowable Adoptive Parent Information" is the information shared with birth parents regarding the adoptive parent(s). It may include non-identifying information as follows:

(a) demographics, such as age, nationality, religious affiliation;

(b) health status;

(c) physical characteristics;

(d) educational achievement and profession;

(e) family characteristics, including marital history and length, sexual orientation, and any other children;

(f) support system;

(g) discipline preferences;

(h) reason for adopting;

(i) non-identifying information transparently disclosed by the Agency in advance; and

(j) any other identifying or non-identifying information agreed upon via a signed release of information by the adoptive parent.

(10) "Allowable Child/Pre-existing Parent Information" is the information shared with adoptive parent(s). It includes:

(a) Genetic and Social History as defined in 78B-6-103 and used as described in 78B-6-143 which shall include all items defined in 76B-6-103 inclusive of:

(i) birth family's medical, genetic, social, and mental health history;

(ii) information pertaining to changes in caregivers; and

(iii) a description of the child's race, cultural and ethnic background.

(b) Health History as defined 78B-6-103 and used as described in 78B-6-143 which shall include all items defined in 78B-6-103 inclusive of:

(i) Pre-natal, labor and delivery records for mother and infant;

(ii) medical records including the child's physical health, immunizations, and any known or potentially significant factors that may interfere with normal development or may signal any potential medical problems; and

(iii) non-identifying information transparently disclosed by the Agency in advance.

(c) Any other identifying or non-identifying information agreed upon via a signed release of information by the birth parent.

(11) "Client" a client of a child placing adoption agency is a pre-existing parent(s), adoptive parent(s) who have consented to, or been ordered by the court to receive adoption services and child(ren) placed or to be placed. For purposes of background screening in accordance with 62A-2-101 only, the adoptive parent(s) are also defined as "Associated with the Licensee".

(12) "Confinement" means the time period when a woman is hospitalized or medically restricted by her physician due to her pregnancy and childbirth. Confinement includes the standard 6 week recovery time from uncomplicated childbirth unless otherwise noted by the woman's physician.

(13) "Directly Affected Person" is defined in 76-7-203.

(14) "Disruption" means the termination of an adoptive placement prior to the issuance of a final decree of adoption.

(15) "Foster Care" means family care in the residence of a foster parent who is licensed or certified pursuant to R501-12.

(16) "Genetic and Social History" is defined in Section 78B-6-103.

(17) "Health History" is defined in Section 78B-6-103.

(18) "High Needs Child" is as defined in 62A-4a-601.

(19) "Home Study" is equivalent to a pre-placement adoptive evaluation as outlined in 78B-6-128 and is the written assessment of an applicant's ability to be considered for adoptive placement.

(20) "Infant" for purposes of adoption means a child up to six months in age at placement.

(21) "Intercountry Adoption" is when an individual or couple becomes the legal and permanent parents of a child who is a habitual resident of another country and is governed by the laws of both countries.

(22) "Legal Risk Placement" means at the time the placement is made, one or more of the child's biological parents or putative legal parents has not executed a legal relinquishment or consent to the adoption, their parental rights have not been lawfully terminated, or they have expressed their intention to exercise parental rights or contest the adoption.

(23) "Match" means the identification of a specific potential adoptive child with a specific potential adoptive family.

(24) "Mental Health Therapist" is defined in Section 58-60-102.

(25) "Office" means the DHS Office of Licensing.

(26) "Pre-existing Parent" is defined in 78B-6-103.

(27) "Recovery" means the standard 6 weeks of time it takes for women to fully recover from normal childbirth. Agencies are responsible for maintaining accurate documentation of each woman's recovery time frame.

(28) "Special Needs Child" means there is known evidence that:

(a) the child is 5 years of age or older;

(b) the child is under the age of 18 with a physical, emotional or mental disability; or

(c) the child is a member of a sibling group placed together for adoption.

(29) "Unmarried Biological Father" is defined in Section 78B-6-103(17).

R501-7-3. Legal Requirements.

(1) In addition to this rule, all child placing adoption agencies shall comply with R495-876, R501-11, R501-2-1 through R501-2-5, R501-2-8 through R501-2-14, R501-14; R501-22, Title 58, Chapter 60; Title 62A, Chapters 2 and 4a; Section 76-7-203; 78A-6; 78B-6; 78B-13; 78B-15; and all other applicable local, State and Federal laws.

(2) Child placing adoption agencies that do not arrange housing for birth mothers are exempt from R501-2-5, 10, 11, 12, and 22.

(3) A child placing adoption agency shall:

(a) be legally responsible for the child following relinquishment of the child to the adoption agency until the adoption is finalized, unless a court of competent jurisdiction or applicable law places legal responsibility with another party, in

accordance with Section 78B-6-134;

(b) comply with the Indian Child Welfare Act;

(c) obtain a child placing foster license and comply with R501-12 if providing foster care;

(d) obtain a residential support license and comply with R501-22 if providing residential support services to pre-existing parent(s);

(e) comply with the Interstate Compact on the Placement of Children, in accordance with Section 62A-4a-701 et seq; and

(f) ensure that its employees, contractors, volunteers and agents comply with all laws relating to adoption services.

(4) The Division of Child and Family Services shall additionally comply with R512-40 for recruitment, home study and approval; R512-41 for qualifying and adoptive family and adoptive placement; R512-302 for responsibilities pertaining to out of home caregivers and any other section of 62A-4a and R512 that governs the provision of adoptive services to child welfare clients served by the Division of Child and Family Services.

(a) The aforementioned child welfare statue and rule shall supersede this rule when in conflict for child welfare clients served by the Division of Child and Family Services.

R501-7-4. Administrative Ethics and Responsibilities.

(1) Child placing adoption agencies shall:

(a) identify and strictly adhere to accurate accounting practices, including all fee requirements of this rule;

(b) always act in the best interest of a child;

(i) best interest determinations are made by considering a number of factors related to the child's circumstances including age and developmental needs and the parent or caregiver's circumstances and capacity to parent the child to adulthood and shall consider the pre-existing parent(s)' wishes when parental rights are voluntarily relinquished;

(c) provide services and adhere to ethical practices that support and comply with all client rights and responsibilities;

(d) develop and comply with processes that are free from fraud, duress or undue influence and avoid and mitigate conflicts of interest in order to preserve the protections of clients to include:

(i) not give preferential treatment to its board members, employees, volunteers, agents, consultants, independent contractors, donors, or their respective families with regard to child placing decisions;

(ii) not accepting or soliciting donations from an adoptive family that is under consideration for placement of a child or pending finalization of an adoption;

(A) generalized mass solicitation through newsletters or the media shall not constitute a violation under this rule;

(iii) not coercing or incentivizing pre-existing parent(s) to make a plan of adoption or to relinquish their parental rights;

(iv) not permitting its employees, volunteers, agents, consultants, or independent contractors to provide adoption services to both the pre-existing parent(s) and the adoptive parent(s) unless all parties are made aware of potential conflicts of interest and sign a voluntary consent;

(v) inform clients that they are free to select independent attorneys and other non-child placing adoption services;

(A) client bears the responsibility to select a competent provider and their choice may affect costs incurred;

(vi) not referring any individual to services in which the agency's board members, volunteers, employees, agents, consultants, independent contractors, or their respective families are engaged, without first disclosing potential conflicts of interest and informing said individuals that they are free to select independent adoption service providers; and

(vii) require members of the governing body to disclose, in writing, to the chairperson of the governing body and the Office of Licensing, any direct or indirect financial interest in the agency;

(e) manage and share information while still preserving confidentiality when required. This includes:

(i) documenting information shared with potential adoptive parent(s) regarding unknown pre-existing parent(s), Indian Child Welfare Act, and any known information that could potentially disrupt an adoptive placement;

(ii) respond to requests for information from clients and former clients within 30 days and document all requests for information or actual sharing of information to/from birth families, adoptees, adoptive families, and others;

(iii) provide non-identifying information in client files that can allowably be shared, and shall comply with previous releases and established policies;

(iv) the agency shall refer clients to the Mutual-Consent Voluntary Adoption Registry through Department of Health Vital Records if adult adoptees or birth family members want to reunite; and

(v) in more urgent circumstances that could have serious implication to any client or prior client, the agency will utilize prior contact and emergency contact information, as well as engage in simple social media and search engine inquiries to locate and communicate with former clients;

(vi) agencies may engage in a fee based more extensive service to search if desired;

(vii) the agency may share information with third party search providers only if consent has been given by the affected party;

(viii) not misrepresent or withhold any facts or allowable adoptive parent(s) or child/pre-existing parent(s) information relating to its services, involved individuals, or the applicable law;

(f) accept and utilize third party assessments, evaluations, references, home studies or pre-placement evaluations only if received directly from the document's author;

(g) preserve the confidentiality and content of client files;

(h) with respect to adoption services an agency shall refer to or utilize only agencies, entities or individuals that are authorized to provide the service by the laws of this state or the jurisdiction in which that agency, entity or individual performs the service;

(i) provide at least 30 days' prior written notice to the Office of Licensing that the agency is:

(i) dissolving or ceasing to provide child placing services; or

(ii) implementing significant changes in adoption services provided, such as adding or eliminating intercountry adoption.

(j) Provide copies of all documents signed by clients directly to those clients upon request.

(2) In addition to policy and procedure requirements outlined in R501-2, agencies shall develop and adhere to the following adoption-related policies and procedures:

(a) a process regarding how to transfer a relinquishment to another agency in compliance with 78B-6-124 (7);

(b) a process to identify a high needs child as defined in 62A-4a-601, and once identified comply with 62A-4a-609 including disclosure and training to adoptive parent(s);

(c) a process for the temporary placement of children awaiting adoptive placement for over 30-days;

(d) a process and standards for the evaluation and approval or denial of an adoptive home study or pre-placement evaluation;

(e) process and standards for the evaluation and approval or denial of applications from prospective adoptive parent(s);

(f) a written plan for contact, file maintenance, and record retrieval in the event that the agency ceases to provide child placement adoption services;

(i) this plan may involve a secondary licensed or file retention entity;

(g) a process for identifying the pre-existing parent(s)' utilization of alternative payment sources including any public assistance that may defray adoptive parent(s) costs;

(h) policy identifying what is allowable child/pre-existing parent(s) information to be shared with potential adoptive parent(s), including the development of releases of information as needed;

(i) policy identifying what is allowable adoptive parent(s) information to be shared with pre-existing parent(s) including the development of releases of information as needed;

(j) process for refunds to include a process for refunding to adoptive parents monies they paid in excess of actual expenses or disclosed agency fees.; and

(k) written policy to be provided to the adoptive parent(s) outlining how the match is determined, its relationship to any fees, and how it is managed by the agency.

R501-7-5. Staffing Requirements.

(1) A child placing adoption agency shall have at least one social work supervisor responsible for directly supervising all staff and volunteers who provide adoption services to clients.

(2) If an Executive Director is serving as a social work supervisor, they shall not supervise more than four staff and volunteers who provide adoption services to clients.

(3) Each social work supervisor shall be licensed in this state as a mental health therapist, shall comply with the Utah Mental Health Professional Practice Act, and shall have at least one year of full time paid professional experience in a licensed child placing adoption agency.

(4) A social work supervisor may not supervise more than eight staff and volunteers who provide adoption services to clients.

(5) An executive director shall have at least one year of full time paid experience in a licensed child placing adoption agency.

(6) All staff that provide services shall receive a minimum of 20 hours of pre-service training, prior to independently providing direct client services, and 12 hours annual in-service training.

(a) Training content shall include:

(i) agency policy and procedures;

(ii) adoption ethics, laws, and rules;

(iii) the provision of professional and trauma informed adoption practices; and

(iv) any evaluations they will be performing.

(b) Staff will be supervised for adherence to training topics.

R501-7-6. Fees and Disclosures.

(1) All fees, costs and expenses whether actual or estimated must be itemized in accordance with this Rule and Utah Code Ann. 78B-6-140.

(2) A child placing adoption agency may charge adoptive parent(s) agency fees which include administrative and professional services provided on behalf of the adoptive parent(s), including but not limited to:

(a) agency overhead;

(b) personnel;

(c) background screenings for adoptive parent(s) and staff;

(d) training;

(e) insurance;

(f) legal services for the agency;

(g) advertising/recruiting;

(h) post-placement visit;

(i) agency staff support throughout pregnancy, birth, placement and post placement;

(j) home studies, if completed by the agency; and

(k) home study updates, if completed by the agency:

(i) copies of purchased home studies and updates are to be provided to the subjects of these documents upon request.

(3) An agency fee may be charged as a flat fee or be itemized and both must clarify what is included or specifically excluded.

(4) Any fee billed inclusive of an agency fee shall not be billed additionally outside of that agency fee.

(5) An agency may charge and accept payment from the prospective adoptive parent(s) only for reasonable, actual, estimated or outstanding adoption related expenses of the pre-existing parent(s) which are itemized outside of any agency fee. These expenses are limited to the following:

(a) additional counseling;

(b) adoption related legal fees to utilize an independent attorney for the adoption;

(c) maternity expenses limited to pregnancy related clothing, pre-natal vitamins, other non-medical pregnancy related needs;

(d) medical and hospital expenses limited to pregnancy and childbirth related medical expenses for the mother/child; and

(e) temporary living expenses limited to the duration of the pregnancy and confinement of the pre-existing parent(s) or directly affected person and include only:

(i) food;

(ii) transportation including bus passes, gasoline, car maintenance, car payments, and taxi/ride share services;

(iii) housing;

(iv) utilities and telephone;

(v) reasonable and minimal incidentals;

(vi) sufficient apparel for the weather and circumstances;

(vii) daily living household supplies;

(viii) travel between the mother's or father's home and the location where the child will be born or placed;

(f) any other expense not explicitly outlined in this rule shall be reasonably related to the adoption, incurred for a reasonable amount and not paid for the purpose of inducing a birth parent to place the child for adoption. If such fees are charged or paid, the agency shall notify the Office of Licensing.

(6) An agency may charge an adoptive or potential adoptive parent(s) for either the actual adoption related expenses in regard to the pre-existing parent(s) and directly affected individuals or a flat fee estimate of adoption related expenses. Regardless of the fee structure, fees and expenses must be itemized in accordance with this Rule and Utah Code Ann. 78B-6-140.

(a) the agency must disclose whether their adoption related expenses charged are actual or estimated and share the agency policy on refunds or re-appropriation prior to charging adoptive parent(s).

(b) If the agency charges a flat fee for adoption related expenses, the amount must be stated in the disclosure outlined in (7) of this section and the policies related to refunds, increases of decreases in those fees must be outlined in the disclosure.

(c) If the agency charges a fixed amount for adoption related expenses, it must be outlined in the disclosure and capped at that amount. It shall be disclosed whether or not the flat adoption related expenses are or are not refundable in the disclosure.

(d) Over collection of adoption related expenses that are not refunded is only permissible with estimated adoption related expenses if:

(i) any overage will be used to support the adoption related expenses of another adoption of the adoptive parent(s) that paid the expenses originally or refunded to the adoptive parent(s)upon their request;

(ii) any over-collected adoption related expenses shall not be used for the benefit of the agency or anyone associated with the licensee or as a payment to a pre-existing parent.

(7) A child placing adoption agency shall provide a written disclosure statement of all agency fees, flat fees and adoption related expenses that prospective adoptive parent(s) may incur before the agency accepts any payments, or enters into any agreement with the prospective adoptive parent(s).

(a) The written disclosure shall identify and itemize:

(i) each fee and the services associated with each fee; and

(ii) each adoption-related expense.

(b) If providing only estimated expenses provide the average cost for each itemized fee and each adoption-related expense for the preceding two fiscal years, and the maximum amount that may be charged for each fee and adoption related expense.

(c) The written disclosure shall identify any fee that is non-refundable.

(d) If the agency is charging a flat fee, the disclosure shall contain full acknowledgment by prospective adoptive parents of this fee structure and refund ability of any portion of the flat fee.

(e) The written disclosure shall be signed and dated by the prospective adoptive parent(s) and an agency representative and maintained in the adoptive parent(s) file.

(8) An agency shall not charge prospective adoptive parent(s) for any fees or adoption related expenses that the client obtained independently or were paid for by another entity, including any public assistance.

(9) An agency shall not charge adoptive parent(s) for any fee that was not included in the written disclosure without providing written agreement and justification approved by the prospective adoptive parent(s), and either the Office of Licensing or the Court.

(10) An agency shall not directly or indirectly offer, give, or attempt to give money or another thing of value in order to induce or influence pre-existing parent(s) in the adoption process.

(11) The agency shall retain documentation for any adoption related expense exceeding twenty five dollars, which may include receipts, lease agreements, signed fund transfers to pre-existing parent(s) in reasonable amounts in order to cover basic daily needs such as food and household supplies, and any other pertinent documentation.

(12) An agency shall not charge the adoptive parent(s) for the temporary living expenses of any person other than the pre-existing parent(s) or directly affected persons.

(13) An agency shall not charge the adoptive parent(s) for any expenses that are post-confinement, with the exception of post-placement counseling if agreed upon.

(14) A birth mother who decides not to place her child shall not be responsible for reimbursing the costs of any goods or services provided to her by the prospective adoptive parent(s) or the child placing adoption agency during her pregnancy unless they are first convicted of fraud.

(15) Child placing adoption agencies that provide or pay for pre-existing parent(s)' transportation to the State of Utah shall also ensure that the pre-existing parent(s)' return transportation to their home state is provided, regardless of whether the pre-existing parent(s) decides to relinquish parental rights.

(16) The agency shall create an affidavit of itemized accounting of the actual fees and adoption related expenses paid by the adoptive parent(s).

(a) The agency shall utilize an affidavit form provided by the Office of Licensing or a form inclusive of the Office's form content.

(b) The affidavit shall be executed as follows:

(i) a copy shall be signed by the adoptive parent(s);

(ii) all adoption related expenses shall be itemized and include a declaration that Section 76-7-203 has not been violated;

(A) itemized expenses in the affidavit shall align with those verified by pre-existing parents in R501-7-11(3)(n);

(iii) the affidavit shall include a declaration of all gifts, property, or other items that have been or will be provided to the pre-existing parent(s), including the source of the gifts, property or other items;

(iv) the affidavit shall include a declaration of the state of the residence of the pre-existing parent(s) and the prospective adoptive parent(s);

(v) the affidavit shall include a declaration of all public funds used for any medical or hospital costs in connection with the pregnancy, delivery of the child, or care of the child; and

(vi) the affidavit shall include the signature of an agency representative with adequate knowledge to verify the contents of the affidavit are accurate and complete.

R501-7-7. Services to Pre-existing Parents.

(1) The Division of Child and Family services shall comply with 62A-4a and R512 in regards to services provided to pre-existing parent(s), including disclosing all allowable adoptive parent(s) information to the birth family, except as governed by R512-41-11 for the Division of Child and Family Services.

(2) Child placing adoption agencies other than the Division of Child and Family Services shall:

(a) offer pre-existing parent(s) all available allowable adoptive parent(s) information unless waived in full or part by the pre-existing parent(s) as early in the matching process or consent to adopt process as reasonable;

(b) per 78B-6-119, accept voluntary relinquishments only after offering a minimum of three sessions of adoption related counseling to any person who is considering relinquishing a child for adoption prior to accepting the consent or relinquishment. This counseling shall include at a minimum:

(i) parental rights prior to relinquishments;

(ii) alternative options for the child and pre-existing parent(s); and

(iii) adoption issues including grief/loss;

(c) provide complete and accurate information to the pre-existing parent(s) regarding their decision to consent to adopt or relinquish;

(d) meet in-person, via video, or via telephone with the pre-existing parent(s) to review the designated adoption orientation form provided by the Office;

(i) pre-existing parent(s) will be given the opportunity for questions/clarifications before initialing and signing the document;

(ii) a pre-existing parent(s) under the age of 18 shall meet privately with the adoption worker unless they waive the option to meet privately;

(e) ensure the written consent to relinquishment includes language acknowledging that the pre-existing parent(s) was afforded adoption related counseling, and that the relinquishment is completely voluntary, permanent and irrevocable under Utah Law once signed;

(i) a child placing adoption agency shall wait at least 24 hours after the birth of a child before taking the birth mother's relinquishment of parental rights or legal consent to the adoption of her child, in accordance with Section 78B-6-125 or the laws of the state governing the relinquishment.

(3) If an agency arranges housing for pre-existing parents, assure that such housing complies with the following minimum standards:

(a) housing is in compliance with health, fire, zoning, and other applicable laws and regulations;

(b) if the housing meets the definition of Residential Support (R501-22) the agency shall obtain a Residential Support license through the Office of Licensing;

(c) housing is clean, well-maintained and adequately furnished;

(d) birth mothers shall not share bedrooms with other birth mothers;

(e) laundry equipment and supplies shall be available; and

(f) adequate nutritious food, or resources to obtain food, is available.

(7) The agency shall be responsible to encourage and facilitate prenatal and medical care of the birth mother.

(8) A child placing agency shall inform pre-existing parent(s) of their information that will be shared with adoptive parent(s) including their detailed health history and a genetic and social history in accordance with Section 78B-6-143.

(9) A child placing adoption agency shall inform pre-existing parent(s) of Utah's Mutual Consent Voluntary Adoption Registry, Section 78B-6-144.

(10) A child placing adoption agency shall assist the birth and adoptive parent(s) in creating a post-placement contact agreement, including:

(a) whether the birth parent wants to disclose their identity to the adoptee or the adoptive family;

(b) contact about or from the child or parents, directly or indirectly, in the future and how that will occur;

(c) that such agreements are non-binding except in certain public child welfare cases; and

(d) Contact agreements shall be updated only when initiated by the previous clients and maintained in case file records.

R501-7-8. Services to Children.

(1) Assessment.

(a) A needs assessment for the child shall be completed to obtain information and identify characteristics which should be given consideration in selecting and preparing a child for an adoptive family and promote appropriate placement for the child.

(b) The needs of the child will be determined through this assessment and shall evaluate for high needs or special needs as defined in this chapter.

(c) A report(s) regarding all assessment information shall be given to the adoptive parent(s) prior to placement.

(d) If the child is an infant that is not defined as special needs or high need, information shall be obtained from the pre-existing parent(s) and any legal guardian to include all allowable child/pre-existing parent(s) information as defined in this chapter. This information should include:

(i) If the child is older than six months the same information from Section 2 above, shall be obtained from the birth or legal parent;

(ii) additional information shall be obtained using an interdisciplinary approach which may include input from: caseworkers, therapists, pediatricians, teachers, previous caregivers, foster parents, nurses, psychologists, and other consultants.

(e) The assessment shall additionally include:

(i) information pertaining to changes in caregivers including foster care, separation experiences and description of the child's behaviors;

(ii) all evaluations regarding a child's development including; physical, social, emotional, mental health and cognitive;

(iii) the child's educational records, and any special educational needs;

(iv) talents and interests; and

(v) if the child is identified as having special needs or is a high needs child as defined in 62A-4a-601, specific training for prospective adoptive parent(s) is statutorily mandated.

(2) Recruitment of adoptive families.

(a) Child placing adoption agencies shall recruit adoptive families that are able to meet the needs of children the agency serves.

(b) If the family states they would be open to a child with special needs or high needs, they will complete training specific to identified needs and in compliance with 62A-4a-609-2.

(3) Matching.

(a) The selection of the adoptive family and the adoptive family's decision to adopt a specific child shall be based on the following:

(i) the child's assessment;

(ii) adoptive family's ability to meet the identified and potential needs of the child;

(iii) the wishes of the pre-existing parent(s) who voluntarily relinquish their rights, the adoptive parent(s), and when applicable, the child, shall be considered.

(4) Placement.

(a) A child placing adoption agency shall attempt to place siblings together when appropriate for the children's needs and pre-existing parent(s) wishes.

(b) A child shall be placed with the adoptive family at the earliest time possible after being freed for placement or adoption.

(c) A child placing adoption agency shall have an individualized written adoptive placement and transition plan that includes the child's current caregivers, the adoptive parent(s), and the child, to facilitate the child's transition into the adoptive family and ensures the family's ability to meet the child's needs.

(i) The transition plan shall consider and include as applicable:

(A) the child's stated preferences;

(B) the child's identified religion;

(C) identification of services the family and child may need based on assessment information;

(D) statement of who is responsible for identifying services and who is responsible for paying for such services;

(E) time frames for transition that consider and accommodate the identified and potential needs of the child in preparing the child for placement; and

(F) developmentally appropriate counseling with the child to address to mitigate transition related emotional trauma.

(d) If a child placing adoption agency other than DCFS assumes custody of a child and the child is not able to be directly placed in an adoptive placement:

(i) the agency may temporarily place the child in a currently home studied adoptive home for up to 30 days; or

(ii) if the child needs temporary care for more than 30 days, the agency shall contract with a licensed foster care program or obtain a license to provide foster care services for children in its custody, in accordance with R501-12.

(e) A private child placing adoption agency shall obtain a copy of the foster home or facility license prior to placing a child, and shall retain the license in the child's case file.

(f) If a child is not placed within 30 days after relinquishment or after determination of availability for adoption by the court, the agency shall document its efforts to screen the child with other child placing agencies and shall list the child with local, regional, and inter-state adoption exchanges

(5) Post Placement Service.

(a) The child placing agency shall monitor and support each placement until the adoption is final.

(b) An agency social worker shall contact the adoptive family within 2 weeks of the placement to offer support. This does not count towards the pre-finalization visit.

(c) Prior to finalization, a minimum of one in-home supervisory visit with both parents and child present shall be made by an agency social worker:

(i) to assess that the child and family are adjusting and child is receiving necessary care, nurturance, medical care, and services as needed.

(d) The agency shall monitor who has legal and physical

responsibility for the child at all times.

(6) Disruption.

(a) If a disruption occurs, a child placing agency shall provide for the care of the child.

(i) The placement shall:

(A) be in a currently home studied adoptive home for no longer than 30 days unless it is the identified subsequent adoptive placement;

(B) be in a licensed or certified foster home governed by Rule R501-12; or

(C) be approved by a judge.

R501-7-9. Services to Adoptive Parents.

(1) The Division of Child and Family services shall comply with 62A-4a and R512 in regards to services provided to adoptive parent(s), including disclosing all allowable child/pre-existing parent(s) information to the prospective adoptive family.

(2) A child placing adoption agency other than the Division of Child and Family Services shall:

(a) provide the adoptive parent(s) orientation form to potential adoptive parent(s) who shall sign and initial the form and shall be offered the opportunity to ask clarifying questions prior to match or payment of any fees in excess of $500.00;

(i) adoptive parent(s) will be given the opportunity for questions/clarifications before initialing and signing the document;

(b) provide prospective adoptive parent(s) with a written description of their services, fees, policies and procedures;

(c) explain the adoption process and the pre-existing parent(s)' rights, including the status of any putative father, to the prospective adoptive parent(s);

(i) a copy of the Office provided pre-existing parent(s) adoptive orientation form shall be provided to adoptive parent(s) for information purposes with an acknowledgement that they have discussed and received this information;

(d) provide training as outlined in 62A-4a-609 in regards to high needs child, as required;

(e) per 62A-4a-607 the agency shall inform each prospective adoptive parent(s) that the state has children available for adoption and that adoption from the Division of Child and Family Services incurs no agency fees and adoption assistance may be available when adopting children in the custody of the state;

(f) inform adoptive parent(s) that when a child has a disability, the child may be eligible for SSI benefits and/or federal adoption assistance. The Agency shall refer the potential adoptive parent(s) to coordinate with the Division of People with Disabilities for further disability resources and with Division of Child and Family Services to apply for potential federal adoption assistance; and

(g) a child placing adoption agency shall inform prospective adoptive parent(s) of Utah's Mutual Consent Voluntary Adoption Registry, Section 78B-6-144.

(3) A home study completed by an adoption service provider as outlined in 78B-6-128-2(C) for each adoptive family shall include:

(a) a recommendation to the court regarding the suitability of the prospective adoptive parent(s) or placement of a child;

(b) a description of in-person interviews with the prospective adoptive parent(s), prospective adoptive parent(s)', children, and other individuals living in the home;

(c) criminal background and child abuse screening of adoptive applicants and other adults living in the home in accordance with R501-14, and Sections 53-10-108(4) and 78B-6-128;

(i) agencies must separately obtain the child abuse registry report through the Division of Child and Family Services in Utah and any out of state comparable entities in order to show compliance with 78B-6-128;

(d) written descriptions from at least two non-related and one related references regarding the character and suitability of the prospective adoptive parent(s) for parenting an adoptive child;

(e) a medical history and a doctor's report, based upon a doctor's physical examination of each applicant, made within two years prior to the date of the application;

(f) description of inspections of the home, to determine whether sufficient space and facilities exist to meet the needs of the child and whether basic health and safety standards are maintained; and

(g) description of documented income for each adoptive applicant and a written plan for adoptive applicants who work outside the home addressing how they shall provide security and responsible child care to meet individual child needs.

(4) The adoptive applicants shall be informed, in writing, and within ten business days after the decision is made, as to the acceptance or the reasons for the denial of their home study.

(a) The agency shall provide applicants with a written copy of the agency's appeal process, which shall include the right to submit a written appeal and request for reconsideration, upon order of the court in accordance with Section 78B-6-128.

(5) A child placing adoption agency shall select applicants who:

(a) are able to provide the continuity of a caring relationship;

(b) are informed with regard to a child's ethnic, religious, cultural, and racial heritage; and

(c) understand the needs of a child at various developmental stages.

(6) The agency's policies regarding the consideration of religion and marital status in the selection of adoptive families shall be clearly stated in its initial consultation with prospective adoptive parent(s). This disclosure shall also be clearly stated in writing on the adoptive parent(s)' application for services forms.

(7) The agency shall verify that an applicant's income is sufficient to provide for a child's needs.

(8) The agency shall not reject an applicant solely based upon the applicant's choice to work outside the home. Applicants who work outside the home shall provide a written plan describing how they shall provide security and responsible child care to meet the individual child's needs.

(9) Except when authorized by court order pursuant to Section 78B-6-128, a child placing adoption agency shall not place a child in an adoptive home until the home study and each adult's criminal and abuse background screenings have been approved.

(10) Matching.

(a) Disclose all allowable child/pre-existing parent(s) information to the prospective adoptive family.

(b) Ensure known special needs are disclosed and referrals and information are provided as necessary to prepare the family to meet the long term needs of the child.

(c) A child placing adoption agency shall not make a legal risk placement unless the prospective adoptive parent(s) have first given their written consent, indicating that they have been fully informed of the specific risks involved.

(d) Develop the capacities of the parents to meet the ongoing needs of the child according to the child's needs and the transition plan.

(e) Matches may only occur once sufficient non-identifying information sharing has occurred to allow for informed decision making by both parties.

(11) Placement.

(a) A child placing adoption agency shall provide continuing support to the child and the adoptive family after placement and before finalization of the adoption, to include:

(i) providing or making referrals to services such as counseling, crisis intervention, respite care, and support groups; and

(ii) monitoring the child's adjustment and development.

(b) The frequency of home visits, office contacts, telephone calls, and other contacts by the child placing adoption agency shall depend on the needs of the child and the adoptive family and may vary depending whether the child is an infant, an older child, or a child with medical or other challenges, and whether the adoptive parent(s) are faced with unanticipated problems.

(c) The first contact after placement shall take place within two weeks of placement.

(d) A minimum of one face-to-face supervisory home visit after the initial two week contact shall take place before finalization.

(12) Disruption.

(a) The agency may remove the child from the adoptive placement due to circumstances that may impair the child's security in the family or jeopardize the child's physical and emotional development, including but not limited to incompatibility; mental illness; seriously incapacitating illness; the death of one of the adoptive parent(s); the separation or divorce of the adoptive parent(s); the abuse, neglect, or rejection of the child; the lack of attachment to the child; or a request by the adopting parents to remove the child.

(b) If a child is removed from an adoptive home by a child placing adoption agency, the adoptive parent(s) shall be entitled to appeal the removal decision.

(i) The agency shall provide the adoptive parent(s) written notice of their right to appeal and the procedure for appeal.

(13) Finalization.

(a) A child placing adoption agency shall provide assistance in finalizing the adoption.

R501-7-10. Intercountry Adoptions.

(1) All intercountry adoptions are considered high needs per 62A-4a-601 and require compliance with 62A-4a-609.

(2) In addition to complying with all other rules, laws and statutes regarding adoption, a child placing adoption agency that is a primary provider of inter-country placement services shall document that it has complied with all applicable laws and regulations of the United States and the child's country of origin, and including:

(a) the agency is Hague accredited by a Department of State approved accrediting body;

(b) the child is legally freed for adoption in the country of origin;

(c) the agency verifies and maintains documentation and agreements regarding the credentials and qualifications of all associates working in their behalf in foreign countries; and

(d) information was provided to the adopting parents about naturalization and US citizenship proceedings.

(3) A child placing adoption agency that provides intercountry adoption services shall:

(a) comply with all fee requirements from R501-7-6;

(b) establish additional policies and procedures to be provided to the adoptive parent applicant(s) regarding:

(i) agency and adoptive parent(s) responsibilities regarding intercounty adoption;

(ii) post adopt responsibilities;

(iii) identification and disclosure of medical risks in intercountry adoption;

(iv) service planning; and

(v) establish an official and recorded method of fund transfers to avoid the use of direct cash transactions to pay for adoption services in other countries;

(c) additionally include in the written agency fee disclosure required in R501-7-6 the following:

(i) itemization of all services and total cost of providing adoption in the child's country of origin and disclosure of whether the fees are paid directly or through the agency to include:

(A) foreign country/legal fees;

(B) cost of documents required by the agency and by the foreign government as well as costs of apostille or authentication of these documents;

(C) required fees paid to USCIS;

(D) estimated costs of travel to the foreign country;

(E) translation of documents provided to the foreign adoption officials;

(F) costs of child care;

(G) parent education costs;

(H) adopted child passport;

(I) USCIS-required medical exam costs;

(J) immunization expenses; and

(K) any other miscellaneous fees that may apply;

(ii) itemization of any mandatory payments to child welfare programs in the country of origin including:

(A) any fixed contributions amounts;

(B) intended use of payments; and

(C) manner in which the transaction will be recorded and accounted for;

(d) provide all applicants with written policies governing refunds;

(e) notify adoptive applicants within ten business days when information is received that a foreign country is suspending its adoption program;

(f) verify and maintain documentation regarding the credentials and qualifications of agents working in their behalf in foreign countries; and

(g) in addition to adoptive parent(s) and child file content requirements in R501-7-11, intercountry adoption files shall also include:

(i) signed agency agreements and/or contracts;

(ii) USCIS approval to proceed with a foreign adoption;

(iii) copies of adoption documents required by the adoption officials in the foreign country;

(iv) copies of all child information provided by the foreign country;

(v) post-adoption reports required by the foreign country; and

(vi) copy of the adoption finalization from the foreign country.

R501-7-11. Administrative Documentation.

(1) Provisions of this section do not apply to the Division of Child and Family Services as they governed by their own rules, statutes, and documentation requirements that are more restrictive and extensive than those outlined here, including 78A-6-306 Shelter Hearing, 307 Placement, 310 Adjudication hearing, 312 Reunification services, 314 Permanency hearing and 316 Termination of parental rights.

(2) Adoptive Parent(s) Files shall cross-reference all related files and shall contain:

(a) signed and dated application for service including agency disclosure of religion and marital status polices on the application;

(b) signed and dated adoptive parent(s) adoptive orientation form as required and provided by DHS Office of Licensing;

(c) proof that the content of the pre-existing parent(s) adoption orientation form was provided to adoptive parent(s);

(d) proof of compliance with 62A-4a-607 regarding the availability of children in state custody for adoption;

(e) itemized written fee disclosure statement as described in Section R501-7-6 signed and dated by prospective adoptive parent(s) and agency representative prior to entering any

agreements as outlined in;

(f) proof of identification or documented due diligence to determine identity;

(g) copies of marriage certificates, divorce papers, custody and visitation orders, proof of US citizenship;

(h) proof that all allowable child/pre-existing parent(s) information was shared with adoptive parent(s);

(i) voluntary consent agreement acknowledging conflict of interests per R501-7-4 (A);

(j) documentation and itemization of all reasonable and actual adoption-related expenses that exceed $25.00 charged to the adoptive parent(s) as outlined in R501-7-6 to include:

(i) written agreement and justification for any expenses charged to the prospective adoptive parent(s) outside the fee disclosure statement;

(ii) affidavit signed by adoptive parent(s) and agency representative outlining itemized actual expenditures made on behalf of the pre-existing parent(s) as outlined in fees disclosures section R501-7-6;

(k) record of all payments received and disbursements made;

(l) home study/pre placement evaluation as outlined in R501-7-9 and 78B-6-128;

(i) and including a child abuse registry report obtained from all applicable child welfare agencies per R501-7-9(3)(c)(i);

(m) case notes describing all services provided;

(n) physician report for each prospective adoptive parent;

(o) background clearances for prospective adoptive parent(s) and all adults over age 18 residing in the home;

(p) proof of ability to provide health care for an adopted child;

(q) 4 letters of reference;

(r) documentation of all requests for information or sharing of information to include:

(i) post adopt information exchange with pre-existing parent(s); and

(ii) post adopt contact terms with pre-existing parent(s);

(s) transition plan for child transition to adoptive placement;

(t) written consent to legal risk placement if applicable;

(u) documentation of the initial agency contact with the adoptive family within 2 weeks of placement;

(v) documentation of one in-home face-to-face supervisory visit prior to finalization post two week visit;

(w) original or certified copy of the order of adoption;

(x) referral to Mutual Consent Registry;

(y) signed declaration of each potential birth father to be filed with the court per 78B-6-110.5; and

(z) any other documentation required in order to show compliance with this Rule.

(3) Pre-existing parent(s) files shall cross reference all related files and shall contain:

(a) signed and dated application for service to include declaration of birth mother's husband or any alleged father's relationship to the child in accordance with 78B-6-110.5;

(b) proof of identification or documented due diligence to determine identity;

(c) signed and dated pre-existing parent(s) adoptive orientation form as required and provided by DHS Office of Licensing;

(d) declaration, certificate or written statement of putative registry search and disclosure of search results from each state identified by the birth mother in compliance with 78B-6-110.5 Sections 1 and 2; and any communications with potential birth fathers;

(e) documentation of any requests for information or sharing of information;

(f) genetic and social history, and health history;

(g) case notes describing services provided including pre relinquishment counseling;

(h) original or certified copies of relinquishment transfer or decree of termination of birth mother and birth father rights per 78B-6-125 (or the state governing relinquishment);

(i) proof that non-identifying information was provided re: the adoptive parent(s);

(j) proof of compliance with 78B-6-143 and 78B-6-144;

(k) copies of marriage certificates, divorce papers, custody and visitation orders, if any;

(l) certified copies of death certificates, if any, of pre-existing parent(s);

(m) pre-existing parent(s) written agreements or refusals of:

(i) waiver of confidentiality;

(ii) authorization of release of information;

(iii) future third party searcher;

(iv) post adopt information exchange with adoptive parent(s);

(v) post adopt contact terms;

(n) verification that all itemized goods and services billed to the adoptive parent(s) were actually provided to and signed upon receipt to the pre-existing parent(s);

(o) documentation of other alternative payment sources, including public assistance;

(p) referral to Mutual Consent Registry; and

(q) any other documentation required in order to show compliance with this rule.

(4) Child Files shall cross reference all related files and shall contain:

(a) needs assessments, evaluations, family background study of current and historical physical, psychological, genetic and developmental health information as required in R501-7-8 A and B;

(b) individualized assessment determining which adoptive family was selected and why as a means to meet all of the identified wishes and needs of all involved;

(c) case notes describing all services provided and referred;

(d) copies of any DHS licenses for children placed in outside agency foster care;

(e) transition plan for child to adoptive placement; and

(f) any other documentation required in order to show compliance with this rule.

(5) File maintenance.

(a) In the event that any records required in this Rule are not obtained, the child placing adoption agency shall provide documentation of its efforts to obtain those records.

(b) All case files shall be retained for a minimum of 100 years from the date the case is closed.

(c) If not continuing to operate and incapable of maintaining their own files for 100 years, the agency shall notify the Office of Licensing and post publicly where the records shall be stored;

(i) it is permissible for a closed child placing adoption agency to transfer closed adoptive files to another licensed child placing for maintenance as long as the chain of control is clear and transparent to the Office and prior clients and there is good reason to believe that the files will be maintained according to law.

(ii) the agency has a written plan involving a secondary entity for contact and file maintenance in the event that the agency changes ownership or ceases to provide child placement adoption services, and notify the Office of Licensing and each client where the records shall be stored; and

(iii) enable record retrieval by individuals with a right to access them.

(d) All adoption records shall be confidential and shall be maintained in a secure location when not in active use;

(i) adoption records shall be accessible only by authorized

agency employees or agents;

(ii) no information shall be shared with any person without the appropriate consent forms, except as required by law.

(e) Records regarding the adoptive parents, with the exception of reference letters, are not sealed and information in adoption files can be provided to adoptive parent(s) upon request.

(f) A child placing adoption agency shall maintain and provide accurate annual statistics describing the number of applications received the number of children, pre-existing parent(s), and adoptive parent(s) served, and the number of adoptions and disruptions, and the number of children in agency custody.

R501-7-12. Compliance.

(1) A licensee that is in operation on the effective date of this Rule shall be given 60 days to achieve compliance with this Rule.

KEY: licensing, human services, child placing
February 12, 2019 62A-2-101 et seq.
Notice of Continuation October 18, 2012

R501. Human Services, Administration, Administrative Services, Licensing.
R501-21. Outpatient Treatment Programs.
R501-21-1. Authority.

(1) Pursuant to Section Title 62A Chapter 2, the Office of Licensing shall license outpatient treatment programs according to the following rules.

R501-21-2. Purpose.

(1) Outpatient treatment programs shall serve consumers who require less structure than offered in day treatment or residential treatment programs.

R501-21-3. Definition.

(1) "Outpatient Treatment" is defined in 62A-2-101.
(2) "Outpatient Treatment Program" means two or more individuals, at least one of whom provides outpatient treatment, and also meets one or more of the following criteria:
(a) allows agents, contractors, persons with a financial interest, staff, volunteers, or individuals who are not excluded under R501-21-3-2 to either:
(i) provide direct client services, including case management, transportation, assessment, screening, education, or peer support services. Direct client services do not include office tasks unrelated to client treatment, such as: billing, scheduling, standard correspondence and payroll; or
(ii) manage or direct program operations, including intake, admissions or discharge, setting of fees, or hiring of staff.
(b) offers outpatient treatment services to satisfy criminal court requirements.
(c) is required by DHS contract to be licensed for outpatient treatment.
(d) provides services requiring DUI Education Certification, or Justice Certification by the Division of Substance Abuse and Mental Health as authorized in 62A-15-103 and described in R523-4 and R523-11.
(e) refers clients to services that present a conflict of interest or otherwise provide an opportunity for exploitation or fraud by the referring provider. Services may include: laboratory services, private probation, housing, employment, transportation or travel.
(3) The following individuals are excluded from subsection (2) above:
(a) individuals who are exempt from individual professional licensure under Utah Code 58-1-307;
(b) individuals who are licensed, certified, or authorized under Utah Code 58, Chapters 60, 61, 67, 68; and
(c) entities that are excluded under 62A-2-110.

R501-21-4. Administration and Direct Services.

(1) In addition to the following rules, all outpatient treatment programs shall comply with R501-1 General Provisions and R501-14 Background Screening Rules.
(2) Programs shall have current program information readily available to the Office and the public, including a description of:
(a) program services;
(b) the client population served;
(c) program requirements and expectations;
(d) information regarding any non-clinical services offered;
(e) costs, fees, and expenses that may be assessed, including any non-refundable costs, fees or expenses; and
(f) complaint reporting and resolution processes.
(3) The Program shall:
(a) provide outpatient and/or intensive outpatient treatment services not to exceed nineteen hours per week, as clinically recommended and documented;
(b) identify and provide to the Office the organizational structure of the program including:
(i) names and titles of owners, directors and individuals responsible for implementing all aspects of the program, and
(ii) a job description, duties and qualifications for each job title;
(c) identify a director or qualified designee who shall be immediately available at all times that the program is in operation;
(d) ensure at least one CPR/First Aid trained or certified staff member is available onsite at all times with clients present;
(e) disclose any potential conflicts of interest to the Office;
(f) ensure that staff are licensed or certified in good standing as required and that unlicensed individuals providing direct client services shall do so only in accordance with the Mental Health Professional Practices Act;
(g) train and monitor staff compliance regarding:
(i) program policy and procedures;
(ii) the needs of the program's consumers;
(iii) Office of Licensing rule 501-21 and annual training on the Licensing Code of Conduct and client rights as outlined in R501-1-11;
(iv) emergency procedures;
(h) create and maintain personnel files for each staff member to include:
(i) applicable qualifications, experience, certifications and licenses;
(ii) approved and current Office of Licensing background screening except as excluded in 501-14-17; and
(iii) training records with date completed, topic and employee signature(s) verifying completion.
(i) comply with Office rules and all local, state and federal laws to include maintaining a current business license, fire inspection and health clearance as applicable;
(j) maintain proof of financial viability of the program;
(k) maintain general liability insurance, professional liability insurance that covers all program staff, vehicle insurance for transport of clients, fire insurance and any additional insurance required to cover all program activities; and
(l) maintain proof of completion of the National Mental Health Services Survey (NMHSS) annually for each site providing mental health services; and
(m) ensure that all programs and individuals involved with the prescription, administration or dispensing of controlled substances shall do so per state and federal law, including maintenance of DEA registration numbers for:
(i) all prescribing physicians; and
(ii) the specific site where the controlled substances are being prescribed, as required.
(4) The program shall develop, implement and comply with policies and procedures sufficient to ensure the health and safety and meet the needs of the client population served. Policies and procedures shall address:
(a) client eligibility;
(b) intake and discharge process;
(c) client rights as outlined in R501-1-12;
(d) staff and client grievance procedures;
(e) behavior management;
(f) medication management;
(g) critical incident reporting as outlined in R501-1-2-9 and R501-1-9-2d;
(h) emergency procedures;
(i) transportation of clients to include requirement of insurance, valid driver license, driver and client safety and vehicle maintenance;
(j) firearms;
(k) client safety including any unique circumstances regarding physical facility, supervision, community safety and mixing populations; and

(l) provision of client meals, administration of required medications, maximum group sizes, and sufficient physical environment providing for the comfort of clients when clients are present for six or more consecutive hours.

(5) Programs shall maintain client files to include the following:

(a) client name, home address, email address if available, phone numbers, date of birth and gender;

(b) legal guardian and emergency contact names, address, email address and phone numbers;

(c) all information that could affect the health, safety or well-being of the client including all medications, allergies, chronic conditions or communicable diseases;

(d) intake assessment;

(e) treatment plan signed by the clinical professional or service plan for non-clinical services;

(f) detailed documentation of all clinical and non-clinical services provided with date and signature of staff completing each entry;

(g) signed fee disclosure statement including Medicaid number, insurance information and identification of any other entities that are billed for the client's services;

(h) client or guardian signed consent or court order of commitment to services in lieu of signed consent, for all treatment and non-clinical services; and

(i) grievance and complaint documentation.

(j) discharge documentation

(6) Programs shall document a plan detailing how all program, staff, and client files shall be maintained and remain available for the Office and other legally authorized access, for seven years, regardless of whether or not the program remains licensed.

(7) The program shall ensure that assessment, treatment and service planning practices are clinically appropriate, updated as needed, timely, individualized, and involve the participation of the client or guardian.

(8) Programs shall maintain documentation of all critical incidents; critical incident reports shall contain:

(a) time of incident;

(b) summary of incident;

(c) individuals involved; and

(d) program response to the incident.

R501-21-5. Physical Facility.

(1) Space shall be adequate to meet service needs and ensure client confidentiality and comfort.

(2) The program shall maintain potentially hazardous items on-site lawfully, responsibly and with consideration of the safety and risk level of the population(s) served.

(3) All furniture and equipment shall be maintained in a clean and safe condition.

(4) Programs offering supplemental services or activities in addition to outpatient treatment shall:

(a) remain publically transparent in the use of the equipment, practices and purposes;

(b) ensure the health and safety of the consumer;

(c) gain informed consent for participation in supplemental services or activities; and

(d) provide verification of all trainings or certifications as required for the operation and use of any supplemental equipment.

(5) The program shall post the following documents where they are clearly visible by clients, staff, and visitors:

(a) Civil Rights and anti-discrimination laws;

(b) program license;

(c) current or pending Notices of Agency Action;

(d) abuse and neglect reporting laws; and

(e) client rights and grievance process.

(6) The program site shall provide access to a toilet and lavatory sink in a manner that ensures basic privacy, and shall be:

(a) stocked with toilet paper, soap, and paper towels/dryer; and

(b) maintained in good operating order and kept in a clean and safe condition.

(7) The program shall ensure that the physical environment is safe for consumers and staff and that the appearance and cleanliness of the building and grounds are maintained.

R501-21-6. Substance Use Disorder Treatment Programs.

(1) All substance use disorder treatment programs shall develop and implement a plan on how to support opioid overdose reversal.

(2) Maintain proof of completion of the National Survey of Substance Abuse Treatment Services (NSSATS) annually.

(3) Medication-assisted treatment (MAT) in substance use disorder programs shall:

(a) maintain a program-wide counselor to MAT consumer ratio of: 1:50;

(b) assure all consumers see a licensed practitioner that is authorized to prescribe controlled substances at least once yearly;

(c) show proof of completion of federally required physician training for physicians prescribing buprenorphine;

(d) admit consumers to the program and prescribe, administer or dispense medications only after the completion of a face-to-face visit with a licensed practitioner having authority to prescribe controlled substances who confirms opioid dependence. A licensed practitioner having authority to prescribe controlled substances must approve every subsequent dose increase prior to the change;

(e) require all consumers admitted to the program to participate in random drug testing. Drug testing will be performed by the program a minimum of two times per month for the first three months of treatment, and monthly thereafter; except for a consumer whose documented lack of progress shall require more frequent drug testing for a longer period of time;

(f) require that consumers participate in at least one counseling session per week for the first 90 days. Upon documented successful completion of this phase of treatment, consumers shall be required to participate in counseling sessions at least twice monthly for the next six months. Upon documented successful completion of nine months of treatment, consumers shall be seen by a licensed counselor at least monthly thereafter until discharge; and

(g) require one hour of prescribing practitioner time at the program site each month for every ten MAT consumers enrolled.

(4) MAT Programs prescribing, administering or dispensing Methadone (Opioid Treatment Programs) shall:

(a) maintain Substance Abuse and Mental Health Services Administration (SAMHSA) certification and accreditation as an opioid treatment program.

(b) comply with DSAMH Rule R523-10 Governing Methadone and other opioid treatment service providers;

(c) employ a:

(i) licensed physician who is an American Society of Addiction Medicine certified physician; or

(ii) prescribing licensed practitioner who can document specific training in current industry standards regarding methadone treatment for opioid addictions; or

(iii) prescribing licensed practitioner who can document specific training or experience in methadone treatment for opioid addictions; and

(d) provide one nurse to dispense or administer medications for every 150 Methadone consumers dosing on an average daily basis.

(5) Certified DUI Education Programs
(a) Only programs certified with the Division of Substance Abuse and Mental Health (DSAMH) to provide Prime for Life education in accordance with and R523-11 shall provide court ordered DUI education.
(b) Certified DUI education programs shall:
(i) complete and maintain a substance use screening for each participant prior to providing the education course;
(A) screenings may be shared between providers with client written consent.;
(ii) provide a workbook to each participant to keep upon completion of the course;
(iii) ensure at least 16 hours of course education; and
(iv) provide separate classes for adults and youth.
(c) Any violations of this rule section will be reported to DSAMH for evaluation of certification.
(6) Justice Reform Initiative (JRI) Certified Programs shall operate in compliance with DSAMH rules 523-3 and 523-4.
(a) JRI certified programs shall maintain a criminogenic screen/risk assessment for each justice involved client and separate clients into treatment groups according to level of risk assessed.
(b) Providers shall complete screenings that assess both substance abuse and mental health comorbidity.
(c) JRI programs shall treat, or refer to other DHS licensed programs that have obtained a justice certification from the DSAMH to treat the array of disorders noted in screenings.
(d) Any violations of this rule section shall be reported to DSAMH for evaluation of certification.

R501-21-7. Domestic Violence.
(1) Domestic Violence (DV) treatment programs shall comply with generally accepted and current practices in domestic violence treatment, and shall meet the following requirements:
(a) maintain and document cooperative working relationships with domestic violence shelters, treatment programs, referring agencies, custodial parents when the consumer is a minor, and local domestic violence coalitions;
(i) treatment sessions for children and victims shall offer a minimum of ten sessions for each consumer, not including intake or orientation;
(b) if the consumer is a perpetrator, program contact with the victims, current partner, and the criminal justice referring agencies is also required, as appropriate;
(i) In accordance with UCA50-60-102(5), a Licensed Mental Health Therapist shall complete a domestic violence treatment evaluation for each offender to include individualized recommendations for the offender's treatment.
(2) Staff to Consumer Ratio
(a) The staff to consumer ratio in adult treatment groups shall be one staff to eight consumers, for a one hour long group; or one staff to ten consumers for an hour and a half long group. The maximum group size shall not exceed 16.
(b) Child victim, or child witness groups shall have a ratio of one staff to eight children, when the consumers are under 12 years of age; and a ratio of one staff to ten children when the consumers are 12 years of age and older.
(3) Client Intake and Safety
(a) When any consumer enters a treatment program, the staff shall conduct an in-depth, face-to-face interview and assessment to determine the consumer's clinical profile and treatment needs. The evaluation in R501-23-7 shall count for this assessment when the consumer is an offender.
(b) For perpetrator consumers, additional information shall be obtained from the police incident report, perpetrator's criminal history, prior treatment providers, the victim, or victim advocate.
(c) When appropriate, additional information for child consumers shall be obtained from parents, prior treatment providers, schools, and Child Protective Services.
(d) When any of the above cannot be obtained, the reason shall be documented.
(e) The assessment shall include the following:
(i) a profile of the frequency, severity, and duration of the domestic violence behavior, which includes a summary of psychological violence;
(ii) documentation of any homicidal, suicidal ideation and intentions, as well as abusive behavior towards children;
(iii) a clinical diagnosis and a referral for evaluation to determine the need for medication, if indicated;
(iv) documentation of safety planning when the consumer is an adult victim, child victim, or child witness; and that they have contact with the perpetrator;
(A) for victims who choose not to become treatment consumers, safety planning shall be addressed when they are contacted; and
(v) documentation that appropriate measures have been taken to protect children from harm.
(4) Treatment Procedures
(a) Consumers deemed appropriate for a domestic violence treatment program shall have an individualized treatment plan, which addresses all relevant treatment issues.
(b) Consumers who are not deemed appropriate for domestic violence programs shall be referred to the appropriate resource, with the reasons for referral documented, and notification given to the referring agency.
(c) Domestic violence counseling shall be provided concurrently with, or after other necessary treatment, when appropriate.
(d) Conjoint or group therapy sessions with victims and perpetrators together, or with both co-perpetrators, shall not be provided until a comprehensive assessment has been completed to determine that the violence has stopped, and that conjoint treatment is appropriate.
(e) The perpetrator must complete a minimum of 4 domestic violence treatment sessions, unless otherwise noted in the offender evaluation recommendations prior to the provider implementing conjoint therapy.
(f) A written procedure shall be implemented to facilitate the following, in an efficient and timely manner:
(i) entry of the court ordered defendant into treatment;
(ii) notification of consumer compliance, participation, or completion;
(iii) disposition of non-compliant consumers;
(iv) notification of the recurrence of violence; and
(v) notification of factors which may exacerbate an individual's potential for violence.
(g) The program shall comply with the "Duty to Warn," Section 78B-3-502.
(h) The program shall document specialized training in domestic violence assessment and treatment practices, including 24 hours of Utah Association for Domestic Violence Treatment (UADVT) pre-service training, within the last two years; and 16 hours annual training thereafter for all individuals providing treatment service.
(i) Clinical supervision for treatment staff that are not clinically licensed shall consist of a minimum of one hour per week to discuss clinical dynamics of cases.
(5) Training
(a) Training that is documented and approved by the designated Utah DHS DV Specialist Regarding assessment and treatment practices for treating:
(i) DV victims; and
(ii) DV perpetrators.
(6) Programs must disclose all current DHS contracts and actions against the contract to the Office.
(7) Programs must disclose all current Accreditations and

actions against accredited status to the Office.

R501-21-8 Compliance.

(1) A licensee that is in operation on the effective date of this rule, shall be given 30 days to achieve compliance with this rule.

KEY: human services, licensing, outpatient treatment programs
February 12, 2019 **62A-2-101 et seq.**
Notice of Continuation April 1, 2015

R590. Insurance, Administration.
R590-170. Fiduciary and Trust Account Obligations.
R590-170-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to the authority granted under Subsection 31A-2-201(3) to adopt rules for the implementation of the Utah Insurance Code under Sections 31A-23a-406, 31A-23a-409, 31A-23a-410, 31A-23a-411.1, 31A-23a-412 and 31A-25-305 authorizing the commissioner to establish by rule, records to be kept by licensees.

R590-170-2. Purpose and Scope.

(1) The purpose of this rule is to set minimum standards that shall be followed for fiduciary and trust account obligations pursuant to Sections 31A-23a-406, 31A-23a-409 and 31A-25-305.

(2) This rule applies to all Chapter 31A-23a and Chapter 31A-25 licensees holding funds in a fiduciary capacity.

R590-170-3. Definitions.

For the purposes of this rule the commissioner adopts the definitions as set forth in Section 31A-l-301 and the following:

(1) "Trust Account" means a checking or savings account where funds are held in a fiduciary capacity.

(2) "Accounts Receivable" means premiums, fees, or taxes invoiced by a licensee.

(3) "Accounts Payable" means premiums or fees due insurers that a licensee is responsible for invoicing and collecting from insureds on behalf of insurers and licensees and premium taxes due taxing entities.

(4) "Licensee" means a licensee under Chapters 31A-23a and 31A-25.

R590-170-4. Establishing the Trust Account.

(1) All records relating to a trust account shall be identified with the wording "Trust Account" or words of similar import, including "premium fund account." These records include checks, bank statements, general ledgers and records retained by the bank pertaining to the trust account.

(2) All trust accounts shall be established with a Federal Employer Identification Number or a Social Security Number.

(3) A trust account shall be separate and distinct from operating and personal accounts, i.e., a separate account number, a separate account register, and different checks, deposit and withdrawal slips.

(4) A non-licensee may not be a signator on a licensee's trust account, unless the non-licensee signatory is an employee of the licensee and has specific responsibility for the licensee's trust account.

R590-170-5. Maintaining the Trust Account.

(1) Funds deposited into a trust account shall be limited to: premiums which may include commissions; return premiums; fees or taxes paid with premiums; financed premiums; funds held pursuant to a third party administrator contract; funds deposited with a title insurance agent in connection with any escrow settlement or closing, amounts necessary to cover bank charges on the trust account; and interest on the trust account, except as provided under Subsection 31A-23a-406(2)(b).

(2) Disbursements from a trust account shall be limited to: premiums paid to insurers; return premiums to policyholders; transfer of commissions and fees; fees or taxes collected with premiums paid to insurers or taxing authority; funds paid pursuant to a third party administrator contract; funds disbursed by a title insurance agent in connection with any escrow settlement or closing; and the transfer of accrued interest.

(3) Personal or business expenses may not be paid from a trust account, even if sufficient commissions exist in the account to cover these expenses.

(4) Commissions may not be disbursed from a trust account prior to the beginning of the policy period for which the premium has been collected.

(5) Commissions attributed to premiums and fees collected must be disbursed from a trust account on a date not later than the first business day of the calendar quarter after the end of the policy period for which the funds were collected.

(6) Premiums due insurers may not be paid from a trust account unless the premiums directly relating to the amount due have been deposited into, and are being held in, the trust account, or unless funds have been retained in the trust account consistent with Subsection 5 above, or placed by a licensee into the trust account to finance premiums on behalf of insureds.

(7) Premiums financed by a licensee must be accounted for as a loan with interest charged at no less than the statutory rate for any loan exceeding 90 days, pursuant to Section 31A-23a-404.

R590-170-6. Insurers' Access to Trust Accounts.

(1) Insurer access to licensee trust funds is not prohibited by the trust relationship; however, licensees must take reasonable steps to assure trust funds are protected from misappropriation by limiting access to those trust funds.

(2) An insurer desiring to access funds in a licensee's trust account may do so if:

(a) the contract between the insurer and the licensee allows electronic fund transfers into or out of the licensee's trust account:

(i) expressly permits the insurer to withdraw only the amount authorized by the licensee for each transaction; and

(ii) specific authorization from the licensee of the amount to be withdrawn from the licensee's trust account must be received by the insurer prior to the withdrawal; or

(b) the licensee provides the insurer electronic funds transfer into or out of a separate trust account set up solely for trust funds deposited for that insurer.

(3) By implementing electronic funds transfers from a licensee's trust account, the insurer accepts the commissioner's right to oversight of all electronic funds transfers between the insurer and licensee.

(4) Insurers utilizing electronic funds transfer contracts will annually report to the commissioner the name of each licensee with whom they have such contracts.

(a) The report is due January 15 of each year.

(b) The report will include the name and address of each licensee and the line of business involved, i.e. personal lines, commercial lines, health, life, etc.

R590-170-7. Accounting Records to be Maintained.

(1) Bank statements for trust accounts shall be reconciled monthly.

(2) An accounts receivable report showing credits and debits shall be maintained and reconciled monthly. This report must list, at a minimum, the account name and the amount and date due for each receivable. The sum of all receivables shall be shown on the report. Receivables and their sums that are over 90 days old shall be shown separately on the report.

(3) An accounts payable report showing the status of each account shall be maintained and reconciled monthly.

(4) Adequate records shall be maintained to establish ownership of all funds in the trust account: from whom they were received; and for whom they are held.

(5) Trust account registers shall maintain a running balance.

(6) All accounting records relating to the business of insurance shall be maintained in a manner that facilitates an audit.

R590-170-8. Insurer Responsibility.

Insurers and their managing general agents shall provide a written report to the insurance commissioner within 15 days:

(1) if a licensee fails to pay an account payable within 30 days of the due date. This does not apply where a legitimate dispute exists regarding the account payable if the licensee has properly notified the insurer of any disputed items and has provided documentation supporting that position; or

(2) if a licensee issues a check that when presented at the bank is not honored or is returned because of insufficient funds.

R590-170-9. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid such invalidity will not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance

October 30, 2014 **31A-2-201**

Notice of Continuation February 11, 2019 **31A-23a-406**

31A-23a-409

31A-23a-412

31A-25-305

R590. Insurance, Administration.
R590-186. Bail Bond Surety Business.
R590-186-1. Purpose.

This rule establishes uniform criteria and procedures for the initial and renewal licensing, of a bail bond surety company, and sets standards of conduct for those in the bail bond surety business in the State of Utah.

R590-186-2. Authority.

This rule is promulgated pursuant to:

(1) Section 31A-35-104 which requires the commissioner to adopt by rule specific licensure, and certification guidelines and standards of conduct for the bail bond business;

(2) Subsection 31A-35-301(1) which authorizes the commissioner to adopt rules necessary to administer Chapter 35 of Title 31A;

(3) Subsection 31A-35-401(1)(c) which allows the commissioner to adopt rules governing the granting of licenses for bail bond surety companies;

(4) Subsection 31A-35-401(2) which allows the commissioner to require by rule additional information from bail bond applicants applying for licensure;

(5) Subsection 31A-35-406(1)(b) which allows the commissioner to establish by rule the annual renewal date for the renewal of a license as a bail bond surety company.

R590-186-3. Scope and Applicability.

This rule applies to any person engaged in the bail bond surety business.

R590-186-4. Initial Company License.

(1) Persons desiring to become licensed as bail bond surety companies shall file with the Bail Bond Surety Oversight Board (Board) a bail bond company application which can be obtained from the Insurance Department.

(2) The applicant shall pay the annual license fee set forth in R590-102, Insurance Department Fee Payment Deadlines, and provide at least one of the following:

(a) If the applicant relies on a letter of credit as the basis for issuing a bail bond, the applicant shall provide an irrevocable letter of credit with a minimum face value of $300,000 assigned to the State of Utah from an entity qualified by state or federal regulators to do business as a financial institution in the state of Utah.

(b) If the applicant relies on the ownership of real or personal property located in Utah as the basis for issuing bail bonds, the applicant shall provide a financial statement reviewed by a certified public accountant as of the end of the most current fiscal year. The financial statement must show a net worth of at least $300,000, including a minimum of $100,000 in liquid assets. The applicant shall also provide a copy of the applicant's federal income tax returns for the prior two years and, for each parcel of real property owned by the applicant and included in the applicant's net worth calculation, a preliminary title report dated not more than one month prior to the date of the application and an appraisal dated not more than two years prior to the date of the application.

(c) If the applicant relies on their status as the agent of a bail bond surety insurer as the basis for issuing bail bonds, the applicant shall provide a Qualifying Power of Attorney issued by the bail bond surety insurer.

(3) Applications approved by the Board will be forwarded to the insurance commissioner for the issuance of a license.

(4) Applications disapproved by the Board may be appealed to the insurance commissioner within 15 days of mailing the notice of disapproval.

(5) When a bail bond surety pledges the assets of a letter of credit under 31A-35-404(1), the letter of credit must:

(a) be drawn on a Utah depository institution;

(b) be assigned to the state and its political subdivisions to guarantee the payment of a bail bond forfeiture; and

(c) be drawn upon by the holder of the judgment of a bail bond forfeiture, which remains unpaid 60 days following the suspension of the bail bond surety licensed under 31A-35-504.

R590-186-5. Company License Renewal.

A licensed bail bond surety company shall renew its license on or before July 15 of each year by meeting the following requirements:

(1) file with the insurance commissioner a renewal application, pay the required renewal licensing fee set forth in R590-102, Insurance Department Fee Payment Deadlines, and provide the additional information described in this section.

(2) If the applicant relies on the ownership of real or personal property as the financial basis for issuing bail bonds the applicant must include the following with the renewal:

(a) a statement that no material changes have occurred negatively affecting the property's title, including any liens or encumbrances that have occurred since the last license renewal;

(b) a financial statement reviewed by a certified public accountant as of the end of the most current fiscal year showing a net worth of at least $300,000, at least $100,000 of which must consist of liquid assets and a copy of the applicant's federal income tax return for the prior year; and

(c) if the bail bond agency is in its second or subsequent year of licensure, the following items are required:

(i) a certified appraisal report;

(ii) a current tax notice and a title letter or report; or

(iii) a current abstract of title from the county recorder.

(3) Renewal applicants who were licensed as a bail bond surety company prior to December 31, 1999, may opt to apply under the lower limits in effect at that date.

(a) For renewal applicants relying on a letter of credit as the financial basis for issuing bail bonds, the amount is reduced to $250,000.

(b) For renewal applicants relying on real or personal property as the basis for issuing bail bonds, the amount is reduced to a net worth of at least $250,000, at least $50,000 of which must consist of liquid assets.

(c) Renewal applicants opting for lower limits are limited to the 5 to 1 ratio of outstanding bond obligations as shown in R590-186-9.

(4) When using a letter of credit at renewal the bail bond surety must follow R590-186-4(5).

R590-186-6. Agent License and Renewal.

(1) Bail bond surety companies and insurers are required to issue bail bonds only through licensed bail bond agents that have been contracted with and appointed by the insurer or designated by the bail bond surety company for whom they are issuing bail bonds.

(2) All persons doing business as bail bond agents must be licensed in accordance with Chapter 23 of Title 31A and applicable department rules regarding individual agent licensing. Bail bond agent licenses are individual limited line licenses. These licenses are issued for a two year period and require no licensing examination or continuing education.

(3) Individual bail bond agent licenses must be renewed at the end of the two year licensing period in accordance with Chapter 23 of Title 31A and applicable department rules regarding individual agent licensing renewal.

R590-186-7. Unprofessional Conduct.

Persons in the bail bond surety business may not engage in unprofessional conduct. For purposes of this rule, unprofessional conduct means the violation of any applicable insurance law, rule, or valid order of the commissioner, or the commission of any of the following acts by bail bond sureties,

by bail bond surety agents or by bail bond enforcement agents working for bail bond sureties:

(1) having a license as a surety revoked in this or any other state;

(2) being involved in any transaction which shows unfitness to act in a fiduciary capacity or a failure to maintain the standards of fairness and honesty required of a trustee or other fiduciary;

(3) willfully misstating or negligently reporting any material fact in the initial or renewal application or procuring a misstatement in the documents supporting the initial or renewal application;

(4) being the subject of any outstanding civil judgment which would reduce the surety's net worth below the minimum required for licensure;

(5) being convicted of any felony or of any misdemeanor that involves the misappropriation of money or property, dishonesty or perjury;

(6) failing to report any collateral taken as security on any bond to the principal, indemnitor, or depositor of such collateral;

(7) failing to preserve, or to retain separately, or both, any collateral taken as security on any bond;

(8) failing to return collateral taken as security on any bond to the depositor of such collateral, or the depositor's designee, within ten business days of having been notified of the exoneration of the bond and upon payment of all fees owed to the bail bond agent, whichever is later;

(9) failing to advise the insurance commissioner of any change that has reduced the surety's net worth below the minimum required for licensure;

(10) using a relationship with any person employed by a jail facility or incarcerated in a jail facility to obtain referrals;

(11) offering consideration or gratuities to jail personnel or peace officers or inmates under any circumstances which would permit the inference that said consideration was offered to induce bonding referrals or recommendations;

(12) failing to deliver to the incarcerated person, or the person arranging bail on behalf of the incarcerated person, prior to the time the incarcerated person is released from jail, a one page disclosure form which at a minimum includes:

(a) the amount of the bail;

(b) the amount of the surety's fee, including bail bond premium, preparation fees, and credit transaction fees;

(c) the additional collateral, if any, that will be held by the surety;

(d) the incarcerated person's obligations to the surety and the court;

(e) the conditions upon which the bond may be revoked;

(f) any additional charges or interest that may accrue;

(g) any co-signors or indemnitors that will be required; and

(h) the conditions under which the bond may be exonerated and the collateral returned.

(13) using an unlicensed bail bond agent or unlicensed bail bond enforcement agent;

(14) using a bail bond agent not contracted and appointed by the bail bond surety company;

(15) charging excessive or unauthorized premiums, excessive fees or other unauthorized charges;

(16) requiring unreasonable collateral security;

(17) failing to provide an itemized statement of all expenses deducted from collateral, if any;

(18) requiring as a condition of his executing a bail bond that the principal agree to engage the services of a specified attorney;

(19) preparing or issuing fraudulent or forged bonds or power of attorney;

(20) signing, executing, or issuing bonds by an unlicensed person;

(21) executing bond without countersignature by a licensed agent at time of issue;

(22) failing to account for and to pay any premiums held by the licensee in a fiduciary capacity to the bail bond surety company, bail bond surety insurer or other person who is entitled to receive them;

(23) knowingly violating, advising, encouraging, or assisting the violation of any statute, court order, or injunction in the course of a business regulated under this chapter;

(24) conviction of felony involving illegally using, carrying, or possessing a dangerous weapon;

(25) conviction of any act of personal violence or force against any person or conviction of threatening to commit any act of personal violence or force against any person, including but not limited to violent felonies as defined under Utah Code Annotated Section 76-3-203.5;

(26) soliciting sexual favors as a condition of obtaining, maintaining, or exonerating bail bond, regardless of the identity of the person who performs the favors;

(27) acting as an unlicensed bail bond enforcement agent;

(28) failing to comply with the provisions of the Utah statutes and rules regulating the bail bond surety business or order of the insurance commissioner, including outstanding judgments; and

(29) using deceptive or intimidating practices in which to gain bail bond business.

R590-186-8. Investigating Unprofessional Conduct.

The Board or the commissioner shall investigate allegations of unprofessional conduct on the part of any bail bond surety, bail bond surety agent, or bail bond producer. Complaints alleging unprofessional conduct shall be submitted in writing to the Department of Insurance.

(1) Investigations shall be completed in the following manner:

(a) Upon receipt of a complaint of unprofessional conduct, the commissioner shall provide a copy of the complaint to the person against whom the complaint was made, and, if warranted, to the person's surety. The commissioner may edit the copy of the complaint mailed under this subsection as may be necessary to protect the identity or interests of the person making the complaint if the complainant so requests.

(b) The subject of the complaint shall provide to the commissioner a written response to the complaint within 15 days of the date the complaint was mailed to respondent.

(c) At the next meeting of the Board, the commissioner shall present the complaint and the action undertaken by the Department to receive comment from the Board.

(d) After the investigation is completed, the commissioner shall present the findings and recommended disposition to the Board. The Board may concur with the commissioner's recommended disposition, recommend a different disposition, or request additional investigation.

(i) Disclosures made to the Board under Sections (c) and (d)shall be treated as confidential. Board members may not disclose or act upon any confidential information obtained pursuant to investigations conducted under this Section.

(ii) If the Board requests additional investigation, the commissioner shall reasonably conduct additional investigation in compliance with the policies and procedures of the Department.

(a) The commissioner shall present findings to the Board at the next scheduled board meeting, or at a meeting no sooner than 30 days after the Board's request, at the discretion of the Board.

(b) Upon hearing the results of any additional investigation by the commissioner, the Board shall provide to the commissioner its recommendation within 30 days.

R590-186-9. Bonding Limits.

(1) An insurance bondsman may not maintain outstanding bail bond obligations in excess of the amount allowed by the insurance company.

(2) A letter of credit bondsman and/or a property bondsman may not maintain outstanding bail bond obligations in excess of the amounts provided in the table below:

TABLE

Financial Requirements	Ratio of Outstanding Bond Obligations to Letter of Credit or Net Worth and Liquidity Amounts
$250,000 line of credit or net worth/$50,000 liquidity)	licensed 0 to 36 months: 5 to 1 licensed over 36 months: 5 to 1
300,000 or more line of credit limit or net worth/ at least $100,000 liquidity	licensed 0 to 36 months: 5 to 1 licensed over 36 months: 10 to 1

(3) The commissioner may reduce the bonding limit of a letter of credit or a property bail bond company who has qualified for the 10 to 1 ratio if that bail bond company's line of credit limit or net worth or liquidity limit falls below the limits stated in Subsection(2) above.

R590-186-10. Publication of Licensed Bail Bond Surety Companies.

On or before September 1 of each year, the Board shall publish a list of bail bond surety companies licensed to do business in the State of Utah.

R590-186-11. Definition.

In reference to subsection 31A-35-701(5) "members of their immediate families" shall be defined as: spouse, children, stepchildren, children-in-law, mother, father, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law, step-mother, step-father, step-brother, step-sister, half-brother, and half-sister.

R590-186-12. Penalties.

Violations of this rule are punishable pursuant to Section 31A-2-308.

R590-186-13. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule 45 days from the rule's effective date. Non-revised provisions are enforceable as of the effective date.

R590-186-14. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this and the provisions of this rule are declared to be severable.

KEY: insurance
February 7, 2019 **31A-35-104**
Notice of Continuation July 10, 2018 **31A-35-301**
31A-35-401
31A-35-406

R590. Insurance, Administration.
R590-220. Submission of Accident and Health Insurance Filings.
R590-220-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Sections 31A-2-201.1 and 31A-22-1404, and Subsections 31A-2-201(3), 31A-2-202(2), 31A-2-212(5), 31A-22-605(4), 31A-22-620(3)(f), 31A-30-106(1) and (4), and 31A-30-106.1(13) and (14).

R590-220-2. Purpose and Scope.

(1) The purpose of this rule is to set forth procedures for submitting:

(a) accident and health filings required by Section 31A-21-201;

(b) individual accident and health filings in accordance with Section 31A-22-605 and Rule R590-85;

(c) Medicare supplement filings in accordance with Sections 31A-22-605 and 31A-22-620, and Rules R590-85 and R590-146;

(d) long term care filings required by Section 31A-22-1404 and Rule R590-148; and

(e) health benefit plan filings required by Subsection 31A-2-212(5); Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act; and Rule R590-167.

(2) This rule applies to:

(a) all types of accident and health insurance products; and

(b) group accident and health contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-220-3. Documents Incorporated by Reference.

(1) The department requires that the documents described in this rule shall be used for all filings.

(a) Actual copies may be used or you may adapt them to your word processing system.

(b) If adapted, the content, size, font, and format must be similar.

(2) The NAIC Uniform Life, Accident and Health, Annuity, and Credit Product Coding Matrix, effective January, 1, 2015, is hereby incorporated by reference and is available on the department's web site, www.insurance.utah.gov.

R590-220-4. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purposes of this rule.

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Discretionary group" means a group that has been specifically authorized by the commissioner under Subsection 31A-22-701(2)(c).

(3) "Electronic filing" means a filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF.

(4) "Eligible group" means a group that meets the requirements in Section 31A-22-701.

(5) "File And Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(6) "File Before Use" means a filing can be used, sold, or offered for sale after it has been filed with the department and a stated period of time has elapsed from the date filed.

(7) "File For Acceptance" means a filing can be used, sold, or offered for sale after it has been filed and the filer has received written confirmation that the filing was accepted.

(8) "File for Approval" means a filing can be used, sold, or offered for sale after it has been filed and the filer has received written confirmation that the filing was approved.

(9) "Filer" means a person who submits a filing.

(10) "Filing," when used as a noun, means an item required to be filed with the department including:

a) a policy;

(b) a rate, rate manual, or rate methodologies;

(c) a form;

(d) a document;

(e) a plan;

(f) a manual;

(g) an application;

(h) a report;

(i) a certificate;

(j) an endorsement or rider;

(k) an actuarial memorandum, demonstration, and certification;

(l) a licensee annual statement;

(m) a licensee renewal application;

(n) an advertisement;

(o) a binder; or

(p) an outline of coverage.

(11) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction of non-compliant items, may request clarification or additional information pertaining to the filing.

(12) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses.

(13) "Letter of authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.

(14) "Market type" means the type of policy that indicates the targeted market such as individual or group.

(15) "Non-2014 PPACA compliant health benefit plan" means a health benefit plan that is either:

(a) a grandfathered health plan as defined in 45 CFR 147.140(a); or

(b) a transitional health benefit plan as outlined by the letter to Insurance Commissioners from the Centers for Medicare and Medicaid Services dated November 14, 2013 and extended by the Insurance Standards Bulletin Series, Extension of Transitional Policy through October 1, 2016 dated March 5, 2014. A transitional plan is also known as a grandmothered health plan.

(16) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(17) "Rating methodology change" for the purpose of a non-2014 PPACA compliant health benefit plan means a:

(a) change in the number of case characteristics used by a covered licensee to determine premium rates for health benefit plans in a class of business;

(b) change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(c) change in the method of allocating expenses among health benefit plans in a class of business; or

(d) change in a rating factor, with respect to any case characteristic, if the change would produce a change in premium for any individual or small employer that exceeds 10%. A change in a rating factor shall mean the cumulative change with respect to such factor considered over a 12-month period. If a covered licensee changes rating factors with respect to more than one case characteristic in a 12-month period, the licensee shall consider the cumulative effect of all such changes in applying the 10% test.

(18) "Rejected" means a filing is:

(a) not submitted in accordance with Utah laws and rules;

(b) returned to the filer by the department with the reasons

for rejection; and

(c) not considered filed with the department.

(19) "SERFF" means the System for Electronic Rate and Form Filings.

(20) "Type of insurance" means a specific accident and health product including dental, health benefit plan, long-term care, Medicare supplement, income replacement, specified disease, or vision.

(21) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department that indicates a paper filing has been accepted. If the Utah Filed Date is used for compliance with any section of this rule, a complete copy of the paper filing with the filed date stamped on the filing must be attached as a supporting document. In addition, if the filing was amended at any time, the amendment filing must also be attached as a supporting document.

R590-220-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) A licensee and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing; and

(c) will not be reopened for purposes of resubmission.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order to Prohibit Use will be issued to the filer. The commissioner may require the licensee to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing correction.

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within 15 days of the date the original filing was submitted to the department. The filer shall include a description of the filing corrections.

(c) A new filing is required if a filing correction is made more than 15 days after the date the original filing was submitted to the department. The filer must reference the original filing in the filing description and include a description of the filing corrections.

(7) If responding to a Filing Objection Letter, an Order to Prohibit Use, or a Filing Rejection, review Section R590-220-17 for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-220-6. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

(2) A filing must be submitted by market type and type of insurance.

(3) A filing may not include more than one type of insurance, or request filing for more than one licensee.

(4)(a) Filing Description. Do not submit a cover letter. On the General Information tab, complete the Filing Description section with the following information, presented in the order shown below.

(i) Provide a description of the filing including:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(ii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous filing's Utah Filed Date or SERFF tracking number;

(C) includes documents for informational purposes; if so, provide the Utah Filed Date or SERFF tracking number; or

(D) does not include the base policy; if so, provide the Utah Filed Date or SERFF tracking number for the base policy and all amendments and describe the effect on the base policy.

(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(iv) Explain any change in benefits or premiums that may occur while the contract is in force.

(v) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(b) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The Utah Accident and Health Insurance Filing Certification must be properly completed, signed, and attached to the Supporting Documentation tab. A false certification may subject the licensee to administrative action.

(c) Domiciliary Approval and Filing Status Information. All filings for a foreign licensee must include on the Supporting Documentation tab:

(i) copy of domicile approval for the exact same filing;

(ii) filing status information which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(d) Group Questionnaire, Utah Bona Fide Employer Association Group Questionnaire, or Discretionary Group Authorization Letter. A group filing must have attached to the Supporting Documentation tab either a:

(i) signed and fully completed Utah Accident and Health Insurance Group Questionnaire;

(ii) copy of the Utah Accident and Health Insurance Discretionary Group Authorization letter; or

(iii) signed and fully completed Utah Bona Fide Employer Association Group Questionnaire.

(e) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the Supporting Documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(f) Variable data.

(i) A statement of variability must be attached to the Supporting Documentation tab and certify:

(A) the final form will not contain brackets denoting variable data;

(B) the use of variable data will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination;

(C) the variable data included in this statement will be used on the referenced forms;

(D) any changes to variable data will be submitted prior to implementation; and

(E) all possible variations of the variable data are shown in the statement, such as "Deductible is $(x-xxxx) in $xx increments."

(ii) Variable data are denoted in brackets and are defined, either by imbedding in the form, or by a separate form identified by its own form number and edition date. Variable data submitted as a separate form must be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.

(iii) Variable data must be reasonable, appropriate and compliant.

(iv) Use of unauthorized variable data is prohibited.

(g) Items being submitted for filing.

(i) All forms must be attached to the Form Schedule tab.

(ii) All rating documentation, including actuarial memorandums and rate schedules, must be attached to the Rate/Rule Schedule tab.

(h) Reports are exempt from the filing submission requirement listed in Subsections R590-220-6(4)(c), (d), and (f).

(i) Underline and Strikethrough Version. A filing submitted for a correction, modification, or replacement of existing language shall have an underline and strikethrough version of the form included with the corrected, modified, or replacement form on the Form Schedule tab.

(5) Refer to each applicable section of this rule for additional procedures on how to submit forms, rates, and reports.

(6) All filings must be submitted in SERFF correctly utilizing the NAIC Uniform Life, Accident and Health, Annuity, and Credit Product Coding Matrix.

R590-220-7. Procedures for Form Filings.

(1) Forms in General.

(a) Forms are File and Use filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) A form must be in final form. A draft may not be submitted.

(d) Blank spaces within the forms must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

(2) Application Filing.

(a) Each application or enrollment form may be submitted as a separate filing or may be filed with its related policy or certificate filing.

(b) If an application has been previously filed or is filed separately, an informational copy of the application must be included with the policy or certificate filing. Include the Utah Filed Date or SERFF tracking number for the application in the Filing Description.

(3) Policy Filing.

(a) Each type of insurance must be filed separately.

(b) A policy filing consists of one policy form, including its related forms, such as the application, outline of coverage, certificate, rider, endorsement, and actuarial memorandum.

(c) Only one policy filing for a single type of insurance may be filed, except as stated in Subsection R590-220-7(3)(d).

(d) A Medicare supplement filing may include more than one policy filing but each filing is limited to only one of each of the Medicare supplement plans A through N.

(4) Rider or Endorsement Only Filing.

(a) Related riders or endorsements may be filed together.

(b) A single rider or endorsement that affects multiple forms may be filed, if the Filing Description references all affected forms.

(c) The filing must include:

(i) a listing of all base policy form numbers, title and Utah Filed Dates or SERFF tracking numbers; and

(ii) a description of how each filed rider or endorsement affects the base policy.

(d) Unrelated riders or endorsements may not be filed together.

(5) Outline of Coverage. If an outline of coverage is required to be issued with a policy, rider, or an endorsement, the outline of coverage must be filed when the policy, rider or endorsement is filed.

R590-220-8. Additional Procedures for Individual Accident and Health Market Filings.

(1) A filer submitting an individual accident and health filing is advised to review:

(a) Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(b) Title 31A, Chapter 22, Part 6, Accident and Health Insurance;

(c) Rules R590-76, R590-85, R590-122, R590-126, R590-131, R590-192, R590-203, R590-215, and R590-218; and

(d) for health benefit plan submissions, additionally review:

(i) Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act; and

(ii) Rules R590-167, R590-176, R590-194, R590-200, R590-233, R590-237, R590-247, R590-259, R590-261, R590-266, R590-269, R590-271 and R590-220-10.

(2) Rate and rate documentation filings.

(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.

(b) A rate revision filing is a File for Acceptance filing.

(3) An individual accident and health policy, rider, or endorsement affecting benefits shall be accompanied by a rate filing with an actuarial memorandum signed by a qualified actuary.

(a) A rate filing need not be submitted if the filing does not require a change in premiums, however the reason why there is not a change in premium must be explained in the Filing Description.

(b) Rates must be filed in accordance with the requirements of Section 31A-22-602, Rules R590-85, and R590-220.

(c) This subsection does not apply to a rate filing for a health benefit plan. A filer submitting a rate filing for a health benefit plan should review R590-220-10.

(4) A filer submitting a long term care filing, including an endorsement or rider attached to a life insurance policy, is advised to review Title 31A, Chapter 22, Part 14, Long Term Care Insurance Standards, Rule R590-148, and Sections R590-220-12 and 13.

(5) A filer submitting a Medicare supplement filing is advised to review Section 31A-22-620, Rule R590-146, and Section R590-220-11.

R590-220-9. Additional Procedures for Group Market Form Filings.

(1) A filer submitting a group accident and health filing is advised to review:

(a) Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;

(b) Title 31A, Chapter 22, Parts 6 and 7;

(c) Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act; and

(d)(i) Rules R590-76, R590-85, R590-122, R590-126, R590-131, R590-146, R590-148, R590-192, R590-203, and R590-215.

(ii) Filers submitting group health benefit plans should also review Rules R590-167, R590-176, R590-194, R590-200, R590-218, R590-233, R590-237, R590-247, R590-259, R590-

261, R590-266, R590-271 and Section R590-220-10.

(2) A filer must determine if the group is an allowable group. An allowable group must meet the parameters of an eligible group or a discretionary group. All groups, except a group formed under a Taft Hartley trust in accordance with Section 302(c)(5) of the Federal Labor Management Relations Act, must be formed and maintained for purposes other than obtaining insurance.

(a) Eligible Group.

(i) A filing for an eligible group must include a signed and fully completed Utah Accident and Health Insurance Group Questionnaire.

(A) A questionnaire must be completed for each eligible group under Sections 31A-22-503 through 507, and Subsection 31A-22-701(2).

(B) When a filing applies to multiple employee-employer groups under Section 31A-22-502, only one questionnaire is required to be completed.

(ii) A filing for an eligible Bona Fide Employer Association must include a signed and fully completed Utah Bona Fide Employer Association Group Questionnaire.

(b) Discretionary Group. If the group is not an eligible group, then specific discretionary group authorization must be obtained prior to filing.

(i) To obtain discretionary group authorization a Utah Accident and Health Insurance Request for Discretionary Group Authorization must be submitted and include all required information.

(ii) Evidence or proof of the following items are some factors considered in determining acceptability of a discretionary group:

(A) the existence of a verifiable group;

(B) that granting permission is not contrary to public policy;

(C) the proposed group would be actuarially sound;

(D) the group would result in economies of acquisition and administration which justify a group rate; and

(E) the group would not present hazards of adverse selection.

(iii) A discretionary group filing that does not provide authorization documentation will be rejected.

(iv) A change to an authorized discretionary group, such as change of name, trustee or domicile state, must be submitted to the department within 30 days of the change.

(v) Adding additional types of insurance products to be offered, requires that the discretionary group be reauthorized. The discretionary group authorization will specify the types of products that a discretionary group may offer.

(vi) The commissioner may periodically re-evaluate the group's authorization.

(vii) A filer may not submit a rate or form filing prior to receiving discretionary group authorization. If a rate or form filing is submitted without discretionary group authorization, the filing will be rejected.

(3) A filer submitting a long-term care filing, including a long-term care endorsement or rider attached to a life insurance policy, is advised to review Title 31A, Chapter 22, Part 14, Long Term Care Insurance Standards, Rule R590-148, and Sections R590-220-12 and 13.

(4) A filer submitting a Medicare supplement filing is advised to review Section 31A-22-620, Rule R590-146, and Section R590-220-11.

R590-220-10. Additional Procedures for Individual, Small Employer, and Group Health Benefit Plan Filings.

This section contains instructions for health benefit plan filings subject to Title 31A, Chapter 30, Individual, Small Employer, and Group Health Insurance Act.

(1) Form Filing.

(a) A health benefit plan form filing must include in the Filing Description the SERFF tracking number for the form's applicable rate manual.

(b) Grandfathered and transitional plans must be filed separate from 2014 PPACA compliant health benefit plans.

(c) Provide documentation for the department's receipt of the form filing's corresponding rate filing.

(2) Rate Manual Filing for non-2014 PPACA Compliant Health Benefit Plans.

(a) A rate manual that does not request a change in rating methodology is a File Before Use filing.

(b) A change in rating methodology filing is a File for Approval filing.

(c) A new and revised rate manual must:

(i) include an actuarial certification signed by a qualified actuary;

(ii) be filed 30 days prior to use;

(iii) list the case characteristics and rate factors to be used;

(iv) be applied in the same manner for all health benefit plans in a class;

(v) contain specific area factors applicable in Utah;

(vi) include the method of calculating the risk load, including the method used to determine any experience factors;

(vii) include how the overall rate is reviewed for compliance with the rate restrictions;

(viii) include detailed description of all classes of business, as provided in Section 31A-30-105;

(ix) fully complete the Company Rate Information on the Rate/Rule Schedule tab; and

(x) comply with all information required by Section R590-167-6.

(3) Rate Filing for 2014 PPACA Compliant Health Benefit Plans.

(a) Rate filings shall be filed in accordance with the department's annual Bulletin to insurance carriers.

b) Quarterly changes to a rate filing shall be filed in accordance with Bulletin 2015-3.

(c) Fully complete the Company Rate Information on the Rate/Rule Schedule tab.

(4) Actuarial Certification Report.

(a) All individual and small employer licensees who maintain a non-2014 PPACA compliant health benefit plan must file an actuarial certification as described in Sections 31A-30-106, 31A-30-106.1, and Subsection R590-167-11(1)(a).

(b) The report is due April 1 each year.

(c) Each report must be filed separately and be properly identified.

(d)(i) Except as provided in R590-220-10(4)(d)(ii), a health benefit plan report must be filed using a type of insurance of "H16I" or "H16G," and a filing type of "Report."

(ii) A Health Maintenance Organization must use "HOrg02I" or "HOrg02G" as the type of insurance and the filing type of "Report."

R590-220-11. Additional Procedures for Medicare Supplement Filings.

A filer submitting Medicare supplement filings is advised to review Section 31A-22-620 and Rule R590-146.

(1) A Medicare supplement form filing that affects rates must be filed with all required rating documentation.

(2)(a) A licensee must file its Medicare Supplement Buyers Guide.

(b) If previously filed, indicate the Utah Filed Date or SERFF tracking number in the filing description.

3) Rates.

(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.

(b) A rate revision filing is a File for Acceptance filing.

(c) Medicare supplement rates must comply with Section

31A-22-602, and Rules R590-146 and R590-85.

(d) A licensee shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed.

(e) A rate revision request may not be used to satisfy the annual filing requirements of Subsection R590-146-14.C.

(4) Annual Medicare Supplement Reports.

(a) Reports are due May 31 each year.

(b) Report of Multiple Policies.

(i) As required by Section R590-146-22, an issuer of Medicare supplement policies shall annually submit a report of multiple policies the licensee has issued to a single insured.

(ii) The report is required each year listing each insured with multiple policies or must state "NO MULTIPLE POLICIES WERE ISSUED."

(c) Annual Filing of Rates and Supporting Documentation.

(i) An issuer of Medicare supplement policies and certificates shall file annually its rates, rating schedule and supporting documentation, including ratios of incurred losses to earned premiums by policy duration, in accordance with Subsection R590-146-14.C.

(ii) The NAIC Medicare Supplement Insurance Model Regulations Manual details what should be included in the annual rate filing.

(iii) Annual reports submitted with a request or any type of reference to a rate revision will be rejected.

d) Refund Calculation and Benchmark Ratio. An issuer shall file the Medicare Supplement Refund Calculation Form and Reporting Form for the Calculation of Benchmark Ratio Since Inception for Group Policies reports according to Subsection R590-146-14.B.

(e) Reports for Pre-Standardized Medicare supplement benefit plans and 1990 Standardized Medicare supplement benefit plans must be submitted together as one filing using a type of insurance of "MS06," and a filing type of "Report."

(f) Reports for 2010 Standardized Medicare supplement benefit plans must be submitted together as one filing with SERFF using a type of insurance of "MS09," and a filing type of "Report."

(g) If all Medicare supplement reports are not submitted together as one filing, the filing is considered incomplete and will be rejected.

R590-220-12. Additional Procedures for Combination Policies or Endorsements and Riders Providing Life and Accident and Health Benefits.

A filer submitting a health and life combination policy or a health endorsement or rider to a life policy is advised to review Rule R590-226.

(1) A combination filing is a policy, rider, or endorsement, which creates a product that provides both life and accident and health insurance benefits.

(a) The two types of acceptable combination filings are:

(i) an endorsement or rider; or

(ii) an integrated policy.

(b) Combination filings take considerable time to process, and will be processed by both the Health Section and the Life Section of the Health and Life Insurance Division.

(2) A combination filing must be submitted separately to both the Health Section and Life Section of the Health and Life Insurance Division.

(3)(a) For an integrated policy, the filing must be submitted to the appropriate division based on benefits provided in the base policy.

(b) For an endorsement or rider, the filing must be submitted to the appropriate division based on benefits provided in the endorsement or rider.

(4) The Filing Description must identify the filing as having a combination of insurance types, such as:

a) whole life policy with a long-term care benefit rider; or

(b) major medical health policy that includes a life insurance benefit.

R590-220-13. Additional Procedures for Long Term Care Products.

A filer submitting long-term care product filings is advised to review Title 31A, Chapter 22, Part 14, Long Term Care Insurance Standards and Rule R590-148.

(1) A long-term care form filing that affects rates must be filed with all required rating documentation.

2) Rates.

(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.

(b) A rate revision filing is a File for Acceptance filing.

(c) Long-term care rates must comply with Rules R590-148 and R590-85.

(d) A licensee shall not use or change premium rates for a long-term care policy or certificate unless the rates, rating schedule and supporting documentation have been filed.

(3) Annual Long-term Care Reports.

(a) All four long-term care reports required by Section R590-148-25 must be submitted together as one filing:

(i) Replacement and Lapse Reporting Form;

(ii) Claims Denial Reporting Form;

(iii) Rescission Reporting Form; and

(iv) Suitability Report Form.

(b) If all reports are not submitted as one filing, the filing is considered incomplete and will be rejected.

(c) If there is no information to report, the reporting form must state "NONE."

(d) Reports are due June 30 each year.

(e) All long term care reports must be electronically filed using a type of insurance of "LTC06," and a filing type of "Report."

R590-220-14. Criteria for Adding or Terminating Participating Providers.

(1) Criteria for adding or terminating participating providers must be submitted electronically using a type of insurance of "H21" and a filing type of "Report."

(2) The Filing Description must state "Preferred Provider Agreement," as required by Subsection 31A-22-617.1(1)(c).

R590-220-15. Binders.

Binder filings for 2014 PPACA compliant health benefit plans and certified stand-alone dental plans shall be in accordance with the department's annual Bulletin to insurance carriers.

R590-220-16. Classification of Documents.

(1) Except as provided in R590-167-12, the commissioner shall maintain as a protected record the records submitted under Sections 31A-30-106 and 31A-30-106.1.

(2) In accordance with Section 63G-2-305, the only information the commissioner may classify as protected is:

(a) information deemed to be a trade secret. Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or

(b) commercial information and non-individual financial information obtained from a person if:

(i) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person

submitting the information or would impair the ability of the commissioner to obtain necessary information in the future; and

(ii) the person submitting the information has a greater interest in prohibiting access than the public has in obtaining access.

(3) The person submitting the information under Subsection (2)(a) or (b) and claiming that such is or should be protected shall provide the commissioner with the information in Subsection 63G-2-309(1)(a)(i).

(a) The filer shall request protected classification for the specific document the filer believes qualifies under Subsections 63G-2-305(1) or (2) when the filing is submitted; and

(b) the request shall include a written statement of reasons supporting the request that the information should be classified as protected.

(4) Once the filing has been received, the commissioner will review the documents the filer has requested to be classified as protected to determine if the request meets the requirements of Subsections 63G-2-305(1) or (2).

(a) If all the information in the document meets the requirements for being classified as protected and the required statement is included, the document will be classified as protected and the information will not be available to the public.

(b) If all the information in the document does not meet the requirements for being classified as protected, the commissioner will notify the filer of the denial, the reasons for the denial, and the filer's right to appeal the denial. The filer has 30 days to appeal the denial as allowed by Section 63G-2-401.

(c)(i) Despite the denial of protected classification, the commissioner shall treat the information as if it had been classified as protected until:

(A) the 30 day time limit for an appeal to the commissioner has expired; or

(B) the filer has exhausted all appeals available under Title 63G, Chapter 2, Part 4 and the document has been found to be a public document.

(ii) During the 30 day time limit to appeal or during the appeal process, the filer may withdraw:

(A) the filing; or

(B) the request for protected classification.

(d) If the filer combines, in a document, information it wishes to be classified as protected with information that is public, the document will be classified as public.

R590-220-17. Responses.

(1) Response to a Filing Objection Letter. When responding to a Filing Objection Letter, a filer must:

a) provide an explanation identifying all changes made;

(b) include an underline and strikeout version for each revised document;

(c) a final version of revised documents that incorporates all changes; and

(d) attach the documents in Subsections R590-220-17(1)(b) and (c) to the appropriate Form Schedule or Rate/Rule Schedule tabs.

(2) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued no later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive by mail or electronic mail a written request for a hearing not later than 15 days after the date of the Order.

(d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

(3) Response to a Filing Rejection. A Filing Rejection is not considered filed with the department. A filer may choose to submit as a new filing. The new filing must reference the previously rejected filing.

R590-220-18. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-220-19. 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: health insurance filings
March 23, 2016 **31A-2-201**
Notice of Continuation February 13, 2019 **31A-2-201.1**
31A-2-202
31A-22-605
31A-22-620
31A-30-106

R590. Insurance, Administration.

R590-225. Submission of Property and Casualty Rate and Form Filings.

R590-225-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Sections 31A-2-201.1 and 31A-19a-203, and Subsections 31A-2-201(3) and 31A-2-202(2).

R590-225-2. Purpose and Scope.

(1) The purpose of this rule is to set forth procedures for submitting:

(a) property and casualty and title form filings required by Section 31A-21-201;

(b) property and casualty and title rates, and supplementary information under Section 31A-19a-203;

(c) service contract form filings required by Subsection 31A-6a-103(2); and

(d) bail bond form filings required by Section 31A-35-607 and Rule R590-196.

(e) guaranteed asset protection waiver filings required by Sections 31A-6b-202 and 31A-6b-203.

(2) This rule applies to all lines of property and casualty insurance, including title insurance, bail bond, service contracts, and guaranteed asset protection waivers.

R590-225-3. Documents Incorporated by Reference.

(1) The department requires that the documents described in this rule shall be used for all filings.

(a) Actual copies may be used or you may adapt them to your word processing system.

(b) If adapted, the content, size, font, and format must be similar.

(2) The following filing are hereby incorporated by reference and are available on the department's web site, http://www.insurance.utah.gov.

(a) "NAIC Uniform Property and Casualty Transmittal Document", dated January 1, 2017;

(b) "NAIC Uniform Property and Casualty Coding Matrix", dated January 1, 2017;

(c) "Utah Insurer Loss Cost Multiplier and Expense Constant Supplement Filing Forms", dated April 2017; and

(d) "Utah Workers Compensation Insurer Loss Cost Multiplier Filing Form", dated April 2017.

R590-225-4. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-19a-102, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Electronic Filing" means a:

(a) filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF, or

(b) filing submitted via an email system.

(3) "File And Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(4) "File Before Use" means a filing can be used, sold, or offered for sale after it has been filed with the department and a stated period of time has elapsed from the date filed.

(5) "Filer" means a person who submits a filing.

(6) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter may, in addition to requiring correction of non-compliant items, request clarification or additional information pertaining to the filing.

(7) "Letter of authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.

(8) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(9) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws and rules;

(b) returned to the filer by the department with the reasons for rejection; and

(c) not considered filed with the department.

(10) "Type of Insurance" means a specific line of property and casualty insurance including general liability, commercial property, workers compensation, automobile, homeowners, title, bail bond, service contracts, and guaranteed asset protection waivers.

(11) "Use And File" means a filing can be used, sold, or offered for sale if it is filed within a stated period of time after its initial use.

(12) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department that indicates a filing has been accepted.

R590-225-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete, and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Licensee and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) Rates, supplementary information, and forms applying to a specific program or product may be submitted as one filing.

(4) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing;

(c) will not be reopened for purposes of resubmission.

(5) A prior filing will not be researched to determine the purpose of the current filing.

(6) The department does not review or proofread every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, A Filing Objection Letter or an Order To Prohibit Use will be issued to the filer. The commissioner may require the licensee to disclose deficiencies in forms or rating practices to affected consumers.

(7) Filing correction:

(a) If the filing is in an open status, corrections can be made at any time.

(b) If the filing is in a closed status, a new filing is required. The filer must reference the original filing in the filing description.

(8) If responding to a Response to Filing Objection Letter or an Order to Prohibit Use, refer to R590-225-13 for instructions.

(9) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information. A filing that is withdrawn may no longer be used.

R590-225-6. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

(a) All filers must use SERFF to submit a filing.

(b) EXCEPTION: bail bond agencies, service contract

providers, and guaranteed asset protection providers may choose to use email instead of SERFF to submit a filing.

(2) All rate filings for private passenger auto, homeowners, or workers compensation type of insurance must include a certification signed by a qualified actuary stating that the rates are not inadequate, excessive, or unfairly discriminatory as required by Subsection 31A-19a-201(1).

(3) A filing must be submitted by market type and type of insurance, not by annual statement line number.

(4) A filing may not include more than one type of insurance, unless the filing is a commercial or personal inter-line form filing. The inter-line use of a form must be explained in the Filing Description.

(5) A filer may submit a filing for more than one insurer if all applicable companies are listed.

(6) SERFF Filing.

(a) Filing Description. Do not submit a cover letter. On the General Information tab, complete the Filing Description Section with the following information, presented in the order shown below.

(i) Certification.

(A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

(B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-225 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

(C) A filing will be rejected if the certification is false, missing, or incomplete.

(D) A certification that is false may subject the licensee to administrative action.

(ii) Provide a description of the filing including:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(iii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and previous filing's Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(b) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the Supporting Documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(c) Items being submitted for filing.

(i) All forms must be attached to the Form Schedule tab.

(ii) All rates and supplementary rating information must be attached to the Rate/Rule Schedule tab.

(iii) The actuarial certification required by R590-225-6(2) must be attached to the supporting documentation tab.

(d) Refer to each applicable section of this rule for additional procedures on how to submit forms, rates, and supplementary information.

(7) A complete EMAIL filing consists of the following when submitted by a bail bond agent, a service contract provider, or a guaranteed asset protection provider:

(a) The title of the EMAIL must display the company name only.

(b) Transmittal. The NAIC Uniform Property and Casualty Transmittal Document, as provided in R590-225-3(2), must be properly completed.

(i) COMPLETE THE TRANSMITTAL BY USING THE FOLLOWING:

(A) "NAIC Coding Matrix;"

(B) "NAIC Instruction Sheet;" and

(C) "Utah Property and Casualty Content Standards."

(ii) Do not submit the documents described in (A), (B), and (C) with the filing.

(c) Filing Description. Do not submit a cover letter. In section 21 of the transmittal, complete the Filing Description with the following information, presented in the order shown below.

(i) Certification.

(A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

(B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-225 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

(C) A filing will be rejected if the certification is false, missing, or incomplete.

(D) A certification that is false may subject the licensee to administrative action.

(ii) Provide a description of the filing including:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(iii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and previous filing's Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(d) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the supplementary documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(e) Refer to each applicable section of this rule for additional procedures on how to submit forms, rates, and supplementary information.

(f) Items being submitted for filing. Any items submitted for filing must be submitted in PDF format.

R590-225-7. Procedures for Form Filings.

(1) Forms in general:

(a) Forms are "File And Use" filings. EXCEPTION: service contracts, bail bonds, and guaranteed asset protection waivers are "File Before Use".

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) A form must be in final printed form. A draft may not be submitted.

(2) If you have authorized a Rate Service Organization (RSO) to make form filings on your behalf, no filing by you is required if you implement the filings as submitted by the RSO.

(a) A filing is required if you delay the effective date, non-adopt or alter the filing in any way.

(b) Your filing must be received by the department before

the RSO effective date.

(c) We do not require that you attach copies of the RSO's forms when you reference a filing.

(3) If you have NOT authorized an RSO to file forms on your behalf, you must include, in your filing a letter stating your intent to adopt any RSO forms for your use.

(a) Copies of the RSO forms are not required.

(b) Your filing must include a complete list of the RSO forms you intend to adopt by form number, title/name and filing identification number of the RSO.

(4) A "Me Too" filing, referencing a filing submitted by another insurer, bail bond agency, or service contract provider is not permitted.

(5) If a previously filed Utah amendatory endorsement will be used in connection with the form being filed, explain this in the Filing Description section of the transmittal form and include a copy with the filing.

(6) If the filing is for more than one insurer and all insurers included in the filing have submitted a transmittal:

(a) only one copy of each form is required;

(b) If the name of each respective company or unique insurer logo is printed on each separate set of the form, then a separate form must be filed for each insurer.

(7) Since a form may be used once it is "Filed" and must be "Filed" before it can be used, sold or offered for sale, you do not need to re-file or notify the department if the implementation date of the original filing changes.

R590-225-8. Procedures for Rate and Supplementary Information Filings.

(1) Rates and supplementary information in general.

(a) Rates and supplementary information are "Use And File" filings. EXCEPTION: title and workers compensation rates and supplementary information are "File Before Use" filings.

(b) Service contract providers, bail bond agencies, and guaranteed asset protection providers are exempt from this section.

(c) All rate filings for private passenger auto, homeowners, or workers compensation type of insurance must include a certification signed by a qualified actuary stating that the rates are not inadequate, excessive, or unfairly discriminatory as required by Subsection 31A-19a-201(1).

(2) If you have authorized a Rate Service Organization (RSO) to make a prospective loss cost, supplementary information filing, or both, on your behalf, no filing by you is required if you implement the filing as submitted by the RSO.

(a) A filing is required if you delay the effective date, non-adopt, or alter the filing in any way.

(b) Any such filing must be received by the department within 30 days of the effective date established by the RSO.

(c) We do not require that you attach copies of the RSO's manual pages when you reference an RSO filing.

(3) If you have NOT authorized an RSO to file the prospective loss cost, supplementary rating information, or both, on your behalf

(a) you must include in your filing a letter stating your intent to adopt the RSO prospective loss cost, supplementary rating information filing, or both.

(b) You must file copies of any manual pages as if they were your own and provide your actuarial justification.

(4) A "Me Too" filing, referencing a filing submitted by another licensee, is not permitted.

(5) If the filing is for more than one insurer and all insurers included in the filing have submitted a transmittal and the supporting data and manual pages are identical for each insurer included in the filing, only one copy of the supporting data and manual pages are required to be submitted.

(6) Rate and supplementary information filings must be supported and justified by each insurer.

(a) Justification must include:

(i) submission of all factors used in determining initial supplementary information and rates or changes in existing supplementary information and rates; and

(ii) a complete explanation as to the extent to which each factor has been used.

(b) Underwriting criteria are not required unless they directly affect the rating of the policy.

(c) Underwriting criteria used to differentiate between rating tiers is required.

(7) When submitting a filing for any kind of rating plan, rating modification plan, or credit and debit plan, an insurer must include in the filing:

(a) a statement identifying the arithmetic process to be used and whether factors will be added or multiplied when applying them to base rates; and

(b) justification for the method used.

(c) A filing will be rejected as incomplete if it fails to specifically provide this information.

(8) Utah and countrywide statistical data for the latest three years available must be submitted with each filing.

(a) This data should include earned premiums, incurred losses, loss ratios, establishment of expense factors, and expected loss ratios.

(b) Calculations involved in establishing rates from loss experience are to be exhibited including the establishment of trend factors, loss development factors, etc.

(c) If any of the above information is not available, a detailed explanation of why must be provided with the filing.

(9) Prospective loss cost and loss cost multiplier.

(a) Loss cost multiplier.

(i) An individual insurer adjustment to the RSO prospective loss cost must be made as part of the calculation of the loss cost multiplier and must be included in the "Utah Insurer Loss Cost Multiplier Filing Forms."

(ii) This form allows for the inclusion of an individual insurer modification of the RSO prospective loss cost.

(10) Procedures for Reference Filings to Advisory Prospective Loss Cost.

(a) An RSO does not usually file an advisory rate that contains provisions for expenses, other than loss adjustment expenses.

(i) An RSO develops and files with the commissioner a "Reference Filing" containing advisory prospective loss cost and supporting actuarial and statistical data.

(ii) Each insurer must individually determine the rates it will file and the effective date of any rate changes.

(b) If an insurer that is a member, subscriber or service purchaser of any RSO determines to use the prospective loss cost in an RSO Reference Filing in support of its own filing, the insurer must make a filing using the "Utah Insurer Loss Cost Multiplier Filing Forms."

(c) The insurer's filed rates are the combination of the RSO's prospective loss cost and the loss cost multiplier contained in the "Utah Insurer Loss Cost Multiplier Filing Forms."

(d) An insurer may file a modification of the prospective loss cost in the RSO Reference Filing based on its own anticipated experience.

(e) Actuarial justification is required for a modification, upwards or downwards, of the prospective loss cost in the Reference Filing.

(f) An insurer may request to have its loss cost adjustments remain on file and reference all subsequent RSO prospective loss cost Reference Filings.

(i) Upon receipt of subsequent RSO Reference Filings, the insurer's filed rates are the combination of the RSO's prospective loss cost and the loss cost adjustments contained in

the "Utah Insurer Loss Cost Multiplier Filing Forms" on file with the commissioner, and will be effective on the effective date of the prospective loss cost.

(ii) The insurer need not file anything further with the commissioner.

(g) If the filer wants to have its filed loss cost adjustments remain on file with the commissioner, but intends to delay, modify, or not adopt a particular RSO's Reference Filing, the filer must make an appropriate filing with the commissioner.

(h) An insurer's filed loss cost adjustments will remain in effect until the filer withdraws them or files a revised "Utah Insurer Loss Cost Multiplier Filing Form."

(i) A filer may file such other information the filer deems relevant.

(j) If an insurer wishes to use minimum premiums, it must file the minimum premiums it proposes to use.

(11) Supplementary Rate Information.

(a) The RSO files with the commissioner RSO filings containing a revision of rules, relativities and supplementary rate information. These RSO filings include:

(i) policy-writing rules;

(ii) rating plans;

(iii) classification codes and descriptions; and

(iv) territory codes, descriptions, and rules, which include factors or relativities such as, increased limits factors, classification relativities or similar factors.

(b) These filings are made by the RSO on behalf of those insurers that have authorized the RSO to file rules, relativities and supplementary rating information on their behalf.

(c) An RSO may print and distribute a manual of rules, relativities and supplementary rating information.

(d) If an insurer has authorized an RSO to file on its behalf and the insurer decides to use the revisions and effective date then the insurer does NOT file anything with the commissioner.

(e) If an insurer has authorized an RSO to file on its behalf and the insurer decides to use the revisions as filed, BUT with a different effective date, then the insurer must notify the commissioner of the insurer's effective date within 30 days after the RSO's effective date.

(f) If an insurer has authorized an RSO to file on its behalf, but the insurer decides not to use the revision, then the insurer must notify the commissioner within 30-days after the RSO's effective date.

(g) If an insurer has authorized an RSO to file on its behalf, but the insurer decides to use the revision with modification, then within 30-days of the RSO's effective date the insurer must file the modification specifying the basis for the modification and the insurer's effective date.

(12) Consent-to-rate Filing.

(a) Subsection 31A-19a-203(6) allows an insurer to file a written application for a particular risk stating the insurer's reasons for using a higher rate than that otherwise applicable to a risk.

(b) The Filing Description must indicate that it is a consent-to-rate filing, show the filed rate, the proposed rate, and the reasons for the difference.

(13) Individual Risk Filing.

(a) R590-127, "Rate Filing Exemptions", provides for those circumstances when an Individual Risk filing is permitted.

(b) An individual risk filing must be filed with the commissioner.

(i) The filing shall consist of a copy of the Declarations Page, copies of any pertinent coverage forms and rating schedules, and premium development.

(ii) The Filing Description must indicate that it is an individual risk filing, and contain the underwriter's explanation for the filing.

(14) Information Regarding Dividend Plan.

(a) Sections 31A-19a-210 and 31A-21-310 allow for dividend distributions.

(b) A plan or schedule for the distribution of a dividend developed AFTER THE INCEPTION of a policy is NOT considered a rating plan and does not have to be filed according to the provisions of this rule.

(c) A plan or schedule for the distribution of a dividend applicable to an insurance policy FROM ITS INCEPTION are required to be filed pursuant to Section 31A-21-310.

(15) The Utah Insurance Code allows tiered rating plans within one insurer or insurer group with common ownership.

(a) A filing must show that the tiers are based on mutually exclusive underwriting rules, which are based on clear, objective criteria that would lead to a logical distinguishing of potential risk.

(b) A filing must provide supporting information that shows a clear distinction between the expected losses and expenses for each tier.

(c) If an insurer group is using a tiered rating structure, the group of insurers cannot all file the same loss cost multiplier and then file standard percentage deviations.

(i) A difference must be demonstrated in the loss cost multiplier formula, either as a modification of the RSO prospective loss cost or in the insurer expense factor.

(ii) An individual insurer adjustment or modification must be supported by actuarial data which establishes a reasonable standard for measuring probable insurer variations in historical or prospective experience, underwriting standards, expense and profit factors.

R590-225-9. Additional Procedures for Workers Compensation Rate Filings.

The following are additional procedures for workers' compensation rate filings:

(1) All rate filings for workers compensation must include a certification signed by a qualified actuary stating that the rates are not inadequate, excessive, or unfairly discriminatory as required by Subsection 31A-19a-201(1).

(2) Rates and supplementary information must be filed 30 days before they can be used.

(3)(a) Each insurer must individually determine the rates it will file.

(b) Filed rates.

(i) An insurer's workers' compensation filed rates are the combination of the most current prospective loss cost filed by the designated rate service organization and the insurers loss cost adjustment, known as the loss cost multiplier (LCM), as calculated and filed using the "Utah Worker's Compensation Insurer Loss Cost Multiplier Filing Form."

(ii) Each insurer must implement the designated rate service organization's current prospective loss cost on the effective date assigned by the designated rate service organization. INSURERS MAY NOT DEFER NOR DELAY ADOPTION.

(iii) An insurer's filed loss cost multiplier will remain in effect until the insurer withdraws it or files a new loss cost multiplier.

(iv) Upon receipt of subsequent designated rate service organization reference filings, the insurer's filed rates are the combination of the designated RSO's prospective loss cost and the loss cost multiplier contained in the insurer's most current "Utah Loss Cost Multiplier Filing Form" on file with the department.

(4) An insurer may file a modification to the designated rate service organization prospective loss cost in the subject reference filing based on its own anticipated experience. Supporting documentation will be required for any modifications, upwards or downwards, of the designated rate service organization prospective loss cost.

(5) An insurer may vary expense loads by individual

classification or grouping. An insurer may use variable or fixed expense loads or a combination of these to establish its expense loadings. However, an insurer is required to file data in accordance with the uniform statistical plan filed by the designated rate service organization.

(6) When submitting a filing for a workers compensation rating plan, a rating modification plan, or a credit and debit plan, an insurer must include in the filing the following or it will be rejected as incomplete:

(a) a statement identifying the arithmetic process to be used and whether factors will be added or multiplied when applying them to base rates; and

(b) justification for the method used.

(7) To the extent that an insurer's rates are determined solely by applying its loss cost multiplier, as presented in the "Utah Worker's Compensation Insurer Loss Cost Multiplier Filing Forms" to the prospective loss cost contained in a designated rate service organization reference filing and printed in the designated rate service organization's rating manual, the insurer need not develop or file its rate pages with the commissioner. If an insurer chooses to print and distribute rate pages for its own use, based solely upon the application of its filed loss cost multiplier, the insurer need not file those pages with the insurance commissioner.

R590-225-10. Additional Procedures for Title Rate Filings.

(1) Title rate and a supplementary information filing are "File Before Use" filings. Rates and supplementary information shall be filed with the commissioner 30 days prior to use.

(2) Each change or amendment to any schedule of rates shall state the effective date of the change or amendment, which may not be less than 30 days after the date of filing. Any change or amendment remains in force for a period of at least 90 days from its effective date.

(3) Supplementary information and rate filings must be supported and justified by each insurer. Justification must include submission of all factors used in determining initial supplementary information and rates or changes in existing supplementary information and rates along with a complete explanation as to the extent to which each factor has been used.

(4) Rates that vary by risk classification such as extended coverage or standard coverage, and all discount factors, such as refinance, subdivision, or construction for purpose of resale discounts, must be supported by differences in expected losses or expenses.

(5) No rate may be filed or used which would require the title insurer or any title agency or producer to operate at less than the cost of doing business or adequately underwriting the title insurance policies.

R590-225-11. Classification of Documents.

(1) The Department will not classify as protected, certain information in property and casualty rate filings unless these procedures are complied with.

(2) Section 31A-19a-204 requires rates, and supplementary rate information to be open for public inspection. Supporting information in a rate filing is not designated under Section 31A-19a-204 as public information, however, under the Government Records Access and Management Act (GRAMA) supporting information in a rate filing would be considered open for public inspection unless it is classified as private, controlled, or protected. Under GRAMA the Department may classify certain information in a record as private, controlled, or protected. It is clear that the only category applicable to rate, rule and form filings other than as a public record is as a protected record. If a record is classified as protected, the Department may not disclose the information in the record to third persons specifically and to the public generally.

(3) The only information the Department may classify as protected, absent clear documentation otherwise, in accordance with Section 63G-2-305 are the following items:

(a) Information deemed to be trade secret. Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) "Commercial Information and non-individual financial information obtained from a person which:"

(i) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future ; and

(ii) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

(4) The person submitting the information under R590-225-11(3)(a) or (b) above and claiming that such is or should be protected has provided the governmental entity with the information in Subsection 63G-2-309(1)(a)(i).

(5) The department will handle supporting information a filer submits as part of a rate filing in the following manner:

(a) The filer will need to request which specific document the filer believes qualifies under GRAMA Subsection 63G-2-305(1) or (2) or both when the filing is submitted; and

(b) the document must include a written statement of reasons supporting the request that the information should be classified as protected.

(c) If the filer does not request the information in the document to be classified as protected, the document will be classified as public.

(d) The Department will not automatically classify any document in a filing as protected.

(e) The Department will not re-open a filing to permit a company to request protected classification of previously filed documents.

(6) Once the filing has been received, the Department will review the documents the filer has requested to be classified as protected to see if it meets the requirements of Subsection 63G-2-305(1) or (2).

(a) If all the information in the document meets the requirements for being classified as protected and the required statement is included, the document will be classified as protected, and the information will not be available to the public or third parties.

(b) If all the information in the document does not meet the requirements for being classified as protected, the Department will notify the filer of the denial, the reasons therefore, and of the filer's right under GRAMA to appeal the denial. The filer will have 30 days to appeal the denial as allowed by Section 63G-2-401. Despite the denial of classifying the information as protected, the Department, pursuant to GRAMA, will nonetheless treat the information as if it had been classified as protected until:

(i) the filer has notified the Department that the filer withdraws the request for designation as protected; or

(ii) the 30 day time limit for an appeal to the Commissioner has expired; or

(iii) the filer has exhausted all appeals under GRAMA and the documentation has been found to be a public document.

(c) If the filer combines in the same document, information it wishes to be classified as protected with information that is public, the document will be classified as public.

(7) Filings submitted that show a pattern of requesting

non-qualifying items as a protected document may be considered a violation of this rule. This would include putting both protected and public information in one document.

R590-225-12. Correspondence, and Status Checks.

(1) Correspondence. When corresponding with the department, provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing; and

(c) Submission method, SERFF, or email; and

(d) tracking number

(2) Status Checks.

(a) A complete filing is usually processed within 45 days of receipt.

(b) A filer can request the status of its filing 60 days after the date of submission. A response will not be provided to a status request prior to 60 days.

R590-225-13. Responses.

(1) Response to a Filing Objection Letter. When responding to a Filing Objection letter a filer must:

(a) provide an explanation identifying all changes made;

(b) include an underline and strikeout version for each revised document;

(c) a final version of revised documents that incorporates all changes; and

(d) for filings submitted in SERFF, attach the documents described in R590-225-12(1)(b) and (c) to the appropriate Form Schedule or Rate/Rule Schedule tabs.

(3) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued not later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the Order.

(d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-225-14. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-225-15. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 15 days from the effective date of this rule.

R590-225-16. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: property casualty insurance filing
December 8, 2017 **31A-2-201**
Notice of Continuation February 13, 2019 **31A-2-201.1**
31A-2-202
31A-19a-203

R590. Insurance, Administration.
R590-252. Use of Senior-Specific Certifications and Professional Designations.
R590-252-1. Authority.

This rule is promulgated pursuant to:

(1) Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A; and

(2) Subsection 31A-23a-402(8)(a) that authorizes the commissioner to define by rule unfair methods of competition and unfair or deceptive acts or practices in the business of insurance.

R590-252-2. Purpose.

The purpose of this rule is to set forth standards to protect consumers from misleading marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, an annuity, accident and health, or life insurance product.

R590-252-3. Scope.

This rule shall apply to any solicitation, sale or purchase of, or advice made in connection with, an annuity, accident and health, or life insurance product by an insurance producer or consultant.

R590-252-4. Findings.

The commissioner finds that the acts prohibited by this rule are unfair, misleading and deceptive.

R590-252-5. Prohibited Uses of Senior-Specific Certifications and Professional Designations.

(1)(a) An insurance producer or consultant may not use a senior-specific certification or professional designation that indicates or implies, in such a way as to mislead a purchaser or prospective purchaser, that the insurance producer or consultant has special certification or training in advising or servicing seniors in connection with the solicitation, sale or purchase of any annuity, accident and health, or life insurance product or in the provision of advice as to the value of or the advisability of purchasing or selling an annuity, accident and health, or life insurance product, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to an annuity, accident and health, or life insurance product.

(b) The prohibited use of senior-specific certifications or professional designations includes, but is not limited to, the following:

(i) use of a certification or professional designation by an insurance producer or consultant who has not actually earned or is otherwise ineligible to use such certification or designation;

(ii) use of a nonexistent or self-conferred certification or professional designation;

(iii) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the insurance producer or consultant using the certification or designation does not have; and

(iv) use of a certification or professional designation that was obtained from a certifying or designating organization that:

(A) is primarily engaged in the business of instruction in sales or marketing;

(B) does not have reasonable standards or procedures for assuring the competency of its certificants or designees;

(C) does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or

(D) does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

(2) There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of subsection (1)(b)(iv) when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:

(a) the American National Standards Institute (ANSI);

(b) the National Commission for Certifying Agencies; or

(c) any organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

(3) In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing seniors, factors to be considered shall include:

(a) use of one or more words such as "senior," "retirement," "elder," or like words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(b) the manner in which those words are combined.

(4)(a) For purposes of this rule, a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency is not a certification or professional designation, unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title:

(i) indicates seniority or standing within the organization; or

(ii) specifies an individual's area of specialization within the organization.

(b) For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates insurers, insurance producers, insurance consultants, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

R590-252-6. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-252-7. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-252-8. Severability.

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: senior-specific insurance designations
February 25, 2009 31A-2-201
Notice of Continuation February 11, 2019 31A-23a-402

R597. Judicial Performance Evaluation Commission, Administration.

R597-1. General Provisions.

R597-1-1. Purpose and Intent.

(1) The commission adopts these rules to describe how it intends to conduct judicial performance evaluations.

(2) The purpose of this rule is to ensure that:

(a) voters have information about the judges standing for retention election;

(b) judges have notice of the standards against which they will be evaluated; and

(c) the commission has the time necessary to fully develop the program mandated by Utah Code Ann. 78A-12-101 et seq.

R597-1-2. Definitions.

(1) Closed case.

(a) For purposes of administering a survey to a litigant, a case is "closed":

(i) in a district or justice court, on the date on which the court enters an order from which an appeal of right may be taken;

(ii) in a juvenile court, on the date on which the court enters a disposition;

(iii) in an appellate court, on the date on which the remittitur is issued.

(b) For purposes of administering a survey to a juror, a case is "closed" when the verdict is rendered or the jury is dismissed.

(2) Evaluation cycle. "Evaluation cycle" means a time period during which a judge is evaluated. Judges not on the supreme court are subject to two evaluations cycles over a six-year judicial term. Justices of the supreme court are subject to three evaluation cycles over a ten-year judicial term.

(3) Survey. "Survey" means the aggregate of questionnaires, each targeting a separate classification of survey respondents, which together are used to assess judicial performance.

(4) Surveyor. "Surveyor" means the organization or individual awarded a contract through procedures established by the state procurement code to survey respondents regarding judicial performance.

(5) Rebuttable presumption.

(a) A presumption to recommend a judge for retention arises when the judge meets all minimum performance standards.

(b) A presumption not to recommend a judge for retention arises when the judge fails to meet one or more minimum performance standards.

(c) A commissioner may overcome the presumption for or against a retention recommendation on any judge if the commissioner concludes that substantial countervailing evidence outweighs the presumption.

KEY: performance evaluations, judicial performance evaluations, judiciary, judges
May 14, 2013 78A-12
Notice of Continuation February 5, 2019

R597. Judicial Performance Evaluation Commission, Administration.
R597-3. Judicial Performance Evaluations.
R597-3-1. Evaluation Cycles.

(1) For judges not serving on the supreme court:

(a) The mid-term evaluation cycle. Except as provided in subsection (3) the mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends on September 30th of the third year preceding the year of the judge's next retention election.

(b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends on September 30th of the year preceding the year of the judge's next retention election.

(2) For justices serving on the supreme court:

(a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends on September 30th of the seventh year preceding the year of the justice's next retention election.

(b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends on September 30th of the third year preceding the year of the justice's next retention election.

(c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends on September 30th of the year preceding the year of the justice's next retention election.

(3) Timing of evaluations within cycles. In order to allow judges time to incorporate feedback from midterm evaluations into their practices, no evaluations shall be conducted during the first six months of the retention cycle.

R597-3-2. Survey.

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.

(b) The commission may provide a partial midterm evaluation to any judge whose appointment date precludes the collection of complete midterm evaluation data.

(c) The commission shall post on its website the survey questionnaires upon which the judge shall be evaluated at the beginning of the survey cycle.

(d) The commission may select retention survey questions from among the midterm survey questions.

(e) Periodically, reviews may be conducted to ensure compliance with administrative rules governing the survey process.

(f) The commission may consider narrative survey comments that cannot be reduced to a numerical score.

(g) Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey. The contractor shall determine the maximum number of survey requests sent to a respondent, but in no event shall any respondent receive more than nine survey requests.

(2) Respondent Classifications

(a) Attorneys

(i) Identification of survey respondents.

(A) Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle.

(B) Attorneys who have been confirmed as judges during the evaluation cycle shall be excluded from the attorney pool.

(C) Within 10 business days of the end of the evaluation cycle, the Office of the Professional Conduct shall identify all judges who have referred an attorney for allegations of misconduct.

(D) An attorney who has been referred by a judge to the Office of Professional Conduct shall be excluded from the attorney pool of the referring judge.

(ii) Number of survey respondents.

(A) For each judge who is the subject of a survey, the surveyor shall identify the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5%.

(B) In the event that the attorney appearance list from the Administrative Office of the Courts contains an insufficient number of attorneys with one trial appearance or at least three total appearances before the evaluated judge to achieve the required confidence level, then the surveyor shall supplement the survey pool with other attorneys who have appeared before the judge during the evaluation cycle.

(iii) Sampling. The surveyor shall design the survey to comply with generally-accepted principles of surveying. All attorneys with one trial appearance or at least three total appearances before the evaluated judge shall be surveyed.

(b) Jurors

(i) Identification and number of survey respondents. All jurors who participate in deliberation shall be eligible to receive an online juror survey.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall collect email addresses from all jurors. If email addresses are not available, street addresses shall be collected. The bailiff or clerk shall transmit all such addresses to the surveyor within 24 hours of collection. The surveyor shall administer the survey online and deliver survey results electronically to each judge. Paper surveys may be sent to those jurors who do not have access to email.

(c) Court Staff

(i) Definition of court staff who have worked with the judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and also includes those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge include, but are not limited to:

(A) judicial assistants;
(B) case managers;
(C) clerks of court;
(D) trial court executives;
(E) interpreters;
(F) bailiffs;
(G) law clerks;
(H) central staff attorneys;
(I) juvenile probation and intake officers;
(J) other courthouse staff, as appropriate;
(K) Administrative Office of the Courts staff.

(d) Juvenile Court Professionals

(i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.

(ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:

(A) Division of Child and Family Services ("DCFS") child protection services workers;

(B) Division of Child and Family Services ("DCFS") case workers;

(C) Juvenile Justice Services ("JJS") Observation and Assessment Staff;

(D) Juvenile Justice Services ("JJS") case managers;

(E) Juvenile Justice Services ("JJS") secure care staff;

(F) Others who provide substantive professional services

on a regular basis to the juvenile court.

(iii) Beginning with juvenile court judges standing for retention in 2014, juvenile court professionals shall be included as an additional survey respondent group for both the midterm and retention evaluation cycles.

(3) Anonymity and Confidentiality

(a) Definitions

(i) Anonymous.

(A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.

(B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.

(C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.

(ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.

(iii) The raw form of survey results consists of quantitative survey data that contributes to the minimum score on the judicial performance survey.

(iv) The summary form of survey results consists of quantitative survey data in aggregated form.

R597-3-3. Courtroom Observation.

(1) General Provisions.

(a) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and (2), supra.

(b) The commission shall provide notice to each judge at the beginning of the survey cycle of the courtroom observation process and of the instrument to be used by the observers.

(c) Only the content analysis of the individual courtroom observation reports shall be included in the retention report for each judge.

(2) Courtroom Observers.

(a) Selection of Observers

(i) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.

(ii) Courtroom observers shall be selected by the commission staff, based on written applications and an interview process.

(iii) Courtroom observers, though volunteers, may be eligible to receive compensation in exchange for successful completion of a specified amount of additional courtroom observation work.

(b) Selection Criteria. Observers with a broad and varied range of life experiences shall be sought. The following persons shall be excluded from eligibility as courtroom observers:

(i) persons with a professional involvement with the state court system, the justice courts, or the judge;

(ii) persons with a fiduciary relationship with the judge;

(iii) persons within the third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(iv) persons lacking computer access or basic computer literacy skills;

(v) persons currently involved in litigation in state or justice courts;

(vi) persons whose background or experience suggests they may have a bias that would prevent them from objectively serving in the program.

(c) Terms and Conditions of Service

(i) Courtroom observers shall serve at the will of the commission staff.

(ii) Courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the commission.

(d) Training of Observers

(i) Courtroom observers must satisfactorily complete a training program developed by the commission before engaging in courtroom observation.

(ii) Elements of the training program shall include:

(A) Orientation and overview of the commission process and the courtroom observation program;

(B) Classroom training addressing each level of court;

(C) In-court group observations, with subsequent classroom discussions, for each level of court;

(D) Training on proper use of observation instrument;

(E) Training on confidentiality and non-disclosure issues;

(F) Such other periodic trainings as are necessary for effective observations.

(3) Courtroom Observation Program.

(a) Courtroom Requirements

(i) During each midterm and retention evaluation cycle, a minimum of four different observers shall observe each judge subject to that evaluation cycle.

(ii) Each observer shall observe each judge in person while the judge is in the courtroom and for a minimum of two hours while court is in session. The observations may be completed in one sitting or over several courtroom visits.

(iii) If a judge sits in more than one geographic location at the judge's appointed level or a justice court judge serves in more than one jurisdiction, the judge may be observed in any location or combination of locations in which the judge holds court.

(iv) When the observer completes the observation of a judge, the observer shall complete the observation instrument, which will be electronically transferred to the commission or the third party contractor for processing.

(b) Travel and Reimbursement

(i) All travel must be preapproved by the executive director.

(ii) All per diem and lodging will be reimbursed, when appropriate, in accordance with Utah state travel rules and regulations.

(iii) Travel reimbursement forms shall be submitted on a monthly basis or whenever the observer has accumulated a minimum of 200 miles of travel.

(iv) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is sought.

(v) Overnight lodging

(A) Overnight lodging is reimbursable when the courtroom is located over 100 miles from home base and court is scheduled to begin before 9:30 a.m., with any exceptions preapproved by commission staff.

(B) Multiple overnight lodging is reimbursable where the commission staff determines it is cost-effective to observe several courtrooms in a single trip.

(vi) Each courtroom observer must provide a social security number or tax identification number to the commission in order to process state reimbursement.

(4) Principles and Standards used to evaluate the behavior observed.

(a) Procedural fairness, which focuses on the treatment judges accord people in their courts, shall be used to evaluate the judicial behavior observed in the courtroom observation program.

(b) To assess a judge's conduct in court with respect to procedural fairness, observers shall respond in narrative form to the following principles and behavioral standards:

(i) Neutrality, including but not limited to:

(A) displaying fairness and impartiality toward all court participants;

(B) acting as a fair and principled decision maker who applies rules consistently across court participants and cases;

(C) explaining transparently and openly how rules are applied and how decisions are reached.

(D) listening carefully and impartially;

(ii) Respect, including but not limited to:

(A) demonstrating courtesy toward attorneys, court staff, and others in the court;

(B) treating all people with dignity;

(C) helping interested parties understand decisions and what the parties must do as a result;

(D) maintaining decorum in the courtroom.

(E) demonstrating adequate preparation to hear scheduled cases;

(F) acting in the interests of the parties, not out of demonstrated personal prejudices;

(G) managing the caseflow efficiently and demonstrating awareness of the effect of delay on court participants;

(H) demonstrating interest in the needs, problems, and concerns of court participants.

(iii) Voice, including but not limited to:

(A) giving parties the opportunity, where appropriate, to give voice to their perspectives or situations and demonstrating that they have been heard;

(B) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents.

(C) attending, where appropriate, to the participants' comprehension of the proceedings.

(c) Courtroom observers may also be asked questions to help the commission assess the overall performance of the judge with respect to procedural fairness.

R597-3-4. Minimum Performance Standards.

(1) In addition to the minimum performance standards specified by statute or administrative rule, the judge shall:

(a) Demonstrate by the totality of the circumstances that the judge's conduct in court promotes procedural fairness for court participants. To determine if the judge meets the minimum performance standard of procedural fairness:

(i) commissioners shall consider only data collected as part of the judge's performance evaluation, pursuant to 78A-12-203(2).

(ii) the standard shall be commensurate with the standard set forth for scored minimum performance standards on the judicial performance survey, as in 78A-12-205(1)(b)(i).

(iii) commissioners shall vote, with a majority of the quorum constituting the decision of the commission.

(iv) the outcome of the vote shall establish the rebuttable presumption as it applies to procedural fairness, in accordance with 78A-12-203(4)(b).

(b) Meet all performance standards established by the Judicial Council, including but not limited to:

(i) annual judicial education hourly requirement;

(ii) case-under-advisement standard; and

(iii) physical and mental competence to hold office.

(2) No later than October 1st of the year preceding each general election year, the Judicial Council shall certify to the commission whether each judge standing for retention election in the next general election has satisfied its performance standards.

R597-3-5. Public Comments.

(1) Persons desiring to comment about a particular judge with whom they have had experience may do so at any time, either by submitting such comments on the commission website or by mailing them to the executive director.

(2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than March 1st of the year in which the judge's name appears on the ballot.

(3) Comments received after March 1st of the year in which the judge's name appears on the ballot will be included as part of the judge's mid-term evaluation report in the subsequent evaluation cycle.

(4) Comments received about a judge after the mid-term evaluation cycle ends will be included in the judge's next retention evaluation report.

(5) Persons submitting comments may choose whether to include their name and contact information with their submission.

(6) All public comments are subject to GRAMA, pursuant to 78A-12-206(1).

R597-3-6. Judicial Retirements and Resignations.

(1) For purposes of judicial performance evaluation, the commission shall evaluate each judge until the judge:

(a) provides written notice of resignation or retirement to the Governor;

(b) is removed from office;

(c) otherwise vacates the judicial office; or

(d) fails to properly file for retention.

(2) For judges who provide written notice of resignation or retirement after a retention evaluation has been conducted but before it is distributed, the retention evaluation shall be sent to the Judicial Council.

R597-3-7. Publication of Retention Reports.

No later than three months after the filing deadline for a retention election, the commission shall post on its website the retention reports of all judges who have filed for that election.

R597-3-8. Judicial Written Statements.

If, pursuant to Utah Code Ann. Subsection 78A-12-206(3), a judge is eligible to provide a written statement to be included in the judge's evaluation report, the statement shall be due to commission staff, in writing, no later than one week after the deadline for the judge to file a declaration of the judge's candidacy in the retention election.

R597-3-9. Judicial Discipline.

(1) For the purposes of judicial performance evaluation and pursuant to Utah Code Ann. Section 78A-12-205, the commission shall consider any public sanction of a judge issued by the Supreme Court during the judge's current term, including:

(a) During the judge's midterm and retention evaluation cycles and

(b) After the end of the judge's retention evaluation cycle until the commission votes whether to recommend the judge for retention.

KEY: judicial performance evaluations, judges, evaluation cycles, surveys

November 7, 2018 78A-12

Notice of Continuation February 5, 2019

R623. Lieutenant Governor, Elections.
R623-5. Municipal Alternate Voting Methods Pilot Project.
R623-5-1. Authority.

This rule is required by Chapter 4 of Title 63G, the Utah Administrative Procedures Act, and is enacted under the authority of Chapter 3 of Title 63G, the Utah Administrative Rulemaking Act.

R623-5-2. Definitions.

"Counting Judge" means a poll worker designated to count the ballots during election day.

R623-5-3. Purpose.

Pursuant to Utah Code Section 20a-4-1 this rule provides procedures for counting judges to follow procedures outlined in 20A-4-603.

R623-5-4. Instant Run Off Voting Counting Procedures.

Counting judges shall follow the procedures outlined in Section 20A-4-603.

KEY: runoff, voting, counting
March 1, 2019 20A-4-101(2)

R651. Natural Resources, Parks and Recreation.
R651-214. Temporary Registration.
R651-214-1. Temporary Registration.

(1) A vessel dealer may apply to the Division of Motor Vehicles for temporary registrations to be used on motorboats or sailboats sold by his business.

(2) Each temporary registration will be valid for a period not to exceed 45 days from date of issue.

(3) A temporary registration will not be valid on any motorboat or sailboat held in the dealer's inventory for sale or any motorboat or sailboat not sold by the same dealer who issued the registration.

(4) A dealer shall not issue more than one temporary registration for any motorboat or sailboat.

(5) A dealer who obtains temporary registrations will be responsible for their issuance and is required to maintain records of each registration obtained and issued. Dealer records will contain a description of the vessel sold, the name and address of the purchaser, and the date issued.

(6) Temporary registration records kept by the dealer shall be made available for inspection and audit by authorized agents of the Division of Motor Vehicles during regular business hours.

(7) If the Division of Motor Vehicles has reasonable grounds to believe that a dealer has failed to comply with any of the above provisions, after notice to the dealer and a hearing, temporary registration issuance privileges may be canceled. Upon cancellation, the dealer will surrender all unissued temporary registrations to the Division of Motor Vehicles within 15 days.

(8) Temporary Operating Authority

(a) The division, or its authorized representatives, may grant a temporary permit to operate a vessel for which:

(i) application for registration has been made, or, in the case of a newly purchased vessel, will be made

(ii) evidence of ownership is provided; and

(iii) the proper fees have been paid.

(b) The temporary permit allows the vessel to be operated pending complete registration by displaying the temporary permit.

(c) If a vessel is operated on a temporary permit issued under this section, that vessel is subject to all other statutes, rules, and regulations intended to control the use and operation of vessels on the waterways.

(9) Relocation Permit

(a) Under rules made by the administrator, relocation permits may be issued by the division or its authorized representatives.

(b) Relocation permits allow use of the waterways for a time period not to exceed 96 hours.

(c) The division or its authorized representative may issue relocation permits without requiring a property tax clearance for the vessel on which the permit is to be used.

(d) Relocation permits allow for the purpose of testing for mechanical or seaworthiness of vessels.

(e) If a vessel is operated on a relocation permit under this section, that vessel is subject to all other statutes, rules, and regulations intended to control the use and operation of vessels on the waterways.

KEY: boating
February 21, 2019 73-18-7(3)
Notice of Continuation January 7, 2016

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking big game.

R657-5-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Draw-lock" means a mechanical device used to hold and support the draw weight of a conventional or compound bow at any increment of draw until released by the archer using a trigger mechanism and safety attached to the device.

(l) "Drone" means an autonomously controlled, aerial vehicle of any size or configuration that is capable of controlled flight without a human pilot aboard.

(m) "Ewe" means a female bighorn sheep or any bighorn sheep younger than one year of age.

(n) "Hunter's choice" means either sex may be taken.

(o) "Limited entry hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.

(p) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, wildlife expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(q) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(r) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, wildlife expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(s) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep older than one year of age.

(t) "Spike bull" means a bull elk which has at least one antler beam with no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

R657-5-3. License, Permit, and Tag Requirements.

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or its parts in accordance with Section 23-19-1 and the rules or guidebooks of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

(3) A person must possess or obtain a Utah hunting or combination license to apply for or obtain any big game hunting permit.

R657-5-4. Age Requirements and Restrictions.

(1)(a) A person 12 years of age or older may apply for or obtain a permit to hunt big game.

(b) A person 11 years of age may apply for a permit to hunt big game, provided that person's 12th birthday falls within the calendar year for which the permit is issued and that person does not use the permit to hunt big game before their 12th birthday.

(2)(a) A person at least 12 years of age and under 16 years of age must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

R657-5-5. Duplicate License and Permit.

(1) Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office or online license agent, for ten dollars or half of the price of the original license, permit, or certificate of registration, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or certificate of registration provided the person did not receive the original license, permit, tag or certificate of registration.

R657-5-6. Hunting Hours.

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

R657-5-7. Prohibited Weapons.

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use:

(a) a firearm capable of being fired fully automatic;

(b) any light enhancement device or aiming device that casts a visible beam of light; or

(c) a firearm equipped with a computerized targeting system that marks a target, calculates a firing solution and automatically discharges the firearm at a point calculated most likely to hit the acquired target.

(3) Nothing in this Section shall be construed as prohibiting laser range finding devices or illuminated sight pins for archery equipment.

R657-5-8. Rifles, Shotguns, Airguns, and Crossbows.

(1) A rifle used to hunt big game must fire centerfire cartridges and expanding bullets.

(2) A shotgun used to hunt big game must be 20 gauge or larger, firing only 00 or larger buckshot or slug ammunition.

(3) An airgun used to hunt big game must:

(a) be pneumatically powered;

(b) be pressurized solely through a separate charging device; and

(c) may only fire a bolt or arrow:

(i) no less than 16 inches long;
(ii) with a fixed or expandable broadhead at least 7/8 inch wide at its widest position; and
(iii) traveling no less than 400 feet per second at the muzzle.
(4)(a) A crossbow used to hunt big game must have a minimum draw weight of 125 pounds and a positive mechanical safety mechanism.
(b) A crossbow arrow or bolt used to hunt big game must be at least 16 inches long and have:
(i) fixed broadheads that are at least 7/8 inch wide at the widest point; or
(ii) expandable, mechanical broadheads that are at least 7/8 inch wide at the widest point when the broadhead is in the open position.
(c) Unless otherwise authorized by the division through a certificate of registration, it is unlawful for any person to:
(i) hunt big game with a crossbow or airgun during a big game archery hunt;
(ii) carry a cocked crossbow containing an arrow or a bolt while in or on any motorized vehicle on a public highway or other public right-of-way; or
(iii) hunt any protected wildlife with a crossbow utilizing a bolt that has any chemical, explosive or electronic device attached.
(5) A crossbow used to hunt big game may have a fixed or variable magnifying scope only during an any weapon hunt.

R657-5-9. Handguns.
(1) A handgun may be used to take deer and pronghorn, provided the handgun:
(a) is a minimum of .24 caliber;
(b) fires a centerfire cartridge with an expanding bullet; and
(c) develops 500 foot-pounds of energy at the muzzle.
(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat, provided the handgun;
(a) is a minimum of .24 caliber;
(b) fires a centerfire cartridge with an expanding bullet; and
(c) develops 500 foot-pounds of energy at 100 yards.

R657-5-10. Muzzleloaders.
(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:
(a) can be loaded only from the muzzle;
(b) has open sights, peep sights, or a variable or fixed power scope, including a magnifying scope;
(c) has a single barrel;
(d) has a minimum barrel length of 18 inches;
(e) is capable of being fired only once without reloading;
(f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;
(g) is loaded with black powder or black powder substitute, which must not contain smokeless powder.
(2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.
(b) A bullet 130 grains or heavier, or a sabot 170 grains or heavier, must be used for taking deer and pronghorn.
(c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.
(3)(a) A person who has obtained a muzzleloader permit for a big game hunt may:
(i) use only muzzleloader equipment authorized in this Subsections (1) and (2) to take the species authorized in the permit; and
(ii) not possess or be in control of a rifle or shotgun while in the field during the muzzleloader hunt.
(b) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found, but does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.
(c) The provisions of Subsection (a) do not apply to:
(i) a person lawfully hunting upland game or waterfowl;
(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt;
(iii) livestock owners protecting their livestock; or
(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.
(4) A person who has obtained an any weapon permit for a big game hunt may use muzzleloader equipment authorized in this Section to take the species authorized in the permit.

R657-5-11. Archery Equipment.
(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:
(a) the minimum bow pull is 30 pounds at the draw or the peak, whichever comes first;
(b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;
(c) expanding arrowheads cannot pass through a 7/8 inch ring when expanded, and
(d) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock.
(2) The following equipment or devices may not be used to take big game:
(a) a crossbow, except as provided in Subsection (5) and Rule R657-12;
(b) arrows with chemically treated or explosive arrowheads;
(c) a mechanical device for holding the bow at any increment of draw, except as provided in Subsection (5) and Rule R657-12;
(d) a release aid that is not hand held or that supports the draw weight of the bow, except as provided in Subsection (5) and Rule R657-12;
(e) a bow with a magnifying aiming device; or
(f) an airgun, except as provided in Subsection (5).
(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.
(4)(a) A person who has obtained an archery permit for a big game hunt may:
(i) only use archery equipment authorized in Subsections (1) and (2) to take the species authorized in the permit; and
(ii) not possess or be in control of a crossbow, draw-lock, rifle, shotgun or muzzleloader while in the field during an archery hunt.
(b) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found, but does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.
(c) The provisions of Subsection (a) do not apply to:
(i) a person lawfully hunting upland game or waterfowl;
(ii) a person licensed to hunt big game species during hunts that coincide with the archery hunt, provided the person is in compliance with the regulations of that hunt and possesses only the weapons authorized for that hunt;
(iii) livestock owners protecting their livestock;
(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife; or
(v) a person possessing a crossbow or draw-lock under a

certificate of registration issued pursuant to R657-12.

(5) A person who has obtained an any weapon permit for a big game hunt may use archery equipment authorized in this Section to take the species authorized in the permit, and may also use a crossbow, draw-lock, or airgun satisfying the minimum requirements of this rule.

(6)(a) A person hunting an archery-only season on a once-in-a-lifetime hunt may:

(i) only use archery equipment authorized in Subsections (1) and (2) to take the species authorized in the permit; and

(ii) not possess or be in control of a crossbow, draw-lock, rifle, shotgun, muzzleloader, or airgun while in the field during the archery-only season.

(b) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found, but does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

R657-5-12. Areas With Special Restrictions.

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-614-4.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may:

(a) only use archery equipment to take buck deer and bull elk south of I-80 and east of I-15;

(b) only use archery equipment to take big game in Emigration Township; and

(c) not hunt big game within one-half mile of Silver Lake in Big Cottonwood Canyon.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the guidebook of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Scott M. Matheson Wetland Preserve.

(10) A person may not discharge a firearm, except a shotgun or muzzleloader, from, upon, or across the Green River located near Jensen, Utah from the Highway 40 bridge upstream to the Dinosaur National Monument boundary.

R657-5-13. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to:

(i) take protected wildlife; or

(ii) locate protected wildlife while in possession of a rifle, shotgun, archery equipment, crossbow, muzzleloader, or airgun.

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is probable cause of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of headlights, illuminated sight pins on a bow, or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-5-14. Use of Vehicle or Aircraft.

(1)(a) A person may not use an airplane, drone, or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.

(b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by any vehicle, device, or conveyance listed in Subsection (a).

(c) Big game may be taken from a vessel provided:

(i) the motor of a motorboat has been completely shut off;

(ii) the sails of a sailboat have been furled; and

(iii) the vessel's progress caused by the motor or sail has ceased.

(2) A person may not use any type of aircraft, drone, or other airborne vehicle or device from 48 hours before any big game hunt begins in the area where they are flying through 48 hours after any big game hunting season ends in the area where they are flying to locate, or attempt to observe or locate any protected wildlife.

(3)(a) The provisions of this section do not apply to the operation of an aircraft, drone, or other airborne vehicle or device used for the purposes of transporting hunters, equipment, or legally harvested wildlife, provided the aircraft takes off and lands only from an improved airstrip, where there is no attempt or intent to locate protected wildlife.

(b) Hunters that are transported by aircraft into an area may not hunt protected wildlife until the following day.

(c) For the purposes of this section, "improved airstrip" means a take-off and landing area with a graded or otherwise mechanically improved surface free of barriers or other hazards that is traditionally used by pilots for the purposes of air travel.

R657-5-15. Party Hunting and Use of Dogs.

(1) A person may not take big game for another person, except as provided in Section 23-19-1 and Rule R657-12.

(2) A person may not use the aid of a dog to take, chase, harm or harass big game. The use of one blood-trailing dog controlled by leash during lawful hunting hours within 72 hours of shooting a big game animal is allowed to track wounded animals and aid in recovery.

R657-5-16. Big Game Contests.

A person may not enter or hold a big game contest that:

(1) is based on big game or its parts; and

(2) offers cash or prizes totaling more than $500.

R657-5-17. Tagging.

(1) The carcass of any species of big game must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue big game after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

R657-5-18. Transporting Big Game Within Utah.

(1) A person may transport big game within Utah only as follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal receipt from the division or a donation slip as provided in Section 23-20-9.

R657-5-19. Exporting Big Game From Utah.

(1) A person may export big game or its parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

R657-5-20. Purchasing or Selling Big Game or its Parts.

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or its parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;

(b) Untanned hides of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;

(c) Inedible byproducts, excluding hides, antlers and horns of legally possessed big game as provided in Subsection 23-20-3, may be purchased or sold at any time;

(d) tanned hides of legally taken big game may be purchased or sold at any time; and

(e) shed antlers and horns may be purchased or sold at any time.

(2)(a) Protected wildlife that is obtained by the division by any means may be sold or donated at any time by the division or its agent.

(b) A person may purchase or receive protected wildlife from the division, which is sold or donated in accordance with Subsection (2)(a), at any time.

(3) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(4) Subsection (3) does not apply to scouting programs or other charitable organizations using untanned hides.

R657-5-21. Possession of Antlers and Horns.

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully obtained as provided in Section R657-5-20; or

(c) shed antlers or shed horns.

(2)(a) A person may gather shed antlers or shed horns or parts of shed antlers or shed horns at any time. An authorization is required to gather shed antlers or shed horns or parts of shed antlers or shed horns during the shed antler and shed horn season published in the guidebook of the Wildlife Board for taking big game.

(b) A person must complete a wildlife harassment and habitat destruction prevention course annually to obtain the required authorization to gather shed antlers during the antler gathering season.

(3) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.

(4) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

R657-5-22. Poaching-Reported Reward Permits.

(1) Big Game poaching-reported reward permits are issued pursuant to rule R657-51 Poaching-Reported Reward Permits.

R657-5-23. General Archery Buck Deer Hunt.

(1) The dates of the general archery buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer may use archery equipment prescribed in R657-5-11 to take:

(a) one buck deer within the general hunt area specified on the permit for the time specified in the guidebook of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within extended archery areas as provided in the guidebook of the Wildlife Board for taking big game.

(c) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(d) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within premium limited entry deer or limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3)(a) A person who obtains a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within extended archery areas during the extended archery area seasons as provided in the guidebook of the Wildlife Board for taking big game and as provided in Subsection (b).

(b)(i) A person must complete the Archery Ethics Course annually to hunt any extended archery areas during the extended archery season.

(ii) A person must possess an Archery Ethics Course Certificate of Completion while hunting.

(4) A person who has obtained a general archery buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer and extended archery areas.

(5) If a person 17 years of age or younger obtains a general archery buck deer permit, that person may only hunt during the general archery deer season and the extended archery season as provided Section R657-5-23(3).

R657-5-24. General Any Weapon Buck Deer Hunt.

(1) The dates for the general any weapon buck deer hunts are provided in the guidebook of the Wildlife Board for taking

big game.

(2)(a) A person who has obtained a general any weapon buck permit may use any legal weapon to take one buck deer within the hunt area and season dates specified on the permit as published in the guidebook of the Wildlife Board for taking big game.

(b) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3) A person who has obtained a general any weapon buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer, as provided in R657-5-27; and

(b) any person 17 years of age or younger on July 31 of the current year, may hunt the general archery, extended archery, general any weapon and general muzzleloader buck deer seasons applicable to the unit specified on the general any weapon buck deer permit, using the appropriate equipment as provided in Sections R657-5-7 through R657-5-11, respectively.

R657-5-25. General Muzzleloader Buck Deer Hunt.

(1) The dates for the general muzzleloader buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general muzzleloader buck permit may use a muzzleloader, as prescribed in R657-5-10, to take one buck deer within the general hunt area specified on the permit as published in the guidebook of the Wildlife Board for taking big game.

(b) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within any deer Cooperative Wildlife Management unit.

(c) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within premium limited entry deer or limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3)(a) A person who has obtained a general muzzleloader buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer, as provided in R657-5-27.

(b) If a person 17 years of age or younger purchases a general muzzleloader buck deer permit, that person may only hunt during the general muzzleloader deer season.

R657-5-26. Premium Limited Entry and Limited Entry Buck Deer Hunts.

(1)(a) To hunt in a premium limited entry or limited entry buck deer area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck deer, general any weapon buck deer, or general muzzleloader buck deer hunting, except as specified in the guidebook of the Wildlife Board for taking big game.

(b)(i) The Wildlife Board may establish in guidebook a limited entry buck deer hunt on a general season buck deer unit.

(ii) The season dates for a limited entry hunt under this Subsection will not overlap the season dates for the underlying general season hunt on the unit.

(iii) A landowner association under R657-43 is not eligible to receive limited entry permits that occur on general season units.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, excluding deer cooperative wildlife management units located within the limited entry unit.

(3)(a) A person who has obtained a premium limited entry, limited entry, management, or cooperative wildlife management unit buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck deer.

(b) Limited entry and cooperative wildlife management unit buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, management, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

(4) A person who has obtained a premium limited entry or limited entry buck permit may not:

(a) obtain any other deer permit, except an antlerless deer permit as provided in R657-5-27 and the guidebooks of the Wildlife Board; or

(b) hunt during any other deer hunt, except unsuccessful archery hunters may hunt within extended archery areas as provided in Subsection (7).

(5)(a) The Wildlife Board may establish a multi-season hunting opportunity in the big game guidebooks for selected premium limited entry and limited entry buck deer hunts.

(b) A person that obtains a premium limited entry or limited entry buck deer permit with a multi-season opportunity may hunt during any of the following limited entry buck deer seasons established in the guidebooks of the Wildlife Board for the unit specified on the premium limited entry or limited entry buck deer permit:

(i) archery season, using only archery equipment prescribed in R657-5-11 for taking deer;

(ii) muzzleloader season, using only muzzleloader equipment prescribed in R657-5-10 for taking deer; and

(iii) any weapon season, using any legal weapon prescribed in R657-5 for taking deer.

(c) A landowner association under R657-43 is not eligible to receive a multi-season hunting opportunity for premium limited entry or limited entry units.

(6) A premium limited entry or limited entry buck deer permit, including a permit with a multi-season opportunity, is valid only within the boundaries of the unit designated on the permit, excluding:

(a) areas closed to hunting;

(b) deer cooperative wildlife management units; and

(c) Indian tribal trust lands.

(7) A person who possesses an archery buck deer permit for a premium limited entry or limited entry unit, including a permit with a multi-season opportunity, may hunt buck deer within any extended archery area during the established extended archery season for that area, provided the person:

(a) did not take a buck deer during the premium limited entry or limited entry hunt;

(b) uses the prescribed archery equipment for the extended archery area;

(c) completes the annual Archery Ethics Course required to hunt extended archery areas during the extended archery season; and

(d) possesses on their person while hunting:

(i) the multi-season limited entry or limited entry buck deer permit; and

(ii) the Archery Ethics Course Certificate of Completion.

R657-5-27. Antlerless Deer Hunts.

(1)(a) To hunt antlerless deer, a hunter must obtain an antlerless deer permit.

(b) A person may obtain only one antlerless deer permit or a two-doe antlerless deer permit through the division's antlerless big game drawing.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer using the weapon type, within the area, and during season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A two-doe antlerless deer permit allows a person to take two antlerless deer using the weapon type, within the area, and during the season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(c) A person may not hunt antlerless deer on any deer cooperative wildlife management unit unless that person obtains an antlerless deer permit for that specific cooperative wildlife management unit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permits, except as provided in R657-44-3.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b) may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the applicable permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used, if hunting antlerless deer during an archery season or hunt; and

(iii) the appropriate muzzleloader hunt equipment is used, if hunting antlerless deer during a muzzleloader season or hunt.

(b)(i) General buck deer for archery, muzzleloader, any weapon, or dedicated hunter;

(ii) General bull elk for archery, muzzleloader, any weapon, or multi-season;

(iii) Premium limited entry buck deer for archery, muzzleloader, any weapon, or multi-season;

(iv) Limited entry buck deer for archery, muzzleloader, any weapon, or multi-season;

(v) Limited entry bull elk for archery, muzzleloader, any weapon, or multi-season; or

(vi) Antlerless elk.

(c) A person that possess an unfilled antlerless deer permit and harvests an animal under authority of a permit listed in Subsection (b), may continue hunting antlerless deer as prescribed in Subsections (a) and (b) during the remaining portions of the Subsection (b) permit season.

R657-5-28. General Archery Elk Hunt.

(1) The dates of the general archery elk hunt are provided in the guidebooks of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general archery elk permit may use archery equipment to take:

(i) an antlerless elk or a bull elk on a general any bull elk unit, excluding elk cooperative wildlife management units;

(ii) an antlerless elk or a spike bull elk on a general spike bull elk unit, excluding elk cooperative wildlife management units;

(iii) an antlerless elk or a bull elk on extended archery areas as provided in the guidebook of the Wildlife Board for taking big game.

(3)(a) A person who obtains a general archery elk permit may hunt within the extended archery areas during the extended archery area seasons as provided in the guidebook of the Wildlife Board for taking big game and as provided in Subsection (b).

(b)(i) A person must complete the Archery Ethics Course annually to hunt the extended archery areas during the extended archery season.

(ii) A person must possess an Archery Ethics Course Certificate of Completion on their person while hunting.

(4) A person who has obtained an archery elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3) and by the guidebooks of the Wildlife Board for taking big game.

R657-5-29. General Season Bull Elk Hunt.

(1) The dates and areas for the general season bull elk hunts are provided in the guidebooks of the Wildlife Board for taking big game, except the following areas are closed to general any weapon bull elk hunting:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) A person may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull elk units are closed to spike bull elk permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk, on a general season any bull elk unit. Spike bull elk units are closed to any bull elk permittees.

(3) A person who has obtained a general season bull elk permit may use any legal weapon to take a spike bull elk or any bull elk, as specified on the permit.

(4) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3).

(5) The Wildlife Board may establish multi-season hunting opportunities in the big game guidebooks for general season spike and bull elk hunts consistent with the following parameters:

(a) an individual with a multi-season spike elk permit may use:

(i) archery equipment as prescribed in R657-5-11 to take an antlerless elk or spike bull elk on a general season spike unit during the archery season;

(ii) archery equipment as prescribed in R657-5-11 to take an antlerless elk or any bull elk on a general season any bull unit during the archery season;

(iii) muzzleloader equipment as prescribed in R657-5-10 to take spike bull elk on general season spike units during the muzzleloader season; or

(iv) any legal weapon as prescribed in R657-5 to take a spike bull elk on a general season spike unit during the any legal weapon season.

(b) An individual with a multi-season any bull elk permit may use:

(i) archery equipment as prescribed in R657-5-11 to take an antlerless elk or spike elk on a general season spike unit during the archery season;

(ii) archery equipment as prescribed in R657-5-11 to take an antlerless elk or any bull elk on a general season any bull unit during the archery season;

(iii) muzzleloader equipment as prescribed in R657-5-10 to take any bull elk on general season any bull units during the muzzleloader season; or

(iv) any legal weapon as prescribed in R657-5 to take any bull elk on a general season any bull unit during the any legal weapon season.

(c) An individual who obtains a multi-season bull elk permit may hunt within the extended archery areas during the extended archery area seasons described in the guidebook of the Wildlife Board for taking big game, provided that individual:

(i) completes the Archery Ethics Course prior to going afield; and

(ii) possesses the Archery Ethics Course Certificate of Completion on their person while hunting.

R657-5-30. General Muzzleloader Bull Elk Hunt.

(1) The dates and areas for general muzzleloader bull elk hunts are provided in the guidebooks of the Wildlife Board for taking big game, except the following areas are closed to general muzzleloader bull elk hunting:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) General muzzleloader bull elk hunters may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general muzzleloader spike bull elk permit may use a muzzleloader, prescribed in R657-5-10, to take a spike bull elk on an any general spike bull elk unit. Any bull units are closed to spike bull muzzleloader permittees.

(c) A person who has obtained a general muzzleloader any bull elk permit may use a muzzleloader, as prescribed in R657-5-10, to take any bull elk on an any bull elk unit. Spike bull units are closed to any bull muzzleloader permittees.

(3) On selected units identified in the guidebook of the Wildlife Board for taking big game, a person who has obtained a general muzzleloader bull elk permit may use muzzleloader equipment to take either an antlerless elk or a bull elk.

(4) A person who has obtained a general muzzleloader bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3).

R657-5-31. Youth General Any Bull Elk Hunt.

(1)(a) For purposes of this section "youth" means any person 17 years of age or younger on July 31 of the current year.

(b) A youth may apply for or obtain a youth any bull elk permit.

(c) A qualified person may obtain a youth any bull elk permit only once during their life.

(2) The youth any bull elk hunting season and areas are published in the guidebook of the Wildlife Board for taking big game.

(3)(a) A youth who has obtained a youth general any bull elk permit may take any bull elk, including antlerless elk, on a general any bull elk unit. Spike bull elk units are closed to youth general any bull elk permittees.

(b) A youth who has obtained a youth general any bull elk permit may use any legal weapon to take any bull elk or antlerless elk as specified on the permit.

(4) A youth who has obtained a youth general any bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-33(3).

(5) Preference points shall not be awarded or utilized when applying for or obtaining a youth general any bull elk permit.

R657-5-32. Limited Entry Bull Elk Hunts.

(1) To hunt in a limited entry bull elk area, a hunter must obtain a limited entry bull elk permit for the area.

(2)(a) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except as provided in Subsection (5) and excluding elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3)(a) The Wildlife Board may establish a multi-season hunting opportunity in the big game guidebooks for selected limited entry bull elk units.

(b) A person that obtains a limited entry bull elk permit with a multi-season opportunity may hunt during any of the following limited entry bull elk seasons established in the guidebooks of the Wildlife Board for the unit specified on the limited entry bull elk permit:

(i) archery season, using only archery equipment prescribed in R657-5-11 for taking elk;

(ii) muzzleloader season, using only muzzleloader equipment prescribed in R657-5-10 for taking elk; and

(iii) any weapon season, using any legal weapon prescribed in R657-5 for taking elk.

(c) A landowner association under R657-43 is not eligible to receive a multi-season hunting opportunity for limited entry units.

(4) A limited entry bull elk permit, including a permit with a multi-season opportunity, is valid only within the boundaries of the unit designated on the permit, excluding:

(a) areas closed to hunting;

(b) elk cooperative wildlife management units; and

(c) Indian tribal trust lands.

(5) A person who possesses any limited entry archery bull elk permit, including a permit with a multi-season opportunity, may hunt bull elk within any extended archery area during the established extended archery season for that area, provided the person:

(a) did not take a bull elk during the limited entry hunt;

(b) uses the prescribed archery equipment for the extended archery area;

(c) completes the annual Archery Ethics Course required to hunt extended archery areas during the extended archery season; and

(d) possesses on their person while hunting:

(i) the limited entry bull elk permit; and

(ii) the Archery Ethics Course Certificate of Completion.

(6) "Prescribed legal weapon" means for purposes of this subsection:

(a) archery equipment, as defined in R657-5-11, when hunting the archery season, excluding a crossbow, draw-lock, and airgun;

(b) muzzleloader equipment, as defined in R657-5-10, when hunting the muzzleloader season; and

(c) any legal weapon, including a muzzleloader, crossbow with a fixed or variable magnifying scope or draw-lock, or airgun when hunting during the any weapon season.

(7)(a) A person who has obtained a limited entry or cooperative wildlife management unit bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull elk.

(b) Limited entry and cooperative wildlife management unit bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

(8) A person who has obtained a limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsections (5) and R657-5-33(3).

R657-5-33. Antlerless Elk Hunts.

(1) To hunt antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using the weapon type, within the area, and during season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A person may not hunt antlerless elk on an elk cooperative wildlife management unit unless that person obtains an antlerless elk permit for that specific cooperative wildlife management unit.

(3)(a) A person may obtain three elk permits each year, in combination as follows:

(i) a maximum of one bull elk permit;

(ii) a maximum of one antlerless elk permit issued through the division's antlerless big game drawing; and

(iii) a maximum of two antlerless elk permits acquired over the counter or on-line after the antlerless big game drawing is finalized, including antlerless elk:

(A) control permits, as described in Subsection (5);

(B) depredation permits, as described in R657-44-8;

(C) mitigation permit vouchers, as defined in R657-44-2(2); and

(D) private lands only permits, as described in Subsection (6).

(b) Antlerless elk mitigation permits obtained by a landowner or lessee under R657-44-3 do not count towards the annual three elk permit limitation prescribed in this subsection.

(i) "Mitigation permit" has the same meaning as defined in R657-44-2(2).

(c) For the purposes of obtaining multiple elk permits, a hunter's choice elk permit is considered a bull elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the applicable permits listed in Subsection (b), provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used, if hunting antlerless elk during an archery season or hunt; and

(iii) the appropriate muzzleloader hunt equipment is used, if hunting antlerless elk during a muzzleloader season or hunt.

(b)(i) General buck deer for archery, muzzleloader, any legal weapon, or dedicated hunter;

(ii) General bull elk for archery, muzzleloader, any legal weapon, or multi-season;

(iii) Premium limited entry buck deer for archery, muzzleloader, any weapon, or multi-season;

(iv) Limited entry buck deer for archery, muzzleloader, any legal weapon, or multi-season;

(v) Limited entry bull elk for archery, muzzleloader or any legal weapon, or multi-season.

(vi) Antlerless deer or elk, excluding antlerless elk control permits.

(c) A person that possess an unfilled antlerless elk permit and harvests an animal under authority of a permit listed in Subsection (b), may continue hunting antlerless elk as prescribed in Subsections (a) and (b) during the remaining portions of the Subsection (b) permit season.

(5)(a) To obtain an antlerless elk control permit, a person must first obtain a big game buck, bull, or a once-in-a-lifetime permit.

(b) An antlerless elk control permit allows a person to take one antlerless elk using the same weapon type, during the same season dates, and within areas of overlap between the boundary of the buck, bull, or once-in-a-lifetime permit and the boundary of the antlerless elk control permit, as provided in the Antlerless guidebook by the Wildlife Board.

(c) Antlerless elk control permits are sold over the counter or online after the division's antlerless big game drawing is finalized.

(d) A person that possess an unfilled antlerless elk control permit and harvests an animal under the buck, bull, or once-in-a-lifetime permit referenced in Subsection (b), may continue hunting antlerless elk as prescribed in Subsection (b) during the remaining portions of the buck, bull, or once-in-a-lifetime permit season.

(6)(a) A private lands only permit allows a person to take one antlerless elk on private land within a prescribed unit using any weapon during the season dates and area provided in the Big Game guidebook by the Wildlife Board.

(b) No boundary extension or buffer zones on public land will be applied to private lands only permits.

(c) Private lands only permits are sold over the counter or online after the division's antlerless big game drawing is finalized.

(d) "Private lands" means, for purposes of this subsection, any land owned in fee by an individual or legal entity, excluding:

(i) land owned by the state or federal government;

(ii) land owned by a county or municipality;

(iii) land owned by an Indian tribe;

(iv) land enrolled in a Cooperative Wildlife Management Unit under R657-37; and

(v) land where public access for big game hunting has been secured.

R657-5-34. Buck Pronghorn Hunts.

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3)(a) A person who has obtained a limited entry or cooperative wildlife management unit buck pronghorn permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck pronghorn.

(b) Limited entry and cooperative wildlife management unit buck pronghorn permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

(4) A buck pronghorn permit allows a person to take one buck pronghorn within the area, during the season, and using the weapon type specified on the permit, except on a pronghorn cooperative wildlife management unit located within a limited entry unit.

R657-5-35. Doe Pronghorn Hunts.

(1)(a) To hunt doe pronghorn, a hunter must obtain a doe pronghorn permit.

(b) A person may obtain only one doe pronghorn permit or a two-doe pronghorn permit through the division's antlerless big game drawing.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn using the weapon type, within the area, and during the season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A two-doe pronghorn permit allows a person to take two doe pronghorn using the weapon type, within the area, and during the season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(c) A person may not hunt doe pronghorn on any pronghorn cooperative wildlife management unit unless that person obtains an antlerless pronghorn permit for that specific cooperative wildlife management unit.

(3) A person who has obtained a doe pronghorn permit may not hunt pronghorn during any other pronghorn hunt or

obtain any other pronghorn permit.

R657-5-36. Antlerless Moose Hunts.

(1) To hunt antlerless moose, a hunter must obtain an antlerless moose permit.

(2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A person may not hunt antlerless moose on a moose cooperative wildlife management unit unless that person obtains an antlerless moose permit for that specific cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless moose permit may not hunt moose during any other moose hunt or obtain any other moose permit for that hunt year.

R657-5-37. Bull Moose Hunts.

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person to take one bull moose within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board, excluding any moose cooperative wildlife management unit located within a limited entry unit.

(4)(a) A person who has obtained a bull moose permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull moose.

(b) Bull moose permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-38. Bison Hunts.

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) A hunter's choice bison permit allows a person to take a bison of either sex within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board.

(4)(a) An orientation course is required for bison hunters who draw an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation.

(5) A cow bison permit allows a person to take one cow bison within the area, during the seasons, and using the weapon types as specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(6) An orientation course is required for bison hunters who draw cow bison permits. Hunters will be notified of the orientation date, time and location.

(7)(a) A person who has obtained a bison permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bison.

(b) Bison permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-39. Desert Bighorn and Rocky Mountain Bighorn Sheep Ram Hunts.

(1) To hunt a ram desert bighorn sheep or a ram Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a ram desert bighorn sheep or a ram Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Ram desert bighorn sheep and ram Rocky Mountain bighorn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) A ram desert bighorn sheep permit allows a person to take one desert bighorn ram within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board.

(b) A ram Rocky Mountain sheep permit allows a person to take one Rocky Mountain bighorn ram within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board.

(5)Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

(6)(a) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a desert bighorn sheep or Rocky Mountain bighorn sheep.

(b) Desert bighorn sheep or Rocky Mountain bighorn sheep permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-39.5. Desert Bighorn and Rocky Mountain Bighorn Ewe Hunts.

(1) To hunt a ewe desert bighorn sheep or a ewe Rocky Mountain bighorn sheep, a hunter must obtain the respective ewe permit.

(2)(a) A ewe permit allows a person to take one ewe using any legal weapon within the area and season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(3) A person who has obtained a ewe permit may not hunt desert bighorn or Rocky Mountain bighorn sheep during any other sheep hunt or obtain any other sheep permit during that hunt year.

(4) Ewe desert bighorn sheep and ewe Rocky Mountain bighorn sheep permits are considered separate hunting opportunities.

R657-5-40. Rocky Mountain Goat Hunts.

(1) To hunt Rocky Mountain goat, a hunter must obtain a

Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) A Rocky Mountain goat of either sex may be legally taken on a hunter's choice permit.

(4) The goat permit allows a person to take one goat within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board.

(5) A female-only goat permit allows a person to take one femalegoat within the area, during the seasons, and using the weapon type specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(6)(a) An orientation course is required for Rocky Mountain goat hunters who draw or purchase a female-goat only permit or a hunter's choice permit.

(b) The orientation course must be completed online through the division's website.

(c) The orientation course must be completed before the hunter obtains his or her permit.

(7)(a) A person who has obtained a Rocky Mountain goat permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a Rocky Mountain goat.

(b) Rocky Mountain goat permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-41. Depredation Hunter Pool Permits.

(1) When big game are causing damage or are considered a nuisance, control hunts not listed in the guidebook of the Wildlife Board for taking big game may be held as provided in Rule R657-44. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) For the purpose of this section, nuisance is defined as a situation where big game animals are found to have moved off formally approved management units onto adjacent units or other areas not approved for that species.

R657-5-42. Carcass Importation.

(1) It is unlawful to import dead elk, moose, mule deer, or white-tailed deer or their parts from the areas of any state, province, game management unit, equivalent wildlife management unit, or county, which has deer or elk diagnosed with Chronic Wasting Disease, except the following portions of the carcass:

(a) meat that is cut and wrapped either commercially or privately;

(b) quarters or other portion of meat with no part of the spinal column or head attached;

(c) meat that is boned out;

(d) hides with no heads attached;

(e) skull plates with antlers attached that have been cleaned of all meat and tissue;

(f) antlers with no meat or tissue attached;

(g) upper canine teeth, also known as buglers, whistlers, or ivories; or

(h) finished taxidermy heads.

(2)(a) The affected states, provinces, game management units, equivalent wildlife management units, or counties, which have deer, elk, or moose diagnosed with Chronic Wasting Disease shall be available at division offices and through the division's Internet address.

(b) Importation of harvested elk, moose, mule deer, or white-tailed deer or its parts from the affected areas are hereby restricted pursuant to Subsection (1).

(3) Nonresidents of Utah transporting harvested elk, moose, mule deer, or white-tailed deer from the affected areas are exempt if they:

(a) do not leave any part of the harvested animal in Utah and do not stay more than 24 hours in the state of Utah;

(b) do not have their deer, elk, or moose processed in Utah; or

(c) do not leave any parts of the carcass in Utah.

R657-5-43. Chronic Wasting Disease - Infected Animals.

(1) Any person who under the authority of a permit issued by the division legally takes a deer, elk, or moose that is later confirmed to be infected with Chronic Wasting Disease may:

(a) retain the entire carcass of the animal;

(b) retain any parts of the carcass, including antlers, and surrender the remainder to the division for proper disposal; or

(c) surrender all portions of the carcass in their actual or constructive possession, including antlers, to the division and receive a free new permit the following year for the same hunt.

(2) The new permit issued pursuant to Subsection (1)(c) shall be for the same species, sex, weapon type, unit, region, and otherwise subject to all the restrictions and conditions imposed on the original permit, except season dates for the permit shall follow the guidebook of the Wildlife Board for taking big game published in the year the new permit is valid.

(3) Notwithstanding other rules to the contrary, private landowners and landowner associations may refuse access to private property to persons possessing new permits issued under Subsection (1)(c).

R657-5-44. Management Bull Elk Hunt.

(1)(a) For the purposes of this section "management bull" means any bull elk with 5 points or less on at least one antler. A point means a projection longer than one inch, measured from its base to its tip.

(b) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management bull elk archery season published in the guidebook of the Wildlife Board for taking big game.

(2)(a) Management bull elk permits shall be distributed pursuant to R657-62 with thirty percent of the permits being allocated to youth, thirty percent to seniors and the remaining forty percent to hunters of all ages.

(3) Management bull elk permit holders may take one management bull elk during the season, on the area and with the weapon type specified on the permit. Management bull elk hunting seasons, areas and weapon types are published in the guidebook of the Wildlife Board for taking big game.

(4)(a) A person who has obtained a management bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management bull elk.

(b) Management bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(5)(a) Management bull elk permit holders who successfully harvest a management bull elk, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the elk they harvest to a division office for inspection within 48

hours after the date of kill.

(6) Management bull elk permit holders may not retain possession of any harvested bull elk that fails to satisfy the definition requirements in Subsection (1)(a).

(7) A person who has obtained a management bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-33(3).

R657-5-45. General Any Weapon Buck Deer and Bull Elk Combination Hunt.

(1) Permit numbers, season dates and unit boundary descriptions for the general any weapon buck deer and bull elk combination hunt shall be established in the guidebook of the Wildlife Board for taking big game.

(2) A person who obtains a general any weapon buck deer and bull elk combination permit may use any legal weapon to take one buck deer and one bull elk during the season and within the unit specified on the permit.

(a) A general any weapon buck deer and bull elk combination permit does not authorize the holder to hunt deer or elk within any cooperative wildlife management unit.

(3) A person who has obtained a general any weapon buck deer and bull elk combination permit may not hunt during any other deer or elk hunt or obtain any other deer or elk permit, except:

(a) antlerless deer, as provided in Subsection R657-5-27, and

(b) antlerless elk, as provided in Subsection R657-5-33.

(4)(a) Lifetime license holders may obtain a general any weapon buck deer and bull elk combination permit.

(b) Upon obtaining a general any weapon buck deer and bull elk combination permit, the lifetime license holder foregoes any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general any weapon or general muzzleloader deer permit.

R657-5-46. Management Buck Deer Hunt.

(1)(a) For the purposes of this section "management buck" means any buck deer with 3 points or less on at least one antler above and including the first fork in the antler. A point means a projection longer than one inch, measured from its base to its tip. The eye guard is not counted as a point.

(b) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management buck deer archery season published in the guidebook of the Wildlife Board for taking big game.

(2) Management buck deer permits shall be distributed pursuant to rule R657-62 with thirty percent of the permits being allocated to youth, thirty percent to seniors and the remaining forty percent to hunters of all ages.

(3) Management buck deer permit holders may take one management buck deer during the season, in the area and with the weapon type specified on the permit. Management buck deer hunting seasons, areas and weapon types are published in the guidebook of the Wildlife Board for taking big game.

(4)(a) A person who has obtained a management buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management buck deer.

(b) Management buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(5)(a) Management buck deer permit holders who successfully harvest a management buck deer, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the deer they harvest to a division office for inspection within 48 hours after the date of kill.

(6) Management buck deer permit holders may not retain possession of any harvested buck deer that fails to satisfy the definition requirements in Subsection (1)(a).

(7) A person who has obtained a management buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except as provided in Section R657-5-27.

R657-5-47. Cactus Buck Deer Hunt.

(1) For the purposes of this section "cactus buck" means a buck deer with velvet covering at least 50% of the antlers during the season dates established by the Wildlife Board for a cactus buck deer hunt.

(2)(a) Cactus buck deer permit holders may take one cactus buck deer during the season, in the area, and with the weapon type specified on the permit.

(b) Cactus buck deer hunting seasons, areas and weapon types are published in the guidebooks of the Wildlife Board for taking big game.

(3)(a) A person who has obtained a cactus buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, regardless of whether the permit holder was successful or unsuccessful in harvesting a cactus buck deer.

(b) Cactus buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(4)(a) Cactus buck deer permit holders who successfully harvest a cactus buck deer, as defined in Subsection (1)(a), must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the deer they harvest to a division office for inspection within 48 hours after the date of harvest.

(5) Cactus buck deer permit holders may not retain possession of any harvested buck deer that fails to satisfy the definition requirements in Subsection (1).

(6) A person who has obtained a cactus buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except as provided in Section R657-5-27.

R657-5-48. Hunter Orange Exceptions.

(1) A person shall wear a minimum of 400 inches of hunter orange material on the head, chest, and back while hunting any species of big game, with the following exceptions:

(a) Hunters participating in a once-in-a-lifetime, statewide conservation, or statewide sportsmen hunt;

(b) Hunters participating in an archery or muzzleloader hunt outside of an area where an any weapon general season bull elk or any weapon general season buck deer hunt is occurring;

(c) Hunters hunting on a cooperative wildlife management unit unless otherwise required by the operator of the cooperative wildlife management units; and

(d) Hunters participating in a nuisance wildlife removal hunt authorized under a certificate of registration by the division.

KEY: wildlife, game laws, big game seasons
February 7, 2019 **23-14-18**
Notice of Continuation October 5, 2015 **23-14-19**
23-16-5
23-16-6

R657. Natural Resources, Wildlife Resources.
R657-9. Taking Waterfowl, Wilson's Snipe and Coot.
R657-9-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Wilson's snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(b) "Baiting" means the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory games birds to, on, or over any areas where hunters are attempting to take them.

(c) "CFR" means the Code of Federal Regulations.

(d) "Daily Bag Limit" means the maximum number of migratory game birds of a single species or combination (aggregate) of species permitted to be taken by one person in any one day during the open season in any one specified geographic area for which a daily bag limit is prescribed.

(e) "Dark geese" means the following species: cackling, Canada, white-fronted and brant.

(f) "Light geese" means the following species: snow, blue and Ross'.

(g) "Live decoys" means tame or captive ducks, geese or other live birds.

(h) "Off-highway vehicle" means any motor vehicle designed for or capable of travel over unimproved terrain.

(i) "Permanent waterfowl blind" means any waterfowl blind that is left unattended overnight and that is not a portable structure capable of immediate relocation.

(j) "Possession limit" the maximum number of migratory game birds of a single species or a combination of species permitted to be possessed by any one person when lawfully taken in the United States in any one specified geographic area for which a possession limit is prescribed.

(k) "Sinkbox" means any type of low floating device, having a depression, affording the hunter a means of concealment beneath the surface of the water.

(l) "Transport" means to ship, export, import or receive or deliver for shipment.

(m) "Waterfowl" means ducks, mergansers, geese, brant and swans.

(n) "Waterfowl blind" means any manufactured place of concealment, including boats, rafts, tents, excavated pits, or similar structures, which have been designed to partially or completely conceal a person while hunting waterfowl.

R657-9-3. Stamp Requirements.

(1) Any person 16 years of age or older may not hunt waterfowl without first obtaining a federal migratory bird hunting and conservation stamp, and having the stamp in possession.

(2) The stamp must be validated by the hunter's signature in ink across the face of the stamp.

(3) A federal migratory bird hunting and conservation stamp is not required for any person under the age of 16.

R657-9-4. Permit Applications for Swan.

(1) Swan permits will be issued pursuant to R657-62-22.

R657-9-5. Tagging Swans.

(1) The carcass of a swan must be tagged before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a swan after the notches have been removed from the tag or the tag has been detached from the permit.

R657-9-6. Return of Swan Harvest and Hunt Information.

(1) Swan permit holders who do not hunt or are unsuccessful in taking a swan must respond to the swan questionnaire through the division's Internet address, or by telephone, within 30 calendar days of the conclusion of the prescribed swan hunting season.

(2) Within three days of harvest, swan permit holders successful in taking a swan must personally present the swan or its head for measurement to the division or the Bear River Migratory Bird Refuge and further provide all harvest information requested by the division or Refuge.

(3) Hunters who fail to comply with the requirements of Subsections (1) or (2) shall be ineligible to:

(a) obtain a swan permit the following season; and

(b) obtain a swan permit after the first season of ineligibility until the swan orientation course is retaken.

(4) late swan questionnaires may be accepted pursuant to Rule R657-42-9(3). Swan permit holders are still required to present the swan or its head for measurement to a division office.

R657-9-7. Authorized Weapons.

(1) Migratory game birds may be taken with a shotgun, crossbow or archery tackle, including a draw lock.

(2) Migratory game birds may not be taken with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive or stupefying substance.

(3) Migratory game birds may not be taken with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells, except as authorized by the Wildlife Board and specified in the guidebook of the Wildlife Board for taking Waterfowl, Wilson's snipe and Coot.

R657-9-8. Nontoxic Shot.

(1) Only nontoxic shot may be in possession or used while hunting waterfowl and coot.

(2) A person may not possess or use lead shot:

(a) while hunting waterfowl or coot in any area of the state;

(b) on federal refuges;

(c) on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadow, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart's Lake, Timpie Springs; or

(d) on the Scott M. Matheson or Utah Lake wetland preserve.

R657-9-9. Use of Weapons on State Waterfowl Management Areas.

(1) A person may not discharge a firearm, crossbow, or archery tackle on the Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt

Creek, Stewart's Lake, Timpie Springs and Topaz Waterfowl Management areas during any time of the year, except:

(a) the use of authorized weapons as provided in Utah Admin. Code R657-9-7 during waterfowl hunting seasons for lawful hunting activities;

(b) as otherwise authorized by the Division in special use permit, certificate of registration, administrative rule, proclamation, or order of the Wildlife Board; or

(c) for lawful purposes of self-defense.

R657-9-10. Airborne, Terrestrial, and Aquatic Vehicles.

Migratory game birds may not be taken:

(1) from or by means of any motorboat or other craft having a motor attached, or sailboat unless the motor has been completely shut off or sails furled and its progress has ceased: provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power; or

(2) by means or aid of any motor driven land, water or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying or stirring up of any migratory bird.

R657-9-11. Airboats.

(1) Air-thrust or air-propelled boats and personal watercraft are not allowed in designated parts of the following areas for the purposes of waterfowl hunting:

(a) Box Elder County: Box Elder Lake, Bear River, that part of Harold S. Crane within one-half mile of all dikes and levees, Locomotive Springs, Public Shooting Grounds and Salt Creek, that part of Bear River Migratory Bird Refuge north of "D" line dike, and outside Units 1, 3, 4 and 5 as posted.

(b) Daggett County: Brown's Park

(c) Davis County: Howard Slough, Ogden Bay and Farmington Bay within diked units or as posted

(d) Emery County: Desert Lake

(e) Millard County: Clear Lake, Topaz Slough

(f) Tooele County: Timpie Springs

(g) Uintah County: Stewart's Lake

(h) Utah County: Powell Slough

(i) Wayne County: Bicknell Bottoms

(j) Weber County: Ogden Bay within diked units or as posted and the portion of Harold S. Crane Waterfowl Management Area that falls within the county line.

(2) "Personal watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

R657-9-12. Motorized Vehicle Access.

(1) "Motorized vehicle" for the purposes of this section means a vehicle that is self-propelled or possesses the ability to be self-propelled. This does not include vehicles moved solely by human power, motorized wheelchairs, or an electric personal assisted mobility device.

(2) Motorized vehicle travel is restricted to county roads, improved roads and parking areas.

(3) Off-highway vehicles are not permitted on state waterfowl management areas, except as marked and posted open.

(4) Off-highway vehicles are not permitted on Bear River Migratory Bird Refuge.

(5) Motorized boat use is restricted on waterfowl management areas as specified in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

(6) Electric-assisted bicycles propelled in part by electrical assistance are only permitted on state waterfowl management areas if they meet the Class 1 definition provided in Utah Code Subsection 41-6a-102(8) and (17).

R657-9-13. Sinkbox.

A person may not take migratory game birds from or by means, aid, or use of any type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water.

R657-9-14. Live Decoys.

A person may not take migratory game birds with the use of live birds as decoys or from an area where tame or captive live ducks or geese are present unless such birds are and have been, for a period of ten consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

R657-9-15. Amplified Bird Calls.

A person may not use recorded or electrically amplified bird calls or sounds or recorded or electronically amplified imitations of bird calls or sounds except as authorized by the Wildlife Board and specified in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-16. Baiting.

(1) A person may not take migratory game birds by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

(a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(ii) from a blind or other place of concealment camouflaged with natural vegetation;

(iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any migratory game bird, except waterfowl, coots and cranes, is legal on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

R657-9-17. Possession During Closed Season.

No person shall possess any freshly killed migratory game birds during the closed season.

R657-9-18. Live Birds.

(1) Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed and become part of the daily bag limit.

(2) No person shall at any time, or by any means possess or transport live migratory game birds.

R657-9-19. Waste of Migratory Game Birds.

(1) A person may not waste or permit to be wasted or

spoiled any protected wildlife or any part of them.

(2) No person shall kill or cripple any migratory game bird pursuant to this rule without making a reasonable effort to immediately retrieve the bird and include it in that person's daily bag limit.

R657-9-20. Termination of Possession.

Subject to all other requirements of this part, the possession of birds taken by any hunter shall be deemed to have ceased when the birds have been delivered by the hunter to another person as a gift; to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or common carrier to some person other than the hunter.

R657-9-21. Tagging Requirement.

(1) No person shall put or leave any migratory game bird at any place other than at that person's personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transporting or storing, including temporary storage, or for the purpose of having taxidermy services performed unless there is attached to the birds a disposal receipt, donation receipt or transportation slip signed by the hunter stating the hunter's address, the total number and species of birds, the date such birds were killed and the Utah hunting license number under which they were taken.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

R657-9-22. Donation or Gift.

No person may receive, possess or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunter's address, the total number and species of birds taken, the date such birds were taken and the Utah hunting license number under which taken.

R657-9-23. Custody of Birds of Another.

No person may receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by Section R657-9-21.

R657-9-24. Species Identification Requirement.

No person shall transport within the United States any migratory game birds unless the head or one fully feathered wing remains attached to each bird while being transported from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.

R657-9-25. Marking Package or Container.

(1) No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers and kinds of species of birds contained therein clearly and conspicuously marked on the outside thereof.

(2) A Utah shipping permit obtained from the division must accompany each package shipped within or from Utah.

R657-9-26. Migratory Bird Preservation Facilities.

(1) Migratory bird preservation facility means:

(i) Any person who, at their residence or place of business and for hire or other consideration; or

(ii) Any taxidermist, cold-storage facility or locker plant which, for hire or other consideration; or

(iii) Any hunting club which, in the normal course of operations; receives, possesses, or has in custody any migratory game birds belonging to another person for purposes of picking, cleaning, freezing, processing, storage or shipment.

(2) No migratory bird preservation facility shall:

(a) receive or have in custody any migratory game bird unless accurate records are maintained that can identify each bird received by, or in the custody of, the facility by the name of the person from whom the bird was obtained, and show:

(i) the number of each species;

(ii) the location where taken;

(iii) the date such birds were received;

(iv) the name and address of the person from whom such birds were received;

(v) the date such birds were disposed of; and

(vi) the name and address of the person to whom such birds were delivered; or

(b) destroy any records required to be maintained under this section for a period of one year following the last entry on record.

(3) Record keeping as required by this section will not be necessary at hunting clubs that do not fully process migratory birds by removal of the head and wings.

(4) No migratory bird preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried out.

R657-9-27. Importation.

A person may not:

(1) import migratory game birds belonging to another person; or

(2) import migratory game birds in excess of the following importation limits:

(a) From any country except Canada and Mexico, during any one calendar week beginning on Sunday, not to exceed 10 ducks, singly or in the aggregate of all species, and five geese including brant, singly or in the aggregate of all species;

(b) From Canada, not to exceed the maximum number to be exported by Canadian authorities;

(c) From Mexico, not to exceed the maximum number permitted by Mexican authorities in any one day: provided that if the importer has his Mexican hunting permit date-stamped by appropriate Mexican wildlife authorities on the first day he hunts in Mexico, he may import the applicable Mexican possession limit corresponding to the days actually hunted during that particular trip.

R657-9-28. Use of Dogs.

(1) An individual may not use or permit a dog to harass, pursue, or take protected wildlife unless otherwise allowed for in the Wildlife Code, administrative rules issued under Wildlife Code, or a guidebook of the Wildlife Board.

(2) Dogs may be used to locate and retrieve turkey during open turkey hunting seasons.

(3) Dogs are generally allowed on state wildlife management and waterfowl management areas, subject to the following conditions.

(a) Dogs are not allowed on the following state wildlife management areas and waterfowl management areas between March 10 and August 31 annually or as posted by the Division:

(i) Annabella;

(ii) Bear River Trenton Property Parcel;

(iii) Bicknell Bottoms;

(iv) Blue Lake;

(v) Browns Park;

(vi) Bud Phelps;

(vii) Clear Lake;

(viii) Desert Lake;

(ix) Farmington Bay;

(x) Harold S. Crane;

(xi) Hatt's Ranch
(xii) Howard Slough;
(xiii) Huntington;
(xiv) James Walter Fitzgerald;
(xv) Kevin Conway;
(xvi) Locomotive Springs;
(xvii) Manti Meadows;
(xviii) Mills Meadows;
(xix) Montes Creek;
(xx) Nephi;
(xxi) Ogden Bay;
(xxii) Pahvant;
(xxiv) Public Shooting Grounds;
(xxv) Redmond Marsh;
(xxvi) Richfield;
(xxvii) Roosevelt;
(xxviii) Salt Creek;
(xxix) Scott M. Matheson Wetland Preserve;
(xxx) Steward Lake;
(xxxi) Timpie Springs;
(xxxii) Topaz Slough;
(xxxiii) Vernal; and
(xxxiv) Willard Bay.

(b) The Division may establish special restrictions for Division-managed properties, such as on-leash requirements and temporary or locational closures for dogs, and post them at specific Division properties and at Regional offices;

(c) Organized events or group gatherings of twenty-five (25) or more individuals that involve the use of dogs, such as dog training or trials, that occur on Division properties may require a special use permit as described in R657-28; and

(d) Dog training may be allowed in designated areas on Lee Kay Center and Willard Bay WMA by the Division without a special use permit.

R657-9-29. Season Dates and Bag and Possession Limits.

(1) Season dates and bag and possession limits are specified in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

(2) A youth duck hunting day may be allowed for any person 17 years of age or younger on July 31st of the year in which the youth hunting day is held, as provided in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-30. Rest Areas and No Shooting Areas.

(1) A person may only access and use state waterfowl management areas in accordance with state and federal law, state administrative code, and proclamations of the Wildlife Board.

(2)(a) The division may establish portions of state waterfowl management areas as "rest areas" for wildlife that are closed to the public and trespass of any kind is prohibited.

(b) In addition to any areas identified in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe, and coot, the following areas are designated as rest areas:

(i) That portion of Clear Lake Waterfowl Management Area known as Spring Lake;

(ii) That portion of Desert Lake Waterfowl Management Area known as Desert Lake;

(iii) That portion of Public Shooting Grounds Waterfowl Management Area that lies above and adjacent to the Hull Lake Diversion Dike known as Duck Lake;

(iv) That portion of Salt Creek Waterfowl Management Area known as Rest Lake;

(v) That portion of Farmington Bay Waterfowl Management Area that lies in the northwest quarter of unit one; and

(iv) That portion of Ogden Bay Waterfowl Management Area known as North Bachman.

(c) Maps of all rest areas will be available at division offices, on the division's website, and to the extent necessary, marked with signage at each rest area.

(3)(a) The division may establish portions of state waterfowl management areas as "No Shooting Areas" where the discharge of weapons for the purposes of hunting is prohibited.

(b) No Shooting Areas remain open to the public for other lawful activities.

(c) In addition to any areas identified in the proclamation of the Wildlife Board for taking waterfowl, Wilson's snipe, and coot, the following areas are No Shooting Areas:

(i) All of Antelope Island, including all areas within 600 feet of the upland vegetative line or other clearly defined high water mark;

(ii) Within 600 feet of the north and south side of the center line of Antelope Island causeway;

(iii) Within 600 feet of all structures found at Brown's Park Waterfowl Management Area;

(iv) The following portions of Farmington Bay Waterfowl Management Area:

(A) within 600 feet of the Headquarters;

(B) within 600 feet of dikes and roads accessible by motorized vehicles; and

(C) within the area designated as the Learning Center.

(v) Within 600 feet of the headquarters area of Ogden Bay Waterfowl Management Area;

(vi) Within the boundaries of all State Parks except those designated open by appropriate signage as provided in Rule R651-614-4;

(vii) Within 1/3 of a mile of the Great Salt Lake Marina;

(viii) Below the high-water mark of Gunnison Bend Reservoir and its inflow upstream to the Southerland Bridge, Millard County;

(xi) All property within the boundary of the Salt Lake International Airport; and

(x) All property within the boundaries of federal migratory bird refuges, unless hunting waterfowl specifically authorized by the federal government.

(4) The division reserves the right to manage division lands and regulate their use consistent with Utah Code Section 23-21-7 and Utah Administrative Code R657-28.

R657-9-31. Shooting Hours.

(1) A person may not hunt, pursue, or take wildlife, or discharge any firearm or archery tackle on state-owned lands adjacent to the Great Salt Lake, on division-controlled waterfowl management areas, or on federal refuges between official sunset and one-half hour before official sunrise.

(2) Legal shooting hours for taking or attempting to take waterfowl, Wilson's snipe, and coot are provided in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-32. Falconry.

(1) Falconers must obtain a valid hunting or combination license, a federal migratory bird stamp and a falconry certificate of registration to hunt waterfowl.

(2) Areas open and bag and possession limits for falconry are specified in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

R657-9-33. Migratory Game Bird Harvest Information Program (HIP).

(1) A person must obtain an annual Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person must call the telephone number published in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot, or register online at the address

published in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot to obtain their HIP registration number.

(b) A person must write their HIP registration number on their current year's hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

(a) hunting license number;

(b) hunting license type;

(c) name;

(d) address;

(e) phone number;

(f) birth date; and

(g) information about the previous year's migratory bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory birds will be required, while in the field, to prove that they have registered and provided information for the HIP program.

R657-9-34. Waterfowl Blinds on Waterfowl Management Areas.

(1) Waterfowl blinds on division waterfowl management areas may be constructed or used as provided in Subsection (a) through Subsection (e).

(a) Waterfowl blinds may not be left unattended overnight, except for blinds constructed entirely of non-woody, vegetative materials that naturally occur where the blind is located.

(b) Trees and shrubs on waterfowl management areas that are live or dead standing may not be cut or damaged except as expressly authorized in writing by the division.

(c) Excavating soil or rock on waterfowl management areas above or below water surface is strictly prohibited, except as expressly authorized in writing by the division.

(d) Rock and soil material may not be transported to waterfowl management areas for purposes of constructing a blind.

(e) Waterfowl blinds may not be constructed or used in any area or manner, which obstructs vehicular or pedestrian travel on dikes.

(2) The restrictions set forth in Subsection (1)(a) through Subsection (1)(c) do not apply to the following waterfowl management areas:

(a) Farmington Bay Waterfowl Management Area - West and North of Unit 1, Turpin Unit, and Doug Miller Unit.

(b) Howard Slough Waterfowl Management Area - West and South of the exterior dike separating the waterfowl management area's fresh water impoundments from the Great Salt Lake.

(c) Ogden Bay Waterfowl Management Area - West of Unit 1, Unit 2, and Unit 3.

(d) Harold Crane Waterfowl Management Area - one half mile North and West of the exterior dike separating the waterfowl management area's fresh water impoundments from Willard Spur.

(3) Waterfowl blinds constructed or maintained on waterfowl management areas in violation of this section may be removed or destroyed by the division without notice.

(4) Any unoccupied, permanent waterfowl blind located on state land open to public access for hunting may be used by any person without priority to the person that constructed the blind. It being the intent of this rule to make such blinds available to any person on a first-come, first-serve basis.

(5) Waterfowl blinds or decoys cannot be left unattended overnight on state land open to public access for hunting in an effort to reserve the particular location where the blinds or decoys are placed.

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R657. Natural Resources, Wildlife Resources.
R657-38. Dedicated Hunter Program.
R657-38-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18, this rule provides the standards and requirements for qualified deer hunters to participate in the Dedicated Hunter Program by obtaining a certificate of registration.

(2) The Dedicated Hunter Program is a program that:

(a) provides expanded hunting opportunities;

(b) requires participation in wildlife conservation projects; and

(c) provides educational training in hunter ethics and wildlife management principles.

R657-38-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Dedicated Hunter Permit" means a general buck deer permit issued to a participant in the Dedicated Hunter Program, which authorizes the participant to hunt deer during the general archery, general muzzleloader and general any weapon open seasons in the hunt area specified on the permit.

(b) "Division" means the Utah Division of Wildlife Resources.

(c) "Hunt area" means an area prescribed by the Wildlife Board where general archery, general muzzleloader and general any legal weapon buck deer hunting is open to permit holders for taking deer.

(d) "Participant" means a person who has remitted the appropriate fee and has been issued a Dedicated Hunter certificate of registration.

(e) "Program" means the Dedicated Hunter Program

(f) "Program harvest" means using a Dedicated Hunter permit to tag a harvested deer or failing to return a Dedicated Hunter permit with the kill tag attached, while enrolled in the program.

(g) "Wildlife conservation project" means any project that provides wildlife habitat protection or enhancement, improves public hunting or fishing access, or directly benefits wildlife or the Division's current needs and is pre-authorized by the Division.

R657-38-3. Dedicated Hunter Certificates of Registration.

(1)(a) To participate in the program, a person must apply for, be issued, and sign a Dedicated Hunter certificate of registration as prescribed by the Division.

(b) Certificates of registration are issued by the Division through a drawing as prescribed in the guidebook of the Wildlife Board for taking big game and R657-62.

(c) Certificates of registration are valid for three consecutive years, except as provided by R657-38-10 and R657-38-13, beginning on the date the big game drawing results are released and ending on the last day of the general season hunt for the third year of enrollment.

(d) The quantity of Dedicated Hunter certificates of registrations is limited to 15 percent of the total annual general season buck deer quota for each respective hunt area.

(e) Certificates of registration remaining unissued from the Dedicated Hunter portion of the big game drawing shall be redistributed as general single-season permits for their respective hunt areas in the general buck deer drawing.

(2) The Division may deny issuance of a Dedicated Hunter certificate of registration for any of the reasons identified as a basis for suspension in Section 23-19-9(7) and R657-38-15.

(3)(a) A certificate of registration conditionally authorizes the participant to obtain a Dedicated Hunter permit which may be used to hunt deer within the area listed on the permit, during the general archery, general muzzleloader and general any legal weapon buck deer seasons according to the dates and boundaries established by the Wildlife Board.

(b) When available, the certificate of registration may also authorize the permit to include the general deer archery extended area during the extended season dates.

(c) The person must use the appropriate weapon type specified by each season and boundary.

(4) The participant's hunt area, as issued through the drawing, shall remain the same for the entire duration of that program enrollment period.

(5) Participants in the program shall be subject to any changes subsequently made to this or other rules during the term of enrollment.

R657-38-4. Applications for Certificates of Registration.

(1) Applications to obtain a Dedicated Hunter certificate of registration are made pursuant to R657-62-16.

(2) To apply for a Dedicated Hunter certificate of registration, applicants must:

(a) have a valid Utah hunting or combination license;

(b) meet all age, hunter education, and license requirements in Sections 23-19-11, 23-19-22, 23-19-24, and 23-19-26 and in applicable rules, except that:

(i) A person 11 years of age may apply for and obtain a Dedicated Hunter certificate of registration if that person's twelfth birthday falls in the calendar year the certificate is issued; and

(ii) a person may not hunt big game prior to their twelfth birthday; and

(c) be compliant with the restrictions in Subsection (2).

(3) A person under any wildlife suspension may not apply for a certificate of registration until their suspension period has ended.

R657-38-5. Dedicated Hunter Preference Point System.

Dedicated Hunter Preference points are issued pursuant to R657-62-10.

R657-38-6. Fees.

(1) Any person who is 17 years of age or younger on July 31 of the application year shall pay the youth participant fees.

(2) Any person who is 18 years of age or older on July 31 of the application year, or is a Lifetime License holder, shall pay the associated participant fees.

(3)(a) A participant who enters the program as a Utah resident and thereafter becomes a nonresident shall be changed to a nonresident status and may be issued nonresident permits for the remainder of the enrollment period.

(i) No additional fee shall be applied to the nonresident certificate of registration or its respective permits following this change.

(5)(a) A participant who enters the program as a nonresident and thereafter becomes a Utah resident, shall be changed to a resident status and may be issued resident permits for the remainder of the enrollment period.

(i) No refund will be issued for the difference of the resident certificate of registration fee or its respective permits following this change.

R657-38-7. Refunds.

(1) A refund for the Dedicated Hunter certificate of registration may not be issued, except as provided in Sections 23-19-38 and 38.2 and R657-42.

(2) Any eligible refund of a certificate of registration fee may be issued pro rata, based on the number of years in which any portion of a hunt may have occurred during the enrollment period.

(3) Drawing application fees are nonrefundable.

(4) A refund shall not be issued under any circumstance if a participant's harvest record indicates two program harvests.

R657-38-8. Wildlife Conservation and Ethics Course Requirement.

(1) After being issued a Dedicated Hunter certificate of registration and prior to obtaining the first Dedicated Hunter permit of the program, a participant must complete a wildlife conservation and ethics course as prescribed by the Division.

(2) The wildlife conservation and ethics course is available through the Division's Website.

(3) The Division shall keep a record of all participants who complete the wildlife conservation and ethics course as required by Utah law.

R657-38-9. Service Hour Requirement.

(1)(a) A participant must complete the minimum annual required service hours as a volunteer on Division -approved wildlife conservation projects in order to obtain a Dedicated Hunter permit.

(b) A participant must complete a minimum of 8 service hours prior to receiving a Dedicated Hunter permit in the first year of the program.

(c) A participant must complete a minimum total of 24 service hours prior to receiving a Dedicated Hunter permit in the second year of the program.

(d) A participant must complete a minimum total of 32 service hours prior to receiving a Dedicated Hunter permit in the third year of the program.

(e) If the participant has two program harvests, the full 32 hours must be completed prior to the expiration of the certificate of registration.

(f) If a participant having two program harvests fails to complete the required hours of service prior to expiration of the certificate of registration, the participant is ineligible to apply for or obtain any Utah hunting license or permit until the remaining service hours have been completed.

(g) After a certificate of registration has expired, incomplete service hours may be completed through Division approved projects or by payment at the established purchase rate.

(2) A participant who has not been issued any Dedicated Hunter permits during the enrollment shall not be required to complete the service hour requirement.

(3)(a) Residents and nonresidents may complete service hour requirements through service, purchase, or a combination of the two options.

(b) Wildlife conservation projects may be provided by the Division, or any other individual or entity, but must be pre-approved by the Division.

(c) Goods or services donated to the Division by a participant may be, at the discretion of the Division, substituted for service hours based upon current market values or comparative state contract rates for the goods or services, and the approved service hour purchase rate.

(d) The Division shall publicize the dates, times, locations and description of approved wildlife conservation projects and activities on the Division's Website.

(4)(a) Service hours performed prior to an enrollment shall not be accepted as service credit.

(b) Service hours exceeding the minimum requirement shall not be applicable beyond the enrollment period and shall not be credited to any subsequent certificate of registration.

(5)(a) Participants are required to perform their own service hours.

(b) Service hours are not transferrable to other participants or certificates of registration.

R657-38-10. Certificate of Registration Extension.

(1)(a) A participant who is a member of the United States Armed Forces or public safety organization that is mobilized or deployed on orders in the interest of national defense or declared state of emergency while enrolled in the program may request a one-year program extension if:

(i) the person is mobilized or deployed for a minimum period of three consecutive months; or

(ii) the participant is mobilized or deployed during the general buck deer season.

(b) The participant must provide evidence of the mobilization or deployment period and that the mobilization or deployment precluded the participant from using the Dedicated Hunter permit.

(c) An extension may not be granted if the participant hunted during the general deer season.

(d) If an extension is granted due to mobilization or deployment:

(i) the minimum annual program requirements shall be postponed into the subsequent year of the enrollment;

(ii) a permit will not be issued in the year the qualifying mobilization or deployment occurs.

(2)(a) A person who is enrolled in the program and obtains a limited entry buck deer permit through the Utah Big Game drawing or accepts a poaching reported reward limited entry buck deer permit, may request the Dedicated Hunter program enrollment period be extended one additional year.

(b) The extension request must be received by the Division before the established deadline, as published on the Division's website.

(c) An extension is not available to participants who have two program harvests.

R657-38-11. Allowable Harvest and Permit Return Requirements.

(1)(a) A program participant may take a maximum of two general season deer within the enrollment period. Only one deer may be harvested in a single year.

(b) The harvest of an antlerless deer using a Dedicated Hunter permit, when permissible in the extended archery areas and seasons established in the big game guidebook, shall be considered a program harvest.

(2) Upon issuance of a Dedicated Hunter permit, the participant is credited with a program harvest.

(a) Two program harvests are allowed within an enrollment period.

(b) If program harvests accrue during the first year and second year of the enrollment, a permit shall not be issued for the third year.

(c) In order to remove a program harvest credit, the participant must:

(i) not have harvested a deer with the Dedicated Hunter permit; and

(ii) return the permit with the attached tag, or a qualifying affidavit as proof of non-harvest to a Division office. A handling fee and notarization may be required for processing an affidavit.

R657-38-12. Dedicated Hunter Permits.

(1)(a) Pursuant to Sections 23-19-24 and 23-19-26 person must have a valid Utah hunting or combination license to apply for or obtain a big game permit.

(b) Except as provided in subsection (c), a permit may not be issued if the participant does not possess a valid hunting or combination license at the time of permit issuance.

(c) A valid hunting or combination license is not required to obtain a permit in the first year of the enrollment period, provided the participant possessed a valid license when applying for the Dedicated Hunter certificate of registration.

(2) The participant must have a valid Dedicated Hunter permit in possession while hunting.

(3) Upon completion of the minimum annual requirements, a Dedicated Hunter permit may be issued as

published on the Division's website.

(4) The Division may exclude multiple season opportunities on specific management units, or may close or reduce a season on part or all of a management unit, when in the interest of the wildlife resource or as necessary for the Division to accomplish its management objectives.

(5)(a) The Division may issue a duplicate Dedicated Hunter permit pursuant to Section 23-19-10.

(b) If a participant's unused Dedicated Hunter permit and tag is destroyed, lost, or stolen prior to, or during the hunting season in which the permit is valid, a participant may obtain a duplicate after paying the associated handling fee.

(c) A duplicate Dedicated Hunter permit shall not be issued after the closing date of the general buck deer season.

(6)(a) A participant may surrender a Dedicated Hunter permit in accordance with Rule R657-42.

(b) A participant may not surrender a Dedicated Hunter permit after the earliest season allowed by the permit has begun, unless the Division can verify that the permit was never in the participant's possession.

(7)(a) Lifetime license holders may participate in the program.

(b) A lifetime license holder shall apply for a certificate of registration in the same manner as all other prospective participants.

(c) A lifetime license holder participating in the program agrees to forego any rights to receive a lifetime license buck deer permit as provided in Section 23-19-17.5 while enrolled in the program and until all outstanding service hours owed from a period of enrollment are complete.

(d) A refund or credit is not issued for a forgone lifetime license permit.

R657-38-13. Obtaining Other Permits.

(1)(a) Participants may not apply for or obtain any other Utah general season buck deer permit, including general landowner buck deer permits, or respective preference points issued by the Division through the big game drawing, license agents, over-the-counter sales, or the internet during an enrollment period in the program.

(b) Any other Utah general season deer permit obtained is invalid and must be surrendered prior to the beginning season date for that permit.

(c) Refunds for surrendered permits are governed by Sections 23-19-38 and 38.2 and R657-42.

(2)(a) Participants may apply for or obtain a limited entry buck deer permit, including CWMU, limited entry landowner, conservation, expo, and poaching reported rewards permits.

(b) A limited entry buck deer permit may be obtained without completion of the annual program requirements but does not exempt the participant from fulfilling the minimum requirements of the enrollment.

(c) If the participant obtains a limited entry buck deer permit and has been issued a Dedicated Hunter permit, either the limited entry buck deer permit or the Dedicated Hunter permit must be surrendered as permissible by R657-38-12 and R657-42.

(d) A participant who obtains a limited entry buck deer permit may only use that permit in the prescribed area and season listed on the permit, but Dedicated Hunter privileges are not extended to that permit.

(e) A limited entry buck deer permit may not be obtained if the Dedicated Hunter permit has been issued and the general buck deer season has started.

(f) Harvest of a limited entry buck deer as permitted shall not be counted as a program harvest.

(3)(a) Participants may apply for or obtain antlerless deer permits as provided in Rule R657-5 and the guidebook of the Wildlife Board for taking big game.

(b) Except as provided in R657-38-11, harvest of an antlerless deer with an antlerless deer permit shall not be considered a program harvest.

R657-38-14. Certificate of Registration Surrender.

(1) A participant may request to withdraw from the Dedicated Hunter program by surrendering the Dedicated Hunter certificate of registration pursuant to R657-42, provided the participant does not have two program harvests within the enrollment period.

(2) A participant who has two program harvests during the program enrollment may not withdraw from the program and is required to complete the program minimum requirement of 32 service hours.

(3) The Division may reinstate preference point(s) for a participant successfully surrendering in the first year of the enrollment period, provided the surrender occurs prior to the start of the general deer season.

R657-38-15. Certificate of Registration Suspension.

(1) The Division may suspend a Dedicated Hunter certificate of registration pursuant to Section 23-19-9 and R657-26.

(2) A certificate of registration may also be suspended if the participant:

(a) fraudulently submits a time sheet for service hours; or

(b) fraudulently completes any of the program requirements; or

(c) is under a judicial or administrative order suspending any wildlife hunting or fishing privilege within Utah or elsewhere; or

(d) provides false information on the drawing application; or

(e) has violated the terms of any certificate of registration issued by the Division or an associated agreement.

(3) A Dedicated Hunter permit is invalid if a participant's certificate of registration is suspended.

(4) The program enrollment period shall not be extended in correlation with any suspension.

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R657. Natural Resources, Wildlife Resources.
R657-67. Utah Hunter Mentoring Program.
R657-67-1. Purpose and Authority.

Under the authority of Utah Code Annotated Sections 23-14-1, 23-14-3, 23-14-18, 23-14-19, and 23-19-1, this rule creates a hunting mentor program that will increase hunting opportunities for Utah families and provides the procedures under which a minor child may share the permit of another to take protected wildlife.

R657-67-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and this Subsection.

(2) "Hunting Mentor" means a Resident or Nonresident individual possessing a valid permit issued by the Division to take protected wildlife in Utah and who is 21 years of age or older at the time of application for the Mentor Program.

(3) "Qualifying Minor" means a Utah Resident who is under 18 at the time of application for the Mentor Program and who is otherwise eligible to lawfully hunt.

(4) "Wildlife document" means a permit to hunt protected wildlife or Division-issued authorization to share such a permit.

R657-67-3. Requirements for Sharing Permits.

(1) A Hunting Mentor may lawfully share a permit with a Qualifying Minor, and a Qualifying Minor may lawfully take protected wildlife authorized by the Hunting Mentor's permit, if the following conditions are satisfied:

(a) The Qualifying Minor has successfully completed a Hunter's Education Program recognized by the Division and possesses a Utah Hunter's Education number;

(b) The Hunting Mentor receives prior written approval by the Division authorizing the sharing of the permit;

(c) The Hunting Mentor receives no form of compensation or remuneration for sharing the permit with the Qualifying Minor;

(d) The Hunting Mentor accompanies the Qualifying Minor while hunting at a distance where the Hunting Mentor can communicate in person with the Qualifying Minor by voice or hand signals;

(e) The Hunting Mentor provides advice, assistance, and mentoring on sportsman ethics, techniques, and safety to the Qualifying Minor; and

(f) Both the Hunting Mentor and the Qualifying Minor otherwise comply with all laws, rules, and regulations governing the taking of protected wildlife as authorized by the permit.

(2) A Qualifying Minor does not need to possess a valid hunting or combination license to participate in the mentor program.

(3) A Hunting Mentor may name up to four individuals to mentor under a single permit.

(4)(a) A Qualifying Minor may only share one permit for each species and sex of protected wildlife per hunt year.

(b) A bobcat permit may only be shared under the Mentor Program if permit quotas are capped under the Bobcat Management Plan.

(c) A Qualifying Minor may not share a swan or sandhill crane permit possessed by a Hunting Mentor.

(5)(a) A Qualifying Minor may simultaneously possess a permit and share a permit for the same species and sex of protected wildlife.

(b) A Qualifying Minor simultaneously possessing a permit and an authorization to share a permit for the same species and sex of protected wildlife may harvest under both wildlife documents.

R657-67-4. Administrative Process for Sharing Permits.

(1) The Hunting Mentor shall submit a complete application for participation in the Mentor Program and receive the Division's written authorization prior to sharing a permit.

(2) A complete application for the mentor program includes the following:

(a) A handling fee as established by the Utah Legislature;

(b) The Permit Number that is to be shared;

(c) A physically identifying description of the Qualifying Minors;

(d) Each Qualifying Minor's hunter education number;

(e) Written authorization from the Qualifying Minor's parent or legal guardian approving their participation in the hunting activity; and

(f) any wildlife document(s) that must be surrendered in order to qualify for the Hunter Mentoring Program.

(3) If a Qualifying Minor must surrender a wildlife document in order to qualify for the Mentor Program, that surrender must be done prior to or at the time of their application to the Utah Hunter Mentoring Program as described in R657-67-6.

(4) If a Hunting Mentor wishes to change the Qualifying Minor with whom they share their permit, they must:

(a) Surrender the authorization issued to the Qualifying Minor by the Division;

(b) Reapply with the Division to have a new Qualifying Minor participate in the mentor program in the same manner as described in this Section.

R657-67-5. Sharing the Permit in the Field.

(1) While in the field, the Qualifying Minor must possess the Division-issued authorization to share in the use of the Hunting Mentor's permit.

(2) A Hunting Mentor may only mentor one Qualifying Minor in the field at a time.

(3) Only one Qualifying Minor and the Hunting Mentor may carry a legal weapon in the field.

(4) Protected wildlife taken by a Qualifying Minor shall be tagged with the Hunting Mentor's permit in the same manner as if the Hunting Mentor was the individual taking the animal.

(5) Take limitations and bag limits apply based upon the permit issued, and the issuance of written authorization to share the permit does not confer additional rights to take protected wildlife.

R657-67-6. Variances, Surrenders, Refunds, Special Accommodations, and Administrative Details.

(1) The surrender of a wildlife document shall generally be in accordance with R657-42-4.

(2) Notwithstanding R657-42-4, a Qualifying Minor may surrender a wildlife document in their possession as part of their application to participate in the Hunter Mentoring Program, consistent with the following:

(a) the timeframe for a Qualifying Minor to surrender a permit is defined in this Section;

(b) A Qualifying Minor may surrender a wildlife document obtained as part of a group application and have their bonus points or preference points reinstated and waiting period waived without requiring all group members to also surrender their permits; and

(c) A Qualifying Minor who wishes to surrender a wildlife document after the opening day of that hunt may only do so if:

(i) they did not hunt under the authorization of that wildlife document; and

(ii) their legal guardian submits a signed affidavit certifying that the Qualifying Minor did not hunt under that wildlife document.

(4) All variances, refunds, and accommodations for people with disabilities shall be based on the type of permit that is shared and the individual using the wildlife document.

(5) All bonus points, reference points, and waiting periods shall be assessed to the Hunting Mentor.

KEY: wildlife, game laws, hunter education
February 7, 2018
Notice of Continuation February 4, 2019

23-14-1
23-14-3
23-14-18
23-14-19
23-19-1

R698. Public Safety, Administration.
R698-4. Certification of the Law Enforcement Agency of a Private College or University.
R698-4-1. Purpose.

Subsection 53-13-103(1)(b)(xi) provides that the members of a law enforcement agency of a private college or university may be law enforcement officers provided the law enforcement agency of the college or university has been certified by the commissioner of public safety in accordance with rules of the Department of Public Safety (department). The purpose of this rule is to establish the criteria the law enforcement agency of a private college or university must meet in order to be certified.

R698-4-2. Authority.

This rule is authorized by Subsection 53-13-103(1)(b)(xi).

R698-4-3. Application for Certification.

The law enforcement agency of a private university or college wishing to be certified shall make written application for certification to the commissioner of public safety.

R698-4-4. Criteria for Certification.

The following criteria must be met in order for the law enforcement agency of a private college or university to be eligible for certification:

(1) In accordance with Subsections 53-6-202(4)(a) and 53-6-205(1)(a), the law enforcement agency's officers must successfully complete the basic course at a certified academy, or successfully pass a state certification examination prior to exercising peace officer authority.

(2) The law enforcement agency must pay for the cost of the basic course training received by it's officers.

(3) In accordance with Subsection 53-6-202(4)(a), the law enforcement agency's officers must satisfactorily complete annual certified training of not less than 40 hours.

(4) The law enforcement agency's officers shall be subject to all of the requirements of Title 53, Chapter 6, Part 2.

(5) The law enforcement agency's officers may exercise peace officer authority beyond the geographical limits of the private college or university only in accordance with Section 77-9-3.

(6) The law enforcement agency's policy and procedure manual shall include a provision requiring it's officers to comply with Section 77-9-3.

(7) The law enforcement agency's policy and procedure manual shall include a provision requiring it's officers to comply with the Law Enforcement Code of Ethics as published by the International Association of Chiefs of Police in the "Police Chief Magazine" (1992).

(8) The law enforcement agency shall comply with the reporting requirements of the statewide crime reporting system established by the department pursuant to Subsection 53-10-202(2).

(9) The private college or university sponsoring the law enforcement agency must be currently accredited by an appropriate accreditation agency recognized by the United States Department of Education.

R698-4-5. Denial or Revocation of Certification Status.

(1) Certification of the law enforcement agency of a private college or university may be denied or revoked for failure to meet the certification criteria set forth in this rule.

(2) Action to deny or revoke a certification shall be considered a formal adjudicative proceeding in accordance with the Administrative Procedures Act, Title 63, Chapter 46b.

(3) A private college or university which is denied certification, or which is notified that the commissioner of public safety intends to revoke its certification, is entitled to a formal hearing before the commissioner or the commissioner's designee.

KEY: colleges, law enforcement officer certification
March 5, 1999 53-13-103(1)(b)(xi)
Notice of Continuation February 14, 2019

R698. Public Safety, Administration.
R698-5. State Hazardous Chemical Emergency Response Commission Advisory Committee.
R698-5-1. Purpose.

This rule provides the procedures for establishing a state hazardous chemical emergency response commission advisory committee, the creation, modification or dissolving of local emergency planning committees, and supervising the overall planning and direction of the local emergency planning committees.

R698-5-2. Authority.

This rule is required by Subsection 53-2a-702(2).

R698-5-3. Definitions.

(1) "EPCRA" means Emergency Planning and Community Right-to-Know Act of 1986.

(2) "LEPC" means Local Emergency Planning Committee.

(3) "SERC" means State Hazardous Chemical Emergency Response Commission.

(4) "SERC Advisory Committee" means State Hazardous Chemical Emergency Response Commission Advisory Committee.

(5) "Tier II chemical inventory report" means a report required to be submitted to the LEPC under Section 312 of the Emergency Planning and Community Right-to-Know Act, which was enacted as Title III of the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 42 U.S.C. Section 11022.

R698-5-4. State Hazardous Chemical Emergency Response Commission Advisory Committee.

(1) There is created by the Department of Public Safety, the State Hazardous Chemical Emergency Response Commission Advisory Committee.

(2) The SERC Advisory Committee's duties are to provide direction to the SERC in the following matters:

(a) the creation, modification or dissolving of local emergency planning committees;

(b) methods and procedures to improve the effectiveness of the LEPC;

(c) the review of LEPC hazardous materials emergency response plans;

(d) the development of procedures for collection, processing, use and public access to information submitted as required by EPCRA;

(e) procedures for the distribution of funding to each LEPC obtained through the US Department of Transportation Hazardous Materials Emergency Preparedness Grant;

(f) hazardous materials emergency response planning efforts; and,

(g) the review of the State Emergency Operations Plan, Emergency Support Function 10 -- Hazardous Materials Annex.

(3) The SERC Advisory Committee's members shall be appointed by the SERC, shall serve four year terms, and shall consist of the following members:

(a) A member representing the hazardous chemical transportation industry.

(b) Two members representing fixed site regulated industries.

(c) A member representing the environmental cleanup contractors.

(d) A member representing the local health departments.

(e) A member representing the urban LEPC.

(f) A member representing the rural LEPC.

(g) A member representing the Hazardous Materials Advisory Council.

(h) A member representing established environmental interest groups.

(i) A member representing the Utah National Guard.

(j) A member representing the Utah Highway Patrol.

(k) A member representing the Utah Department of Transportation.

(l) Two members from the general public.

(4) The SERC Advisory Committee shall meet quarterly or as directed, and a majority of the members shall be present to constitute a quorum.

(5)(a) The SERC Advisory Committee shall select one of its members to act in the position of chair, and another member to act as vice chair.

(b) Elections for chair and vice chair shall occur every two years at the meeting conducted in the fourth quarter of the calendar year.

(c) The chair and vice chair shall serve a two year term beginning in January following the election.

(d) The past chair shall continue to serve on the SERC Advisory Committee for a two year term.

(6) If a SERC Advisory Committee member has two or more unexcused absences during a 12 month period, from regularly scheduled meetings, it is considered grounds for dismissal pending review by the SERC.

(7) A member of the SERC Advisory Committee that cannot be in attendance may:

(a) have a representative of their respective organization attend and vote by proxy for that member; or

(b) have another SERC Advisory Committee member vote by proxy, if submitted and approved by the chair prior to the meeting.

(8)(a) The chair or vice chair of the SERC Advisory Committee shall report to the SERC the activities of the SERC Advisory Committee at regularly scheduled SERC meetings; or

(b) a member of the SERC Advisory Committee may report to the SERC the activities of the SERC Advisory Committee in the absence of the Chair or Vice Chair.

(9) The SERC Advisory Committee shall:

(a) consider all subjects presented to them;

(b) consider subjects assigned to them by the SERC; and

(c) report their recommendations to the SERC at scheduled SERC meetings.

(10) One-half of the members of the SERC Advisory Committee shall be reappointed or replaced by the SERC every two years.

(11) When a vacancy occurs in the SERC Advisory Committee, a replacement shall be appointed by the SERC to complete the remainder of the term.

R698-5-5. Local Emergency Planning Committee.

(1) The creation, modification or dissolution of an LEPC shall be approved by the SERC.

(2) A jurisdiction requesting the formation of an LEPC shall provide the following information to the SERC Advisory Committee:

(a) a plan for coordinating the proposed additional LEPC with the county LEPC and/or any other city formed LEPC in that county.

(b) an assessment of the jurisdiction's population and hazardous materials risk, to include but not limited to fixed facilities, rail, highways, and hazardous material pipelines; and

(c) A determination of how that agency, if allowed to form an LEPC, would meet all federal LEPC standards as identified in 42 USC Chapter 116.

(3) By July 1 of each year LEPCs shall submit the following information to the Utah Department of Public Safety, Division of Emergency Management, contact information for the LEPC:

(a) chair;

(b) co-chairs;

(c) vice-chairs; and

(d) members employed by a local government organization designated to receive tier II chemical inventory reports.

(4) An LEPC wishing to dissolve shall submit the following to the SERC Advisory Committee:

(a) reasons why the dissolution is in the best interest of the public served by the LEPC;

(b) a formal agreement with another LEPC addressing:

(i) the assumption of LEPC duties identified in 42 U.S.C. Chapter 116;

(ii) the transfer of remaining LEPC operational funds; and

(iii) the assumption of outstanding LEPC financial obligations; and

(c) a plan to notify facilities located within the jurisdiction of the dissolving LEPC who submitted chemical inventory or chemical emergency planning information to the LEPC within the previous year, providing notice of the LEPC dissolution and providing the name and mailing address of the LEPC assuming the dissolving LEPC duties.

(5) The SERC Advisory Committee shall evaluate information submitted in accordance with Subsections R698-5-4(2) through R698-5-4(4) and shall make a recommendation to the SERC concerning LEPC creation, modification or dissolution.

(6) The SERC shall consider the following in its decision to approve or disapprove the formation, modification or dissolution of an LEPC:

(a) the recommendation of the SERC Advisory Committee;

(b) all information submitted to the SERC Advisory Committee; and

(c) the comments of directly affected LEPCs.

(7) The LEPC shall coordinate its overall planning and direction with the SERC.

(i) The SERC shall supervise the overall planning and direction of the LEPC.

(8) The LEPC shall submit a copy of their hazardous materials emergency response plan to the SERC for review.

(9) The SERC shall approve the amount of US Department of Transportation Hazardous Materials Emergency Preparedness Grant funding to be given to each LEPC and shall establish criteria for that funding to be awarded.

R698-5-6. Adjudicative Proceedings.

(1) All adjudicative proceedings performed by the SERC shall proceed informally as authorized by Sections 63G-4-201 through 63G-4-203.

(2) An agency whose request to create, modify or dissolve an LEPC is denied by the SERC shall have an opportunity for a hearing before the SERC if requested by that agency within 20 days after receiving notice.

(3) The SERC shall act as the hearing authority, and shall convene after timely notice to all parties involved.

(a) The members of the SERC acting as the hearing authority shall consist of:

(i) the Commissioner of the Department of Public Safety; and

(ii) the Executive Director of the Department of Environmental Quality.

(b) The SERC shall also be joined when acting as the hearing authority by a representative from the Attorney General's Office.

(4) After acting as the hearing authority, the SERC shall direct the secretary to issue a signed order to the agency involved giving the decision of the SERC within a reasonable time of the hearing pursuant to Section 63G-4-203.

(5) Reconsideration of the SERC decision may be requested in writing within 20 days of the date of the decision pursuant to Section 63G-4-302.

(6) Judicial review of all final SERC actions resulting from informal adjudicative proceedings shall be conducted pursuant to Section 63G-4-402.

KEY: state emergency response commission, hazardous materials, SERC
February 20, 2019 53-2a-702
Notice of Continuation August 14, 2014

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-920. Cold Case Database.
R722-920-1. Authority.

This rule is authorized under Section 53-10-115.

R722-920-2. Purpose.

The purpose of this rule is to specify the information to be collected and maintained in the cold case database, and what information may be accessed by the public.

R722-920-3. Definitions.

(1) Terms used in this rule are defined in Section 53-10-102 and 53-10-115.

(2) In addition:

(a) "CODIS" means the Combined DNA Index System;

(b) "database" means the cold case database established in Subsection 53-10-104(17);

(c) "NAMUS" means the National Missing and Unidentified Persons System;

(d) "NCIC" means the National Crime Information Center;

(d) "NCMEC" means the National Center for Missing and Exploited Children; and

(d) "ViCAP" means the Violent Criminal Apprehension Program.

R722-920-4. Information to Be Collected and Maintained.

(1) Each law enforcement agency in the state shall provide information regarding the following cold case types to the division for inclusion in the database:

(a) unresolved homicide; or

(b) missing person.

(2) The following information is required, when available, in order for a cold case to be included in the database:

(a) the victim's:

(i) name;

(ii) gender;

(iii) race;

(iv) ethnicity; and

(v) date of birth;

(b) ViCAP number, if the case has been entered into the ViCAP system;

(c) NCMEC number if the case has been entered into the NCMEC system;

(d) whether the case was entered into the NAMUS system;

(e) NCIC number if entered into the NCIC system;

(f) Medical Examiner case number;

(g) whether probative, unanalyzed suspect reference DNA is available;

(h) whether a probative, crime scene DNA profile from the putative perpetrator has been uploaded to CODIS;

(i) whether reference DNA from the victim is available;

(j) State Bureau of Forensic Services case number;

(k) name of agency referring the case;

(l) investigating agency contact number;

(m) date case entered into the database;

(n) agency case number;

(o) whether the victim was a juvenile or adult victim at the time the crime occurred;

(p) date crime was reported to investigating agency;

(q) date or approximate date the victim was last seen;

(r) date or approximate date of death;

(s) cause or manner of death;

(t) location body was found if a body was found;

(u) whether a weapon was used, and the type of weapon used if applicable;

(v) whether the following evidence is available:

(i) fingerprints

(ii) palm prints;

(iii) latent prints;

(iv) dental records;

(vi) shell casings; or

(v) other physical evidence;

(w) scars, marks and tattoos;

(x) whether a suspect or person of interest has been identified;

(y) date case solved; and

(z) case narrative.

(2) The following information may be entered into the database at the discretion of the investigating agency for a cold case:

(a) associated information which may include the following:

(i) vehicle information;

(ii) nickname or moniker;

(iii) associated case addresses;

(iv) associated phone numbers;

(v) associated names

(b) case photos or composite drawings at the discretion of the investigating agency; and

(c) other details as determined by law enforcement agency.

R722-920-5. Information That May Be Accessed by the Public.

(1) The following information maintained in the database shall be made available to the public:

(a) case type;

(b) the victim's:

(i) name;

(ii) gender;

(iii) race; and

(iv) age;

(c) name of agency referring the case;

(d) agency case number;

(e) date of crime;

(f) date of death; and

(g) status of case.

(2) Additional information maintained in the database may be made available to the public at the discretion of the investigating agency.

KEY: cold case database, cold cases, database
February 20, 2019 53-10-115

R728. Public Safety, Peace Officer Standards and Training.
R728-502. Procedure for POST Instructor Certification.
R728-502-1. Authority.

This rule is authorized by Subsection 53-6-105(1)(k), which provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-502-2. Purpose.

The purpose of this rule is to provide guidelines for the certification of training instructors and to establish standards for the revocation of POST instructor certification pursuant to Section 53-6-105(1)(c).

R728-502-3. Definitions.

(1) Terms used in this rule are defined in Section 53-6-102.

(2) In addition:

(a) "Annual statutory training" means the annual training requirement for peace officers and dispatchers as established in Sections 53-6-202 or 53-6-306;

(b) "Applicant" means an individual who has applied to become a POST certified instructor;

(c) "Basic training" means the basic training courses offered by the division or one of the satellite academies, which are required to become a:

(i) special function officer;

(ii) correctional officer;

(iii) law enforcement officer; or

(iv) dispatcher;

(d) "DT" means defensive tactics;

(e) "EVO" means emergency vehicle operation;

(f) "IW" means impact weapon;

(g) "In-service training" has the same meaning as annual statutory training;

(h) "K9" means canine;

(i) "POST certified instructor" means an individual who has completed the requirements set forth in this rule and is authorized by the division to conduct basic training courses;

(j) "Satellite academy" means a certified academy or training program administered by a governmental entity or institution of higher education which is established primarily for the training of its employees or self-sponsored applicants; and

(k) "Specialty instructor" means an individual who has completed the requirements set forth in this rule and is authorized by the division to conduct specific practical skill training courses.

R728-502-4. POST Certified Instructors Authority and Duties.

(1) A POST certified instructor shall be authorized to teach classes sponsored by the division including basic training, in-service, and regional classes.

(2) An instructor presenting in-service training must be in harmony with the division's current basic training curriculum.

(3) An instructor presenting basic training classes must follow the basic training student performance objectives approved by the division and the council.

(a) If POST approved student performance objectives are not available for the subject matter, an instructor shall have a lesson plan approved by the division prior to teaching in a basic training class.

R728-502-5. Instructor Certification Requirements.

(1) An applicant must meet the following requirements before being certified as an instructor:

(a) have two years of experience as a full-time peace officer or dispatcher;

(b) receive a recommendation from the chief administrative officer of the agency employing the applicant; and

(c) complete an approved instructor development course or specialty instructor certification course as outlined below.

(2) The requirements in this Subsection (1) may be waived if the applicant has specialized training or expertise in an area which, in the opinion of the director, would be beneficial in the training of law enforcement officers.

(a) An individual wishing to qualify for instructor certification wavier under this Subsection (2), must submit a written request to the director providing evidence of their specialized training or experience and justification as to why this training or experience would be beneficial in the training of law enforcement officers.

R728-502-6. Instructor Recertification.

(1) Instructor recertification is not required except in specialty areas as provided in Section R728-502-9.

(2) An instructor teaching in a professional specialty area, including but not limited to, law classes, first aid, CPR, intoxilyzer, and chemical munitions, shall maintain current certification and continuing education requirements of the respective professional certification or licensing entity.

(3) An instructor teaching in other specialty areas may be subject to industry standards that establish specific recertification requirements.

R728-502-7. Application for Instructor Certification.

(1) To obtain a POST instructor certification, an applicant shall submit a completed application for POST Instructor Development School to the division and include the following:

(a) documentation of years of experience;

(b) a letter of recommendation from the applicant's chief administrative officer; and

(c) documentation of specialized training.

(2) If the application is approved, the applicant shall be invited to attend a POST instructor development course.

(3) An applicant shall receive POST instructor certification upon successfully completing the instructor development course, which includes demonstrating to the course instructor the ability to develop a lesson plan following the style and format taught in the instructor development course.

R728-502-8. Agency In-Service Instructors.

(1) An agency is not required to utilize POST certified instructors for in-service training programs presented to members of their agency, which will allow the agency to formulate training programs designed to meet their needs utilizing local resources.

(2) If a POST certified instructor is not used for in-service training programs, the chief administrative officer of the agency sponsoring the training shall be solely responsible for the content of the class and the qualifications of the instructor.

R728-502-9. Specialty Instructors.

(1) An instructor who teaches practical skills and technical or high liability law enforcement subjects shall attend a specialty instructor course as provided in this Section.

(2) An instructor who completes a specialty instructor school may only instruct the specific skills covered in the specialty instructor school.

(a) An instructor who teaches other academic courses in the classroom shall complete a POST approved instructor development course as provided in Sections R728-502-4 through R728-502-7.

(3) An EVO instructor shall be trained and certified in accordance with POST policy and procedure.

(a) EVO instructor certification shall be valid for three years from the date of issue.

(b) An EVO instructor must teach EVO for a minimum of

40 hours every three years in order to maintain certification.

(c) An EVO instructor must teach at least 20 of the 40 required hours at the POST EVO range under the direction of the POST EVO training supervisor.

(d) An EVO instructor may teach the remaining 20 hours of EVO instruction at individual agencies.

(4) A firearms instructor, including handgun instructor or rifle instructor, shall be trained and certified in accordance with POST policy and procedure.

(a) Firearms instructor certification is valid for three years from the date of issue.

(b) A firearms instructor must attend an eight hour recertification class conducted by POST and pass a practical examination every three years in order to maintain certification.

(5) A DT instructor shall be trained and certified in accordance with POST policy and procedure;

(a) DT instructor certification is valid for three years from the date of issue.

(b) A DT instructor must attend a POST defensive tactics instructor training course and successfully pass a practical and written examination every three years in order to maintain certification.

(6) An IW instructor shall be trained and certified in accordance with POST policy and procedure.

(a) IW instructor certification is valid for three years from the date of issue.

(b) An IW instructor must attend an impact weapon instructor training course and successfully pass a practical and written examination every three years in order to maintain certification.

(7) A K-9 instructor shall be trained and certified in accordance with POST policy and procedure.

(a) A K-9 instructor may conduct K-9 training, but is not authorized to conduct K-9 certification evaluations.

(b) K-9 instructor certification is valid for three years from the date of issue.

(c) A K-9 instructor shall attend 40 hours of K-9 instructor training and successfully pass a practical examination every three years in order to maintain certification

(8) A K-9 judge shall be trained and certified in accordance with POST policy and procedure.

(a) A K-9 judge shall be trained and certified as a K-9 instructor prior to being certified as a K-9 judge.

(b) A K-9 judge may conduct K-9 certification evaluations and K-9 training.

(c) K-9 judge certification is valid for three years from the date of issue.

(d) A K-9 judge shall attend 40 hours of K-9 judge training and successfully pass a practical examination every three years in order to maintain certification.

(e) A K-9 judge who successfully re-certifies is automatically re-certified as a K-9 instructor.

(9) RADAR/LIDAR instructors shall be trained and certified in accordance with POST policy and procedure;

(a) RADAR/LIDAR instructor certification is valid for three years from the date of issue.

(b) A RADAR/LIDAR instructor shall participate in one RADAR/LIDAR instructor school and successfully pass a written examination every three years in order to maintain certification.

R728-502-10. Revocation of Instructor Certification.

(1) The division may revoke an individual POST instructor certification if the instructor fails to meet any of the requirements specified in this rule.

(2)(a) If the division revokes an individual's POST instructor certification, the division shall issue a letter to the individual by regular mail.

(b) The letter shall state the reasons for termination of the individual's POST instructor certification and indicate that the individual has a right to appeal the decision to the director by filing a written request for review within 30 days from the date of the division's decision.

(3) An instructor whose peace officer or dispatcher certification is suspended or revoked by the POST Council, in accordance with Section 53-6-211 or Section 53-6-309, shall also have his or her POST instructor certification revoked or suspended for the period of time his or her peace officer or dispatcher certification is suspended.

KEY: peace officers, instructor certification, in-service training; basic training

August 23, 2016 53-6-105

Notice of Continuation February 21, 2019 53-6-202

53-6-306

R805. Regents (Board of), University of Utah, Administration.

R805-3. Overnight Camping and Campfires on University of Utah Property.

R805-3-1. Purpose.

To set forth the regulations that govern camping and campfires on University property.

R805-3-2. Definitions.

A. "Campfire" means an outdoor fire, burned in the open or in a receptacle other that a furnace or incinerator, used for the cooking of food of providing personal warmth or for recreational purposes. "Campfire" does not mean a professionally manufactured barbeque grill operated in connection with an official University event.

B. "Camping overnight" means any of the following:

1. Sleeping, at any time between the hours of 11:00 p.m. and 8:30 a.m., outdoors, with or without bedding, sleeping bag, blanket, mattress, tent, hammock, or other similar protection, equipment or device;

2. Establishing or maintaining outdoors, at any time between the hours of 11:00 p.m. and 8:30 a.m., a temporary or permanent place for sleeping or cooking by setting up any bedding, sleeping bag, blanket, mattress, tent, hammock, or other sleeping equipment or by setting up any cooking equipment, with the intent to remain in that location overnight.

"Camping overnight" does not include the following:

1. Waiting in line for the sale of tickets to an event that will take place on University property;

2. Tail-gating activities on University property within areas designated by the University that occur the night before or the night of a sporting event.

C. "University property" means the university campus and any other property owned, operated or controlled by the University of Utah.

R805-3-3. Policy.

A. Overnight Camping

In order to protect University property, and to protect the safety and health of the University community and the public, camping overnight on University property is prohibited without first obtaining permission from the University Scheduling Office. Permission may be withheld by the University on any reasonable basis.

B. Campfires

In order to protect University property, and to protect the safety and health of the University community and the public, lighting or maintaining campfires in University property is prohibited without first obtaining permission from the University Scheduling Office. Permission may be withheld by the University on any reasonable basis.

C. Sanctions

1. University students, university staff and university faculty who violate this rule may be subject to disciplinary action pursuant to the applicable policies and procedures of the University of Utah Regulations Library.

2. Members of the public who violate this rule may be subject to one or more of the following sanctions:

1. Issuance of a citation for setting an improper fire pursuant to Section 65 A-8-211;

2. Issuance of a citation for criminal trespass pursuant to Section 76-6-206;

3. Issuance of citation and temporary eviction from, and denial of access to University property pursuant to Sections 76-8-701 through 76-8-718; and

4. Eviction from, and denial of access to, University property after an informal adjudicative proceeding pursuant to Rule R765-134.

KEY: camp, camping, campfire, fire

September 18, 2009 **53B-1-104(8)**

Notice of Continuation February 25, 2019 **53B-2-106**

63G-4-102

65A-8-211

76-8-701 et seq.

R805. Regents (Board of), University of Utah, Administration.

R805-6. University of Utah Shooting Range Access and Use Requirements.

R805-6-1. Definitions.

(a) Certified Official. Certified Official means an individual who has obtained certification from the National Rifle Association or a branch of the United States Armed Forces as a Range Safety Officer, a Firearms Instructor, or a Shooting Coach.

(b) Range Operator. Range Operator means a University of Utah employee with primary administrative oversight for scheduling University Range access, verifying the certification status of Certified Officials, and verifying that any Group seeking access to the University Range has complied with this rule.

(c) University Range. University Range means that gun range located in the basement of the Naval Science building located on the campus of University of Utah at 110 South 1452 East, Salt Lake City, Utah 84112.

(d) Other terms not defined in this rule shall have the definitions set forth at Utah Code section 47-3-102.

R805-6-2. Requirements for Access.

(a) Group Qualifications and Approval. A Group seeking access to the University Range must first demonstrate to the Range Operator that the Group is in compliance with the requirements set forth in this section. The Range Operator shall approve a Group's request for access once the Group has submitted satisfactory evidence of the following:

(i) Group Insurance

(ii) Liability Waivers

(iii) Certified Official Status

(iv) That no Group member is prohibited by State or Federal law from possessing a firearm.

(b) Reservations. Once a Group's request for access is approved by the Range Operator, the Group may reserve the University Range for use during public hours by filing a Facility Reservation Request Form. Reservations are required and must be made with the Range Operator at least 48 hours prior to the time of use. The Group may contact the Range Operator for current range hours. Because the Range Operator must make prior arrangements in order to allow access to the Naval Science building and the University Range, requests for reservation will not be accepted with less than 48-hours' advanced notice. Reservation requests will be processed on a first-come-first-served basis.

(c) A Group's use may not interfere with use of the University Range by the University of Utah, including but not limited to use by the NROTC and use by the Utah Precision Marksmanship Society.

(d) The maximum size of any Group accessing the University Range is eight (8) individuals, including the Certified Official. The maximum number of Group Members firing weapons at any time shall be six (6) individuals. In the event fewer than six (6) shooting lanes are in operation at any time, the maximum number of Group Members firing weapons shall correspond to the number of operational shooting lanes.

(e) Cost. Each Group Member accessing the range, including the Certified Official, shall pay a fee of $5.00 per session. Fees are deposited in the University of Utah's General Fund to be used for the operation and maintenance of the University Range and are intended to cover costs related to incidental materials, supplies, maintenance, repairs and personnel providing access to the Naval Science building and the University Range.

(f) No person under the age of fifteen is permitted in the University Range without direct supervision by that person's parent or legal guardian.

(g) No person may use the University Range under the influence of illicit or prescription drugs or alcohol.

(h) The Range Operator may deny a request for access based on the failure of any Group to comply with this rule or if the Range Operator concludes that the Group's use of the University Range poses a threat to any person or property.

(i) The Range Operator may revoke a Group's approval to access the University Range based on any Group Member's failure to follow the Rules of Conduct set forth in this rule, any rules and guidelines posted in the University Range during the Group's use of the University Range, or any of the Range Operator's reasonable requests regarding safety or University Range access.

R805-6-3. Approved Firearms.

(a) Due to ventilation limitations imposed by OSHA regulations, public users of the University Range may only use Air Guns in the University Range.

(b) Air gun means a .177 or .20 caliber, or equivalent 4.5mm or 5.0mm, pellet rifle or pellet pistol whose projectile is pneumatically propelled by compressed air or compressed gas such as carbon dioxide.

R805-6-4. Insurance Requirements.

(a) Liability insurance policy requirements: Prior to accessing the University Range, a Group must provide the Range Operator with the Group's certificate of insurance for commercial general liability insurance, in the amount of at least $1,000,000 per occurrence that lists the University of Utah as an additional insured. Upon proof of adequate alternative liability coverage, this insurance requirement may be waived by the Range Operator in consultation with the University of Utah's Risk and Insurance Manager.

(b) Acknowledgment of Risk, Waiver, Release and Indemnity Agreement: Prior to accessing the University Range, each Group Member or, in the case of minors, the minor Group Member's parent or legal guardian, must sign an Acknowledgement of Risk, Waiver, Release, and Indemnity Agreement in the form provided by the University of Utah's Risk and Insurance Manager. The Group's Certified Official shall be responsible for collecting signed forms and returning them to the Range Operator.

R805-6-5. Rules of Conduct.

(a) Users of the University Range must provide and be accompanied at all times by a Certified Official.

(b) The Range Operator is responsible for opening and securely closing the University Range.

(c) The Certified Official and Group members assume all risks related to, and are responsible for all harms arising out of, their use of the University Range.

(d) The Certified Official shall inspect the University Range prior to use in order to verify that the range ventilation system is turned on and is operational, and to identify any hazards, damage or deficiencies and report them to the Range Operator immediately.

(e) Each Group member shall be familiar with and abide by safety standards adopted by the National Rifle Associate while using the University Range.

(f) The Certified Official shall report any injuries or property damage to the Range Operator immediately.

(g) User ammunition and firearms are subject to inspection and approval by the University of Utah and the Range Operator.

(h) All individuals using the University range must follow all range rules posted in the range as of the date of use.

(i) The Certified Official shall be responsible for ensuring that all members of the group comply with all applicable rules and regulations, including posted range rules, these University of Utah Shooting Range Access and Use Requirements, and all

other applicable rules.

R805-6-5. Posted Range Rules.

(a) The firing range ventilation system shall be in operation at all times while the range is in use, and also during after-use housekeeping procedures.

(b) Participants may only fire at paper targets, which shall be provided by the participant. Use of frangible targets is prohibited.

(c) This range is equipped with pellet traps. Pellet traps must be properly placed behind all targets prior to firing down-range. In no instance may pellets be fired down-range at the rubber bullet trap.

(d) Group Members may cross the firing line only if expressly directed by the Certified Official. Group Members should be permitted to cross the firing line only when operationally necessary (e.g., to retrieve targets or to set up pellet traps). No person may cross the firing line for any reason while firing is underway.

(e) Firearms must be pointed down range toward bullet traps at all times.

(f) Firearms may only be loaded and unloaded in shooting booths.

(g) Keep finger off trigger until ready to fire. Fire only from firing line location between stalls.

(h) Eye and ear protection must be worn by everyone in the University Range at all times.

(i) One shooter per lane maximum.

(j) No food or drink is allowed in the University Range.

(k) Users or the user's Group may be charged for any costs incurred by the University of Utah due to negligence and/or failure to follow these rules of use.

KEY: shooting range
February 11, 2014 47-3-303
Notice of Continuation February 4, 2019

R807. Regents (Board of), University of Utah, Museum of Natural History (Utah).
R807-1. Curation of Collections from State Lands.
R807-1-1. Purpose.

(1) This rule ensures the adequate curation of all collections from lands owned or controlled by the state and its subdivisions through the selection and review of curation facilities and repositories.

R807-1-2. Authority.

(1) This rule is required by Title 53B, Chapter 17, and is enacted under the authority of Subsections 53B-17-603(2) and 53B-17-603(4)(b) and (c), and 53B-17-603(6).

R807-1-3. Definitions.

(1) The terms used in this rule are defined in Sections 9-8-302, 65A-1-1, 53B-17-603, and 79-3-102.

(a) "Collection" means a specimen and the associated records documenting the specimen and its recovery.

(b) "Critical paleontological resources" means vertebrate fossils and other exceptional fossils that are designated state paleontological landmarks as provided for in Section 79-3-505.

(c) "Curation facility" means:

(i) the museum;

(ii) an accredited facility meeting federal curation standards; or;

(iii) an appropriate state park.

(d) "Museum" means the Utah Museum of Natural History.

(e) "Repository" means:

(i) a facility designated by the museum through memoranda of agreement; or

(ii) a place of reburial.

(f) "Specimen" means:

(i) all man-made artifacts and remains of an archaeological or anthropological nature, found on or below the surface of the earth, excluding structural remains; and

(ii) remains of a critical paleontological nature found on or below the surface of the earth.

(2) In addition:

(a) "Appropriate permitting agency" means the Division of State History, the Geologic Survey, or the School and Institutional Trust Lands Administration as set forth in Sections 9-8-305 and 79-3-501, 502.

(b) "Arbitration board" means ultimate arbitration authority as set forth in Section 53B-17-603(4)(c)(vii).

(c) "Committee" means the curation advisory committee;

(d) "State lands" means lands owned or controlled by the state and its subdivisions, and includes lands administered by the School and Institutional Trust Lands Administration.

R807-1-4. Clarification of 53B-17-603.

(1) For the purposes of Section 53B-17-603 and this rule:

(a) "Accredited" means current accreditation by the American Association of Museums or other nationally recognized accrediting institutions or agencies;

(b) "Appropriate state park" means a state park designated by the Division of Parks and Recreation as meeting and being in compliance with federal curation standards;

(c) "Federal curation policy" means: generally understood principles of federal and professional curation policy, and for archaeological collections, includes but is not limited to those as set forth in 36 CFR Part 79, 1996 ed., as amended and those federal rules implementing the Native American Grave Protection and Reburial Act (43 CFR Part 10, 1996 ed.);

(d) "Meeting federal curation standards" means that a facility has been designated by a federal agency as a repository and is in compliance with Federal curation policy.

R807-1-5. Curation Advisory Committee.

(1) The Museum shall establish a curation advisory committee and shall select the members of the Committee.

(2) The Committee shall be composed of at least eight members and shall include a representative from the Division of Parks and Recreation, the Division of Sovereign Lands and Forestry, the School and Institutional Trust Lands Administration, Division of Indian Affairs, Division of State History, Utah Geologic Survey, curation facilities, and may include representatives with interests in one or more of the following areas: education, research, cultural resource management, or curation.

(3) The Committee shall serve in an advisory capacity to the Museum.

(4) The Committee's responsibilities shall include advising the Museum on the following:

(a) the development and annual review of procedures relating to the designation of repositories;

(b) the designation of certain repositories or curation facilities, taking into consideration those factors listed in Section 53B-17-603(4)(c); and

(c) other means by which the Museum can ensure the adequate curation of all collections from state lands.

(5) The Committee shall meet with the Museum at least semiannually, as called by the Director of the Museum.

R807-1-6. Proof of Consultation.

(1) The Museum may enter into a memorandum of agreement with permitting agencies that establishes a process for providing persons applying for either a survey or an excavation permit with proof of consultation as required by Subsection 79-3-501(1)(c)(vi). That process will include:

(a) The Museum maintaining a list of curation facilities and repositories in Utah. The list shall include:

(i) their geographic location;

(ii) the types of collections they curate or desire to curate; and

(iii) for repositories, the types of collections they can adequately curate.

(b) A procedure for the permit applicant receiving a copy of the list.

(c) A procedure for the Museum receiving notification of the selected curation facility or repository and a copy of the permit application.

(d) A procedure whereby critical vertebrate paleontological resources may be curated by the permittee when the permittee is a curation facility.

(2) Collections obtained under an excavation permit shall be deposited by the permittee at the designated repository or curation facility no later than six months after the permittee provides the appropriate permitting agency with reports as required by law.

(3) Collections obtained under a survey permit shall be deposited at the designated repository or curation facility within one calendar year of completion of field work.

R807-1-7. Curation Standards.

(1) In order to be designated as an appropriate curation facility or repository for collections, a facility must provide evidence of its ability to continually provide adequate curation appropriate to the nature and content of the collection.

(2) Adequate curation is presumed for all curation facilities.

(3) Adequate curation for repositories means at a minimum:

(a) possessing and maintaining complete and accurate collection records;

(b) possessing and maintaining requisite facilities which have equipment and space in the physical plant dedicated solely

to the proper storage, study, and conservation of collections;

(c) possessing and maintaining the ability to keep collections under physically secure conditions within storage, laboratory, study, and exhibition areas;

(d) requiring staff and any consultants who are responsible for managing and preserving collections to be trained in the curation of collections;

(e) appropriately handling, storing, cleaning, conserving, and exhibiting collections to ensure the physical integrity of collections;

(f) storing records of collections, including site forms, field notes, artifact inventory lists, computer disks and tapes, catalog forms, photographs, and a copy of the final report in a manner that will protect them from theft and fire;

(g) conducting regular inspections and inventories of collections; and

(h) developing and implementing procedures regarding the accessioning, loan, exhibition, and deaccessioning of specimens.

R807-1-8. Designation of Repositories.

(1) Any facility, other than a place of reburial, seeking to be designated as a repository shall submit to the Museum:

(a) a completed Facility Assessment Form, a copy of which may be obtained from the Museum; and

(b) any other information relating to the facility's ability to provide adequate curation appropriate to the nature and content of collections requested by the Museum.

(2) If the Museum determines that a facility is able to provide adequate curation, the Museum will enter into a memorandum of agreement that will designate that facility as a repository and ensure continued adequate curation at that facility. The memoranda of agreement shall include the following:

(a) reporting provisions;

(b) provisions for periodic review and monitoring; and

(c) conditions triggering the revocation of collections from state lands.

(3) Any facility denied repository status may appeal the Museum's decision within 30 days of the denial of status pursuant to the procedures set forth in R807-1-13 below.

R807-1-9. Selection of a Repository or Curation Facility.

(1) A repository or curation facility seeking designation as a repository or curation facility shall notify the Museum of the nature of collections it wishes to curate by filing a request with the Museum. A request for designation shall include a discussion of the following as appropriate:

(a) identification of any specific site or project of interest to the repository or curation facility;

(b) repository or curation facility programs related to its proposed scientific and educational use of the requested collections; and

(c) proximity of the repository or curation facility to the point of origin of the requested collections.

(2) The Museum shall select a repository or curation facility for collections to be obtained from state lands under a survey permit, considering those factors listed in Section 53B-17-603(4)(c).

(3) The Museum in consultation with the Committee shall select a repository or curation facility for collections to be obtained from state lands under an excavation permit, taking into consideration those factors listed in Section 53B-17-603(4)(c).

(4) The Museum in consultation with the Committee shall designate a second repository or curation facility to curate collections if the repository or curation facility originally selected fails to provide adequate curation appropriate to the nature and content of the collection.

(5) Any curation facility or repository may appeal the selection of a repository or curation facility within 30 days after receiving notice of that selection through the procedures set forth in R805-1-13 below.

R807-1-10. Obligations of Repositories or Curation Facilities.

(1) Repositories or curation facilities shall immediately notify the Museum of any loss of accreditation, any changes resulting in a failure to meet federal curation standards, or any breach of a memorandum of agreement entered into with the Museum.

(2) If a repository or curation facility loses its accreditation, fails to meet federal curation standards, or breaches its memorandum of agreement, the Museum may require transfer of collections to another repository or curation facility.

(3) The Museum shall periodically review repositories to assure they are providing adequate curation appropriate to the nature and content of the collection. The Museum's reviews may occur through an on-site visit or submission of written reports from the repository. The Museum shall give the repository 30 days notice of a proposed review.

(4) Curation facilities with collections from state lands shall provide the Museum with copies of accreditation reports from the American Association of Museums or other nationally recognized accrediting institutions or agencies.

(5) Repositories or curation facilities shall provide an inventory of collections received from state lands to the Museum within 90 days of receipt of the collection.

(6) Repositories or curation facilities shall notify the Museum 30 days prior to undertaking any destructive analysis or exchange to allow the Museum opportunity to review and comment.

(7) Other than appropriate exchanges of collections and destructive analysis, no other form of permanent removal of collections shall take place.

(8) Repositories or curation facilities shall notify the Museum within 30 days of the accidental or any other loss or destruction of any specimen.

(9) Repositories or curation facilities shall not take any actions that would adversely affect recognition of the following:

(a) Collections obtained in exchange for collections found on school and institutional trust lands are owned by the respective trust and are subject to these rules;

(b) Collections recovered from school and institutional trust lands are owned by the respective trust;

(c) Any monies obtained by a curation facility or repository from sales of reproductions derived from collections found on state lands shall be given to the respective trust, except that the curation facility or repository may retain monies sufficient to recover the direct costs of preparation for sale and a reasonable fee for handling the sale. It is recognized that a curation facility or repository may contract with a third party to prepare and produce reproductions.

(d) Collections recovered from school and institutional trust lands shall be available for exhibition as the beneficiaries of the respective trust may request, subject to Museum's curation responsibilities and the repository or curation facility's budgetary and exhibit priorities.

R807-1-11. Reporting.

(1) The Museum shall annually submit to the Division of Sovereign Lands and Forestry and the School and Institutional Trust Lands Administration an inventory of collections received from their respective lands and placed in repositories or curation facilities.

(2) The Museum shall annually submit to the Division of Sovereign Lands and Forestry and the School and Institutional Lands Administration an inventory of specimens lost, destroyed,

or exchanged from their collections.

(3) The Museum shall annually submit to the Division of State History a list of collections received and places in repositories or curation facilities.

R807-1-12. Designation of Adjudicative Proceedings as Informal.

(1) All appeals shall be conducted informally.

R807-1-13. Procedures of Informal Adjudicative Proceedings.

(1) Any facility requesting an appeal of a Museum designation or selection shall include the following information in its request:

(a) the names and addresses of all persons known to have a direct interest in the requested Museum action and to whom a copy of the request for Museum action is being sent;

(b) the Museum's file number or other reference number, if known;

(c) the date that the request for Museum action was mailed;

(d) a statement of the legal authority and jurisdiction under which the Museum action is requested;

(e) a statement of the relief or action sought from the Museum; and

(f) a statement of the facts and reasons forming the basis for relief or Museum action.

(2) The facility requesting an appeal shall send a copy of the request by mail to each person known to have a direct interest in the requested agency action.

(3) The director of the Museum shall promptly review a request for relief and shall notify the facility in writing of:

(a) the decision;

(b) the reasons for the decision; and

(c) a notice of the right to review by the arbitration board within 30 days.

(4) Copies of the director's notification shall be sent to the facility making the request and to those parties who have previously expressed a direct interest in the request.

(5) The facility may request a review within 30 days of the director's final decision by submitting a written request to the Museum. The Museum director shall then request that the arbitration board, as set forth in 53B-17-603 (4)(c)(vii), shall meet.

(6) The arbitration board shall respond to the request within 30 days of notification.

KEY: curation, archaeological resources, paleontological resources

June 3, 1999 53B-17-603(2)

Notice of Continuation February 22, 201953B-17-603(4)(b)

9-8-305(1)(c)

79-3-501(1)©

R909. Transportation, Motor Carrier.
R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification.
R909-19-1. Authority.

This rule is enacted under the authority of Sections 72-9-601, 72-9-602, 72-9-603, 72-9-604, 53-1-106, 41-6a-1405, Utah Code.

R909-19-2. Applicability.

All tow truck motor carriers and employees must comply and observe all rules, including R909-1, regulations, traffic laws and guidelines as prescribed by State Law, including Sections 41-6a-401.9, 41-6a-1404, 41-6a-1405, 41-6a-1406, 72-9-301, 72-9-303, 72-9-601, 72-9-602, 72-9-603, 72-9-604, 72-9-701, 72-9-702, and 72-9-703.

R909-19-3. Definitions.

(1) "Consent tow" means any tow truck service that is done at the vehicle, vessel, or outboard motor owner's, or its legal operator, knowledge and/or approval.

(2) "Department" means the Utah Department of Transportation.

(3) "Division" means the Motor Carrier Division.

(4) "Emergency moves" means a tow operation initiated by law enforcement to move a wrecked or disabled motor vehicle.

(5) "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GVCR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(6) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(7) "Life-essential personal property" includes those items essential to sustain life or health including: prescription medication, medical equipment, essential clothing (e.g. shoes, coat), food and water, child safety seats, and government issued photo-identification.

(8) "Non-consent police generated tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102.

(9) "Non-consent non-police generated tow" means towing services performed without the prior consent or knowledge of the owner of the vehicle or the person authorized by the owner to operate the vehicle from private property. The tow truck service must be from private property, at the request of the property landowner or agent for the landowner.

(10) "Normal office hours" means hours of operation where the office or yard shall be staffed and open for public business during normal business hours Monday thru Friday, except for designated state and federal holidays.

(11) "Recovery operation" means a towing service that may require charges in addition to the normal one-truck/one-operator towing service requirements. The additional charges may include charges for manpower, extra equipment, and supplies necessary for the recovery operation.

(12) "Tow truck" means a commercial vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, repossessed or impounded vehicles from highway or other place by means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

(13) "Tow truck certification program" means a program to authorize and approve tow truck motor carrier owners, operators, and vehicles is the process by which the Department, acting under Section 72-9-602, shall verify compliance with the State and Federal Motor Carriers Safety Regulations.

(14) "Tow truck motor carrier" means any company that provides for-hire towing services. It includes the company's agents, officers, and representatives as well as employees responsible for hiring, training, supervisory, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment and/or accessories.

(15) "Tow truck service" means the functions and any ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place by means of a tow truck.

(a) Tow truck service, with regards to authorized towing fees, is determined by the type and size of the towed vehicle, not the type and size of the tow truck performing the service.

(b) Towed vehicle-classifications will be used when determining authorized fees. Information regarding the GVWR to determine classification category of towed vehicle can be found on the identification plate on the vehicle driver side doorframe. Towed vehicle classifications are as follows:

(i) "Light duty" means any towed vehicle with a GVWR 10,000 pounds or less;

(ii) "Medium duty" means any towed vehicle with a GVWR between 10,001 to 26,000 pounds;

(iii) "Heavy duty" means any towed vehicle with a GVWR or GCWR 26,001 pounds and greater.

(16) "Tow Truck Operator" means a natural person who drives or operates the towing equipment, or a motor vehicle adapted to or designed for the towing of motor vehicles.

(17) "Tow truck motor carrier steering committee" means a committee established by the Motor Carrier Division and will include enforcement personnel, industry representatives and other persons as deemed necessary.

R909-19-4. Duties - Enforcement - Compliance Audits, Inspections and Right of Entry.

The Department shall administer and in cooperation with the Department of Public Safety, Utah Highway Patrol Division as specified under Section 53-8-105, shall administer and enforce state and federal laws related to the operation of tow truck motor carriers within the state. In addition, a tow truck motor carrier shall submit its lands, property, buildings, equipment for inspection and examination and shall submit its accounts, books, records, or other documents for inspection and copying to verify compliance as authorized by Section 72-9-301.

R909-19-5. Insurance.

(1) Tow truck motor carriers performing emergency moves shall maintain liability insurance coverage of at least $750,000 per occurrence. Tow truck motor carriers performing non-emergency moves shall maintain liability insurance coverage of at least $1,000,000 per occurrence.

(2) All tow truck motor carriers performing consent or non-consent tows are required to obtain a MCS-90 endorsement for environmental restoration as required in 49 CFR Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.

(3) Evidence of required insurance shall be maintained at the principal place of business and made available to the Department and/or Investigator upon request and prior to issuance of the tow truck motor carrier certification.

R909-19-6. Penalties and Fines.

(1) Any tow truck motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations, other statutes, any part of this rule, any term or condition of the permit or any materials that it incorporates either by reference or attachment, or a Departmental order, is subject to:

(a) a civil penalty as authorized by Section 72-9-701, and 72-9-703;

(b) suspension or revocation of a carrier or tow truck certification (suspension or revocation will be based upon the severity of violations to this rule, Sections 41-6a-1406 and 72-9-603);

(c) issuance of a cease-and-desist order as authorized by Section 72-9-303; and

(d) the revocation or suspension of registration by the Utah State Tax Commission pursuant to Section 72-9-303.

R909-19-7. Towing Notice Requirements.

(1) All non-consent police generated, and non-consent non-police generated tows conducted by tow truck motor carriers must input required information in electronic form on the Division of Motor Vehicles Utah State Tax Commission's website, at "https://secure.utah.gov/ivs/ivs" as required by Utah Code Subsection 41-6a-1406(11).

(2) Tow truck motor carriers must notify the local enforcement agency having jurisdiction over the area from where the vehicle, vessel, or outboard motor was removed on all non-consent non-police generated tows immediately upon arrival at the impound or storage yard.

(a) For tows conducted on vehicles, vessels, and outboard motors and the owner information does not appear in the IVS or TLR (Title License Registration) systems, a tow truck motor carrier has met this requirement if they can provide proof that a letter has been sent to the Utah State Tax Commission Division of Motor Vehicle or the appropriate state where the vehicle, vessel, and outboard motor is registered, within two business days requesting the needed information to send the letter.

(3) The tow truck motor carrier or the tow truck operator must provide a copy of the Utah Consumer Bill of Rights Regarding Towing at first contact with the owner of a vehicle, vessel, or out board motor that was towed.

(a) The tow truck motor carrier must be able to verify that the consumer received their copy of the Utah Consumer Bill of Rights Regarding Towing.

(4) The Utah Consumer Bill of Rights Regarding Towing shall contain the language and information as published at, www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396.

(a)The consumer has a right to receive documentation from the tow truck motor carrier showing the date and time the storage began.

(b) A consumer has the right to file a complaint alleging:

(i) Overcharges;

(ii) inadequate certification for the operator, truck or company, and;

(iii) violations of the Federal Motor Carrier Safety Regulations, Utah Code Annotated, or Utah Administrative Code.

(c) Complaints may be filed online with the Utah Department of Transportation at https://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:4610,66405 or by contacting the Motor Carrier Division at (801) 965-4892.

R909-19-8. Certification.

There are three (3) certifications required by the Department.

(1) Tow Truck Operator Certification.

(a) Effective July 1, 2004 all tow truck operators will be tested and certified in accordance with Towing and Recovery Association of America Inc (TRAA) standards and carry evidence of certification for the appropriate level of vehicle they are operating. These standards of conduct and proficiency may be tested and certified through an accepted program approved by the Department.

(i) Towing and Recovery Association of America (TRAA) Testing Program;

(ii) Wreckmaster Certification Program;

(iii) Utah Safety Council; or

(iv) Other driver testing certification programs approved by the Department to meet certification requirements, however, the tow truck motor carrier must obtain prior approval in writing from the Motor Carrier Division Administrator or Division representative by calling (801) 965-4892.

(b) Information on qualified certification programs may be obtained by contacting the Motor Carrier Division at (801) 965-4892.

(c) Tow truck motor carriers shall ensure that all tow truck operators:

(i) are properly trained and certified to operate tow truck equipment;

(ii) are licensed, as required under Utah Code Sections 53-3-101, through 53-3-909 Uniform Driver License Act;

(iii) are complying with the requirements under Utah Code Sections 41-6a-1406 and 72-9-603;

(iv) have cleared the criminal background check required in Subsections 72-9-602(2) and (3). In addition, a tow truck motor carrier must notify the department of a tow truck operator whom is not in compliance with 72-9-602(3) within two business days of obtaining knowledge from the Bureau of Criminal Identification.

(v) obtain and maintain a valid medical examiner's certificate under 49 C.F.R Sec 391.45.

(2) Tow Truck Vehicle Certification.

(a) All tow trucks shall receive and pass a tow truck certification inspection biannually.

(b) All tow trucks must be equipped with required safety equipment. Safety Equipment List can be found at https://www.udot.utah.gov/main/f?p=100:pg::::1:T,V:396 or by calling 801-965-4892.

(c) Upon vehicle certification, a UDOT certification sticker will be issued and shall be affixed on the driver's side rear window.

(d) Documentation of UDOT tow truck vehicle certification shall be retained and available upon request by Department personnel.

(3) Tow truck motor carrier Certification.

(a) Tow truck motor carriers shall be certified biannually to ensure compliance as required by the Federal Motor Carrier Safety Regulations, Utah Code Annotated, and local laws where applicable.

R909-19-9. Certification Fees.

The Department may charge tow truck motor carriers a fee biannually as authorized by Section 72-9-603 to cover costs associated with driver, vehicle, and carrier certifications.

R909-19-10. Information Required on Towing Receipt.

(1) Charges for services provided must be clearly reflected on a company receipt and a copy shall be provided to the customer. The receipt must include the following information:

(a) company name;

(b) address;

(c) phone number;

(d) transportation, administration, fuel surcharge, and storage fees charged;

(e) name of company driver;

(f) unit number;

(g) license plate of the towed vehicle;

(h) make, model, Vehicle Identification Number, and year of the towed vehicle;

(i) start and end time with total hours for services provided; and

(j) the date vehicle was retrieved from tow yard or other storage area.

R909-19-11. Non-Consent Towing Fee.

(1) A tow truck motor carrier may charge up to but not exceed the approved tow rate, based upon the type of non-consent tow, as indicated in the Towing Fee Schedule published online at http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396.

(a) An additional 15% of the fee for tow truck service may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of and in accordance with the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(b) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck motor carrier shall be considered in possession of the vehicle.

(c) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle is attempting to retrieve said vehicle before the tow truck motor carrier is in possession of the vehicle, no fee(s) shall be charged to the vehicle owner.

(d) If the owner, authorized operator, or authorized agent of the owner of the vehicle is attempting to retrieve the vehicle after the tow truck motor carrier is in possession of the vehicle but before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(e) Charges for recovery operations, as defined by R909-19-3, shall be coordinated with the towed vehicle owner, or directed by law enforcement prior to initiating the additional charges relating to the recovery operation. Coordination with the towed vehicle owner should result in an agreement between the towed vehicle owner and tow truck motor carrier.

(i) If attempts to coordinate the recovery operation charges with the towed vehicle owner fail, law enforcement personnel may authorize the recovery operation.

(ii) At least two attempts must be made to contact the towed vehicle owner.

(iii) Record of owner coordination or law enforcement authorization shall be maintained by a tow truck motor carrier for each recovery operation. The record shall include contact name, entity, contact time and date, and agreement made.

(iv) Uncoordinated or unauthorized recovery operation fees may be subject to penalty and reimbursement of recovery operation fees.

R909-19-12. Police Generated Towing Fee Calculation.

(1) Tows dispatched during business hours: Tow time shall be calculated from dispatch time to completion of tow service.

(2) Tows dispatched after business hours: Tow time shall be calculated from dispatch time to completion of tow service and return to dispatch location. Time to return to dispatch location shall not exceed allowed rotation response time.

(3) Time charged shall be to the nearest fifteen-minute increment.

(4) Charges may not extend to include the towing notice requirement period pursuant to Utah Code Subsections 72-9-603(1)(a)(i) or 41-6a-1406(4)(a)(ii).

R909-19-13. Non-consent Towing Storage Fee.

(1) Daily storage fees for Non-consent Police generated tow service may not exceed:

(a) Outside storage: light duty $40, medium duty $60, heavy duty $60

(b) Inside Storage: light duty $45, medium duty $85, heavy duty $85

(c) Outside hazardous materials: medium duty $115, heavy duty $115

(d) Inside hazardous materials: medium duty $165, heavy duty $165

(2) Daily storage fees for Non-consent non-police generated tow service may not exceed:

(a) Outside storage: light duty $25, medium duty $45, heavy duty $45

(i) Light duty state approved yard: $40, medium duty $60, heavy duty $60.

(b) Inside Storage: light duty $45, medium duty $85, heavy duty $85

(c) Outside hazardous materials: medium duty $115, heavy duty $115

(d) Inside hazardous materials: medium duty $165, heavy duty $165.

(3) A tow truck motor carrier may charge up to but not exceeding the amount for storage per day for the type of non-consent tow.

(a) A tow truck motor carrier may charge a higher fee for inside storage per day per unit only if requested by the owner(s), or a law enforcement agency or highway authority.

(b) Vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F may be charged a higher storage fee rate.

(c) For the purpose of calculating storage rates, if the first six hours of storage for a vehicle includes more than one day, the authorized storage fee is only the charge for one day.

R909-19-14. Non-consent Fuel Surcharge Fee.

(1) A tow truck motor carrier may charge a fuel surcharge when the daily Rocky Mountain Average, as determined by the Department of Energy, for the price of fuel reaches $3.25 per gallon, a tow truck motor carrier may charge a surcharge equal to 5% of the base tow rate. An additional 5% shall be allowed for each $0.25 per gallon increase. Conversely, as the price of fuel drops, the fuel surcharge shall decrease by the same rate.

(a) To determine the Rocky Mountain daily average per gallon diesel cost, refer to the U.S. Energy Information Administration's website at https://www.eia.gov/.

(b) The fuel surcharge may be charged on non-consent police generated tow when the vehicle is being used in the function of a tow vehicle i.e. travel to and from the scene and during the operation of equipment for recovery operation. Non-consent non-police tows may charge a onetime fee.

(c) Surcharge fee shall be listed as a separate fee on the tow bill.

R909-19-15. Non-consent Administrative Fee.

A tow truck motor carrier may charge an administrative fee for reporting the removal of up to but not exceeding the amount indicated in the Towing Fee Schedule as published online at, http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396 per vehicle notification for reporting non-consent tows to the Department of Motor Vehicles and for sending notifications to the owner and lien-holder (if applicable).

R909-19-16. Tow Truck Service and Administrative Fee Adjustment.

(1) The Motor Carrier Division is required to establish the allowable maximum fee for a tow truck service and administrative fee for reporting the removal, as per Utah State Code 72-9-603.

The Towing Fees Schedule is published on the Division's website at http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396.

(2) The allowable maximum fee for tow truck service and the maximum allowable administrative fee for reporting the removal shall be tied to the Consumer Price Index for all Urban Wage Earners and Clerical Workers (CPI-W) in the West Urban Region of the U.S. The CPI-W is calculated by the U.S. Department of Labor, Bureau of Labor and Statistics (BLS), which publishes CPI Detailed Report Tables every month on its

web site at https://www.bls.gov/cpi/tables/home.htm.

(3) The Motor Carrier Division shall adjust the allowable maximum fees once annually as follows:

(a) The base fee schedule for each calendar year after a year in which the motor Carrier Division determines the allowable maximum fees pursuant to R909-19-11(1) shall be adjusted effective January 1 of each such calendar year (the "Adjustment Date").

(b) The adjustment amount of the allowable maximum fees shall be equal to the change in the CPI-W for the twelve-month period prior to the October CPI-W figure reported by the BLS immediately preceding the Adjustment Date in question.

(c) If the twelve-month change in the CPI-W from October to October is negative, the allowable maximum fees shall remain unchanged until the next Adjustment Date.

(d) The Division of Motor Carriers shall round the allowable maximum fees to the nearest whole number.

R909-19-17. Public Consent Towing and Storage Rates.

Towing rates for public consent tows are the responsibility of the consumer and the tow truck motor carrier as contracted for services rendered and are not regulated by the Department.

R909-19-18. Rates and Storage Posting Requirements.

Pursuant to Section 72-9-603, a tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current non-consent fees and rates for towing and storage of a vehicle at all locations at which vehicles are retrieved, or payment is accepted.

R909-19-19. Federal Motor Carrier Safety Requirements.

All tow truck motor carriers that meet the definition of a commercial motor carrier shall comply with all State and Federal Motor Carrier Safety Regulations, in addition to any other legal requirements established in statute, rule, or permit.

R909-19-20. Consumer Protection Information.

Pursuant to Section 72-9-602, the Department shall make consumer protection information available to the public that may use a tow truck motor carrier. To obtain such information, including a list of tow truck motor carriers that are currently certified by the Department, the public can access this information online at http://www.udot.utah.gov/main/f?p=100:pg::::1:T,V:396, or by calling the Motor Carrier Division at (801) 965-4892.

R909-19-21. Establishment of Tow Truck Steering Committee and Work Group.

(1) The Administrator for the Motor Carrier Division will establish a Steering Committee to provide advisory information and input.

(2) The Motor Carrier Advisory Board, established by the Governor, will serve as the steering body for regulatory guidance and the Department's certification process.

R909-19-22. Review of Rates, Fees and Certification Process.

(1) During a regularly scheduled Motor Carrier Advisory Board meeting, the board may review rates, fees, tow truck motor carrier procedures, and the certification process. The board is not required to review each of these items every year.

(2)(a) Interested parties must notify the department of their desire to appear and be heard at a regularly scheduled Motor Carrier Advisory Board meeting. To ensure placement on the agenda, notify the Motor Carrier Division at 801-965-4892, by the first day of the month of the scheduled meeting.

(b) Interested parties must be present at the Motor Carrier Advisory Board meeting to submit evidence supporting or challenging proposed rate or fee adjustments, or issues related to procedures regarding the certification process.

R909-19-23. Ability to Petition for Review.

Any tow truck motor carrier who believes the Division has acted wrongfully in denying or suspending certification or in imposing a cease-and-desist order may petition the Department for review of that action pursuant to Utah Admin. Code R907-1, Administrative Procedures.

R909-19-24. Record Retention.

Tow truck motor carriers shall retain records relating to rates charged for services for a period of six months after the service has been provided. However, if the Division or the vehicle owner have notified the carrier that it disputes its ability to charge a particular fee, the carrier shall retain the record until six months after the dispute has concluded or a court rule or order requires a longer retention period.

R909-19-25. Life Essential Property.

Property which is deemed as life essential shall be given to the vehicle owner regardless of payment for rendered services.

KEY: safety regulations, tow trucks, towing, certifications
February 7, 2019 **41-6a-1404**
Notice of Continuation June 2, 2016 **41-6a-1405**
41-6a-1406
53-1-106
53-8-105
72-9-601
72-9-602
72-9-603
72-9-604
72-9-301
72-9-303
72-9-701
72-9-702
72-9-703

R920. Transportation, Operations, Traffic and Safety.
R920-50. Ropeway Operation Safety.
R920-50-1. Purpose.

This rule establishes regulations, requirements, and provides standards for the design, construction, and operation of a passenger ropeway, except private residence passenger ropeways as defined in Section 72-11-102(11) and establishes the procedures necessary to implement the powers and duties of the Utah Passenger Ropeway Safety Committee (Committee). Previously the Committee was known as the Utah Passenger Tramway Safety Committee. The Committee has also been referred to as the Tramway Board.

R920-50-2. Authority.

This rule is authorized by Section 72-11-210 to implement Title 72, Chapter 11, Passenger Ropeway Systems Act.

R920-50-3. Definitions.

In addition to terms defined at Section 72-11-102, the following terms are defined:

(1) "Aerial lift specialist" as used in American National Standards Institute (ANSI) B77.1 sections 3.3.4.1 and 4.3.4.1, means a Ropeway Inspector as defined in R920-50-3(31).

(2) "Aerial tramway specialist" as used in ANSI B77.1 section 2.3.4.1 means a Ropeway Inspector as defined in R920-50-3(31).

(3) "Air Space" means the area bounded by vertical planes commencing at a point thirty-five (35) feet from the intersection of the vertical planes of the ropes and ground surface.

(4) "Annual general inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to verify preservation of original design integrity and to determine that components and systems of the passenger ropeway are in proper working order and in accordance with this rule.

(5) "Audible warning devices" means an audible warning device that signals an impending start of the aerial lift.

(6) "Auxiliary Power Unit" is a generic term to describe a gas or diesel engine generally used as a backup to the prime mover.

(7) "Bullwheel" means a large grooved wheel at a terminal that rotates continuously when the haul rope is moving and deflects the haul rope by an angle of 10 degrees or more.

(8) "Carrier" means the structural and mechanical assemblage in or on which the passenger(s) or freight of a ropeway system are transported. Unless qualified, the carrier includes, for example, the carriage, grip or clip, hanger, and cabin or chair.

(9) "Conveyor specialist" as used in ANSI B77.1 section 7.3.4 means a Ropeway Inspector as defined in R920-50-3(31).

(10) "Dynamic Testing Logs" means a record of the data collected during the dynamic test.

(11) "Experienced personnel" means an individual who has acquired knowledge and skills through study, training, or experience in ropeway maintenance, operation, or testing.

(12) "Existing ropeway" means any passenger ropeway that shall have been operated for passengers for more than one calendar year.

(13) "Grip" means the device by which carriers are attached to the haul rope.

(14) "Governing Standard" means the ANSI B77 standard that is incorporated by reference as part of this rule by rule R920-50-4 Governing Standards.

(15) "Haul rope" means a wire rope used on a ropeway that provides motion to carrier(s) and is powered by the drive bullwheel.

(16) "Incident inspection" means an inspection of a passenger ropeway incident made by an approved Ropeway Inspector or a qualified engineer at the request of the Committee.

(17) "Land surveyor" means an individual licensed under Section 58-22-102 as a professional land surveyor.

(18) "Modification" means any change as defined in ANSI B77.1 Section 1.2.4.4, ANSI B77.2 Section 1.2.4.4, and the replacement of a ropeway component by one that alters the certified design or construction provided by the passenger ropeway manufacturer or designer.

(19) "New ropeway" means any passenger ropeway that is registered for the first time for passenger operation during its first calendar year of operation.

(20) "Operational inspection" means an inspection of a passenger ropeway made by a Ropeway Inspector to determine compliance with the operation and maintenance requirements of the Governing Standard and with this rule.

(21) "Operating personnel" means persons employed by the operator to supervise the operation, or engaged in servicing, checking, inspecting or maintaining the machinery or structures of a ropeway and when on duty for such purposes on that ropeway.

(22) "Passenger" means any person riding a ropeway, other than "operating personnel."

(23) "Passenger Ropeway Incident" means:

(a) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in bodily injury to any person on, or inside the load or unload zone of, a passenger ropeway;

(b) Any deropement regardless of whether the passenger ropeway is evacuated;

(c) Any evacuation of the passenger ropeway other than by prime mover or auxiliary power unit, regardless of cause;

(d) Any fire involving a passenger ropeway component or adjacent structure;

(e) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component that results in a ropeway that will not SLOW DOWN when given the command to do so, will not STOP when given the command to do so, OVERSPEEDS beyond control settings and/or maximum design speed, ACCELERATES faster than normal design acceleration, SELF-STARTS or SELF-ACCELERATES without the command to do so, REVERSES direction unintentionally and without the command to do so , or a loss of control of the passenger ropeway as defined in ANSI B77.2 Section 2.2.3.1;

(f) Any wire rope damage which exceeds the requirement in ANSI B77.1 Section A.4.1.3 or ANSI B77.2 Section A.4.1; and

(g) Any structural, mechanical, or electrical malfunction or failure of a passenger ropeway component or its primary connection that has the apparent potential for causing bodily injury to any person, including but not limited to, the following:

(i) Terminal Structure;
(ii) Bullwheel;
(iii) Brake System;
(iv) Tower Structure;
(v) Sheave, Axle, or Sheave Assembly;
(vi) Carrier; and
(vii) Grip.

(24) "Portable Ropeway" means a ropeway expressly designed to be portable, operated without a permanent foundation, and that has a design range of maximum grade.

(25) "Pre-operational inspection" means an inspection made by a Ropeway Inspector prior to the operation of any new or modified passenger ropeway requiring an Acceptance Inspection and Test.

(26) "Qualified engineer" means any engineer who is licensed to practice engineering in the state of Utah and who has been approved by the Committee.

(27) "Prime Mover" means the power unit utilized for the continuous operation of a passenger ropeway.

(28) "Qualified personnel" as used in ANSI B77.1 sections

2.1.1.11, 3.1.1.11, 4.1.1.11, 5.1.1.11, 6.1.1.11, and 7.1.1.11 means a qualified engineer as defined by R920-50-3(26).

(29) "Relocated ropeway" means any passenger ropeway moved to a new location.

(30) "Responsible charge" means effective control and direction of the installation or modification of a passenger ropeway.

(31) "Ropeway Inspector" means an engineer licensed to practice engineering in the state of Utah, independent of the ropeway owner, and approved by the Committee to inspect passenger ropeways.

(32) "Sheave" means pulley or wheel grooved for haul rope.

(33) "Structure" means any edifice, including residential and public buildings, or any other structure or equipment that could reasonably be expected to interfere with the safe operation of a ropeway. Ropeway components required for the operation of the ropeway are not structures.

(34) "Surface lift specialist" as used in ANSI B77.1 section 5.3.4.1, means a Ropeway Inspector as defined in R920-50-3(31).

(35) "Tow specialist" as used in ANSI B77.1 section 6.3.4 means a Ropeway Inspector as defined by R920-50-3(31).

R920-50-4. Governing Standards.

(1) Passenger ropeways operating in the State of Utah shall conform to the requirements of ANSI B77.1-2017, ANSI B77.2-2014, which are incorporated by reference as part of this rule R920-50 and to the revised and additional provision listed in R920-50-11. Use of these standards is authorized by Utah Code Section 72-11-201.

(2) The Utah Passenger Ropeway Safety Committee reserves the right to add, alter, or delete provisions included in the Governing Standard for use in the State of Utah.

(3) Existing installations need not comply with the new or revised requirements of the Governing Standard and this rule except as set forth in R920-50-12 "Applicable Provisions."

R920-50-5. General Requirements for Passenger Ropeways.

(1) Passenger ropeways operating in the State of Utah shall be registered annually with the Committee, and no passenger ropeway shall be operated for passengers without a valid certificate of registration.

(2) Ropeways require a qualified engineer to certify the design, manufacturing, and construction of the ropeway. A Qualified Engineer or Land Surveyor is required to complete the "as-built" profile and certification.

(3) Existing ropeways, when removed and reinstalled, shall be classified as new installations.

(4) Ropeway operators shall be covered by a liability insurance of a minimum of $300,000. The Utah Passenger Ropeway Safety Committee shall be notified of a lapse or termination of insurance coverage pursuant to the terms of the policy.

R920-50-6. Application to Register a Passenger Ropeway.

(1) Each year prior to operating a passenger ropeway the ropeway operator shall apply to the Committee, for a Certificate of Registration. In the event a new operator is assigned, the operator shall notify the Committee of such action and shall apply for a Certificate of Registration.

(2) Term - Passenger ropeways shall be registered annually starting November 1st of each year, and each registration expires on October 31st next following date of issue.

(3) Application for Certificate of Registration for existing ropeways shall include the following:

(a) Annual General Inspection Report;
(b) Annual registration fee;
(c) Approved request for exception, if applicable;
(d) Certification of Compliance; and
(e) Certificate of Insurance.

(4) Application for Certificate of Registration for new ropeways shall include the following:

(a) Annual registration fee;
(b) Approved request for exception, if applicable;
(c) Certification of Compliance;
(d) Certificate of Insurance;
(e) Certifications required in R920-50-7;
(f) Documents required in R920-50-8; and
(g) Preoperational Inspection Report.

(5) Submittal of application for registration of ropeways - All applications for registration of new or existing ropeways shall be submitted in such form as the Committee shall designate and in accordance with requirements of these rules. Applications shall be made in writing and addressed to:

Utah Department of Transportation
Passenger Ropeway Safety Committee
Traffic and Safety Division
4501 South 2700 West
Salt Lake City, Utah 84119

R920-50-7. Certifications Required for Ropeways.

(1) The Certifications listed below must include the following information:

(a) Name, address and telephone number of the operator of the ropeway, name of ropeway supervisor, operator's designation of the ropeway;

(b) Designated certifying statement;

(c) A certification of design, and construction must also include the name, address, seal, and Utah license of the qualified engineer making the certification; and

(d) A certification of "as-built" profile must also include the name, address, seal, and Utah license of the qualified engineer or land surveyor making the certification.

(2) A Certification of Compliance for Passenger Ropeway shall be made on the Application for Certificate of Registration for the Ropeway.

(a) The certification shall be signed and dated by the ropeway owner or area operator.

(b) The certification shall include the following statement: "I certify that the reports, requests and certificates attached hereto were provided and signed by the persons required by law to provide them, and the deficiencies noted in the inspection report have been corrected with the exception of those listed in the Request for Exception from Standards for Passenger Ropeway."

(3) A Certification of Ropeway Design for New or Modified Passenger Ropeways must be submitted.

(a) The Qualified Engineer in responsible charge of the design shall certify to the Committee that the design, plans and specifications conform to the Utah Passenger Ropeway Safety Act, the Governing Standard and the Utah Ropeway Operation Safety Rule.

(b) The Certification must be submitted prior to the performance of the Acceptance Inspection and Test.

(c) The certification must state the following:

"I hereby certify that the design for this ropeway or ropeway modification is in complete compliance with the Utah Passenger Ropeway Safety Act, Governing Standard and the Utah Ropeway Operation Safety Rule."

(d) This statement shall be placed on the top of the drawing packet and signed and sealed by the qualified engineer. Each additional sheet of this drawing packet shall be sealed by the qualified engineer.

(e) The drawings and specifications shall include the quality assurance methods used for the evaluation of the re-used components and shall be submitted for review a minimum of 30 days prior to installation. Any component on the Utah

Passenger Ropeway Safety Committee Lift Data Form must be addressed.

(4) A Certification of Construction for Passenger Ropeways must be submitted by a Qualified Engineer directly responsible for the construction for the ropeway.

(a) The Certification must be submitted prior to the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the construction and installation has been completed in accordance with the drawings and specifications issued for this ropeway or ropeway modification by the Qualified Design Engineer."

(5) A Certification of "as-built" profile for the Passenger Ropeway must be submitted by a Qualified Engineer or Land Surveyor licensed in the State of Utah.

(a) The "as-built" profile must be submitted prior to the performance of the Acceptance Inspection and Test.

(b) The certification must state the following:

"I hereby certify that the attached "as-built" profile of the herein-identified ropeway is as represented on the attached profile drawing and that the completed ropeway conforms to the profile as identified in the plans and specifications prepared by the Qualified Design Engineer."

R920-50-8. Documents Required for Ropeways.

(1) A Utah Passenger Ropeway Safety Committee Lift Data Form must be submitted along with other requested supporting documents. This form must be submitted prior to the performance of the Acceptance Test.

(2) A copy of the acceptance test procedure proposed and submitted by the designer or manufacturer must be provided to the Committee for review at least fourteen (14) days before acceptance testing begins. The qualified engineer determines the acceptance test requirements.

(3) The owner or area operator shall notify the Committee in writing before the acceptance test that the continuous operation requirements of ANSI B77.1 section X.1.1.11 or ANSI B77.2 section 2.1.1.11 have been completed.

(4) A final acceptance test report must be submitted to the Committee prior to opening the lift to the public. The qualified engineer shall approve any changes to the acceptance test procedure.

(5) "As-built" drawings for each passenger ropeway shall be submitted no later than 60 days after the project is completed and the Acceptance Test is finished. Any variation from the design drawings shall be noted in the as-built drawings and approved by the Qualified Design Engineer.

(6) The area operator shall send a "letter of intent" to the Committee at least 45 days prior to beginning the construction of a new lift. The letter of intent must include the name of the qualified engineer, the design standard, the anticipated dates to begin and complete construction, and the available lift manufacturing data.

R920-50-9. Certificate of Registration.

(1) If the application for Certificate of Registration and supporting documentation attest that the ropeway complies with the Governing Standard and this rule, the Committee, if satisfied with the facts stated in the application, shall issue a Certificate of Registration to the operator.

(2) Identification number - For each ropeway, upon receipt of the first application for a Certificate of Registration, the Committee shall assign an identification number to the ropeway, which shall remain as a permanent identification number for the life of the ropeway. All correspondence with the Committee pertaining to any ropeway shall refer to the identification number assigned to that ropeway.

R920-50-10. Revised and Additional Provisions.

The revised and additional provisions of this section shall only apply when referenced in R920-50-11 "Applicable Provisions."

(1) "New installations and relocated installations." ANSI B77.1 Section 1.2.4.3 is modified by the following requirement: New ropeways and relocated ropeways shall comply with the new or revised requirements of the Governing Standard and with these rules at the time of the acceptance test.

(2) "Auxiliary power unit." Installations prior to November 1, 1994 shall meet the requirements for auxiliary power units, as set forth in ANSI B77.1-1992, 2.1.2.1.1, 3.1.2.1.1, 4.1.2.1.1.

(3) "Electronic speed-regulated drives." Installations prior to November 1, 1994 shall meet the requirements for electronic speed-regulated drives as set forth in ANSI B77.1-1992, 2.2.1.8.2, 3.2.1.8.2, 4.2.1.8.2, 5.2.1.8.2, 6.2.1.8.2.

(4) "Rope position monitoring." Installations prior to November 1, 1994 shall meet the requirements for rope position monitoring, as set forth in ANSI B77.1-1992, 3.1.3.3.2, paragraph 6.

(5) "Friction type brakes." Installations prior to November 1, 1995 shall meet the requirements for friction type brakes, as set forth in ANSI B77.1-1992, 2.1.2.5, 3.1.2.5, 4.1.2.5, 5.1.2.5, 6.1.2.5.

(6) "Wire rope inspection." Inspections shall be performed according to ANSI B77.1 Annex A.4.1 and ANSI B77.2 Annex A.4.1 and shall be performed by a competent inspector defined by the Governing Standard and who is approved by the Committee. The wire rope inspector shall certify to the owner or area operator whether the wire rope in its present condition meets requirements for continued operation.

(7) "Audible warning devices." Requirements for audible warning devices on installations prior to April 17, 2007.

(a) Installations shall meet the requirements for audible warning devices as specified by ANSI B77.1-1999, 2.1.1.12, 3.1.1.12.

(b) Installations prior to April 17, 2007 ANSI B77.1-1999 Section 4.1.1.12 is modified by the following requirement: The aerial lift shall incorporate an audible warning device that signals an impending start of the aerial lift. After the start button is pressed, the device shall sound an audible alarm for a minimum of two seconds before the aerial lift begins to move. The audible device shall be heard inside and outside all terminals and machine rooms above the ambient noise level.

(8) "Conveyor Standards." Requirements for installations prior to May 11,2018.

(a) Loading and unloading area requirements of ANSI B77.1 section 7.1.1.9 shall also accommodate the use of adaptive devices.

(b) Power units referred to in ANSI B77.1 section 7.1.2.1 may not have reverse capability.

(c) "Power supply cords" referred to in ANSI B77.1 section 7.2.1.5.6 shall be protected from snow grooming, skiers, and other equipment and shall be ground fault protected.

(d) For installations prior to May 11, 2018 the belt transition entry stop device referred to in ANSI B77.1 section 7.2.3.3 shall include redundant (double) sensors or an equivalent system submitted by a qualified engineer to prevent operation in the faulted condition. Each sensor shall be part of an independent control circuit that can initiate an emergency shutdown of the conveyor. The device shall be so designed and maintained that no single point of failure can cause the entry stop device to malfunction. The device shall not be remotely resettable and shall require the operator to reset the device prior to restarting the conveyor.

(9) "Air Space Requirements." ANSI B77.1, section 2.1.1.4, 3.1.1.4, 4.1.1.4, 5.1.1.4, and 6.1.1.4 and ANSI B77.2 section 2.1.1.4 shall also include the following: No structure (temporary or permanent) shall be permitted to encroach into

the air space of the ropeway. Ropeways and Structures that were both constructed prior to November 1, 2006 do not need to comply with this requirement.

(10) "Portable Ropeways." Portable ropeways shall not be considered new ropeways when moved to different locations but remaining under the jurisdiction of the same operator.

(11) "Tows Requirements."

Handle Tows shall have stop gates above and below the rope.

R920-50-11. Applicable Provisions.

Installations shall comply with the "Revised and Additional Provisions" of R920-50-10 in the categories listed below, on or before the date specified. These provisions establish the minimum requirement.

(1) The following apply to all ropeways:

(a) New installations and relocated installations R920-50-10(1);

(b) Wire rope inspection R920-50-10(6); and

(2) The following provisions apply to an Aerial Tramway:

(a) Auxiliary drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Friction type brakes R920-50-10(5); effective November 1, 1995;

(d) Audible warning devices R920-50-10(7); effective November 1, 2001; and

(e) Air space requirements R920-50-10(9); effective November 1, 2006.

(3) The following provisions apply to a Detachable Grip Aerial Lift:

(a) Auxiliary drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Rope position monitoring R920-50-10(4); effective November 1, 1994;

(d) Friction type brakes R920-50-10(5); effective November 1, 1995;

(f) Audible warning devices R920-50-10(7); and

(h) Air space requirements R920-50-10(9); effective November 1, 2006.

(4) The following provisions apply to a Fixed Grip Aerial Lift:

(a) Auxiliary Drives R920-50-10(2); effective November 1, 1994;

(b) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(c) Friction type brakes R920-50-10(5); effective November 1, 1995;

(e) Audible warning devices R920-50-10(7); and

(g) Air space requirements R920-50-10(9); effective November 1, 2006.

(5) The following provisions apply to a Surface Lift:

(a) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(b) Friction type brakes R920-50-10(5); effective November 1, 1995; and

(c) Air space requirements R920-50-10(9); effective November 1, 2006.

(6) The following provisions apply to a Rope Tow:

(a) Electronic speed-regulated drives R920-50-10(3); effective November 1, 1994;

(b) Friction type brakes R920-50-10(5); effective November 1, 1995;

(c) Air space requirements R920-50-10(9); effective November 1, 2006;

(d) Tow requirements R920-50-10(11); and

(e) Portable Ropeways R920-50-10(10).

(7) The following provisions apply to a Conveyor:

(a) Conveyor standards R920-50-10(8); and

(b) Portable Ropeways R920-50-10(10).

R920-50-12. Exceptions to Standards.

(1) In the event that the ropeway does not conform with the governing standards and the Ropeway Operation Safety Rule, the Committee may issue a certificate of registration with an exception. Two types of exceptions may be granted after a Request for Exception from Standards is submitted.

(a) Annual Exception - This type of exception must be reviewed annually by the Committee. This type of exception is subject to cancellation at any time pursuant to a determination by the Committee that a change is necessary.

(b) Limited Exception - This type of exception is granted only for a fixed time period to be determined by the Committee.

(2) The nature of the exception shall be stated in the Request for Exception from Standards.

(3) The Committee shall, as expeditiously as possible, and within thirty (30) days of receipt of a Request for Exception from Standards, notify the operator in writing of its action on the Request.

(4) The Request for Exception from Standards shall include the following information:

(a) Reasons for requesting an exception;

(b) Identification of the way the ropeway does not conform to the governing standards or this rule; and

(c) Procedures, with estimated time and cost, which would be required to bring the ropeway into conformance.

(5) Except as required in R920-50-12(7), the Committee shall issue a Certification of Registration with an exception if the operator satisfies the requirements stated in R920-50-12(4) and supplies the following for new or existing ropeways:

(a) New Ropeways.

(i) A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those that meet requirements set forth in the Governing Standard and this rule.

(ii) Any known items that require a Request for Exception from Standards for Passenger Ropeways must be submitted to the Committee before work begins.

(b) Existing Ropeways.

(i) A design certification by a qualified engineer attesting that the ropeway is so designed and equipped that it's devices or methods provide features that are comparable in performance and safety to the requirements of the Governing Standard and this rule.

(ii) A statement by the operator certifying that the ropeway feature for which the exception is requested has been operated safely and without any passenger ropeway incident, as defined in R920-50-3(23) item (a) or (g), for at least 2 years prior to the date of the Request for Exception from Standards.

(6) In exceptional circumstances, the Committee may issue a certificate of registration with an exception even if the operator does not satisfy the requirements defined in the Governing Standard or this rule if the Committee determines that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety.

(7) Where doubt exists as to the safety of a ropeway, the Committee may require an inspection to ascertain that the ropeway is so designed and equipped that its devices or methods provide features that are comparable in performance and safety to those of the governing standards and this rule.

(8) The issuance of a certificate of registration with an annual exception shall not bind the Committee to issue such a certificate for the ropeway involved in subsequent years, nor to

issue such a certificate for another ropeway of same or similar design.

R920-50-13. Operation of Ropeways.

(1) Every passenger ropeway incident shall be reported to the Committee regardless of the time of year in which it occurs and regardless of whether the ropeway was open to the public at the time of the incident. The operator shall meet the requirements stated in R920-50-14.

(2) When a ropeway is modified the ropeway operator shall notify the Committee, or its appointed representative. The operator shall meet the requirements stated in R920-50-15.

R920-50-14. Incidents.

(1) Reporting of Incidents.

(a) Every passenger ropeway incident, as defined in R920-50-3(23) shall be verbally reported to the Committee, or the Committee's appointed representative, as soon as reasonably possible, but no later than twenty-four (24) hours after the time of the incident. A written report shall be delivered to the Committee within five (5) days of the incident.

(b) The reports required by this section are to be maintained for administrative enforcement, licensing and certification purposes only. The reports are "protected" records under the Government Records Management Act, Section 63G-2-305 and are also governed by Section 63G-2-207.

(2) Suspension of Operations. When a passenger ropeway incident, as defined in R920-50-3(23) (a) or (g), occurs, the owner or area operator of the ropeway shall suspend operation of the ropeway and shall notify the Committee through the Committee's appointed representative. The owner or area operator of the ropeway, with the Committee or the Committee's appointed representative, shall perform a joint incident inspection of the ropeway. The inspection shall precede any authorization to resume public operation of the passenger ropeway.

R920-50-15. Modification of a Ropeway.

(1) The Committee, or its appointed representative shall determine the certifications that will be required.

(2) Depending on the nature and extent of the modification the Committee, or its appointed representative may require an Acceptance Inspection and Test.

(3) The following certifications may be required: design; construction, and As-Built profile.

(4) The certifications must be submitted by a qualified engineer and attached to the cover of the modification documents. The modification documents shall include the drawings, descriptions, or specifications pertaining to the affected systems and their connections with existing systems.

(5) A revised lift data form shall be submitted.

(6) The ropeway shall not resume operating until authorized by the Committee, or its appointed representative.

R920-50-16. Inspections and Testing.

(1) Inspections shall verify that the intent of the design and operational requirements imposed by the Governing Standard and this rule are met. The Committee may order other inspections in accordance with Section 72-11-211. Ropeway inspectors may inspect ropeways at any time during the operation of the ropeway (spot check). All reports, logs, etc. shall be made available to them upon request.

(2) Acceptance Inspection and Test.

(a) The Committee, or its appointed representative, will schedule acceptance inspection and test as the procedures are received.

(3) Annual General Inspection.

All existing ropeway shall have an annual general inspection.

(a) A ropeway inspector shall make the inspection.

(b) The inspection shall occur prior to approval of any registration application.

(c) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(d) The report shall include the name and address of the inspector and the date of the inspection.

(e) The area operator shall notify the Committee, or its appointed representative of the annual general inspection. The area operator should give a 7-day notice of the inspection.

(f) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

(4) Incident Inspection.

Incident inspections shall occur as required in R920-50-14.

(5) Operational Inspection.

An operational inspection may be made periodically during each season of use.

(a) A ropeway inspector shall make the inspection.

(b) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(c) The report shall include the name and address of the inspector and the date of the inspection.

(d) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

(6) Pre-operational Inspection.

A pre-operational inspection is required for new and modified lifts.

(a) A ropeway inspector shall make the inspection.

(b) The inspection shall occur prior to approval of any registration application.

(c) A report signed by the Ropeway Inspector listing items found either deficient or in noncompliance shall be filed with the owner.

(d) The report shall include the name and address of the inspector and the date of the inspection.

(e) If the inspection does not take place at the acceptance inspection and testing the area operator shall notify the Committee, or its appointed representative of the inspection. The area operator should give a 7-day notice of the inspection.

(f) The owner shall correct all deficiencies and noncompliance items listed in the Ropeway Inspector's report.

R920-50-17. Ropeway Inspector and Qualified Engineer.

(1) General.

(a) Any person performing inspection services must be a "ropeway inspector" as required by this rule, and any person performing design services must be a "qualified engineer", as required by this rule.

(b) The Committee shall maintain up-to-date lists of qualified engineers and ropeway inspectors, which lists shall be open to inspection by the public.

(c) Any person desiring to be approved by the Committee as a ropeway inspector or qualified engineer shall submit a written request to the Committee enumerating his or her professional experience and attesting as far as possible to meeting the requirements stated in R920-50-17(2).

(2) Requirements.

(a) Applicant shall satisfy the Committee that by his or her education, training and experience gained by participation in ropeway inspections or designs as a principal or an assistant to a recognized ropeway inspector or ropeway designer, he or she is qualified to be, respectively, an approved inspector or designer or both.

(b) Applicant shall satisfy the Committee that he has a working familiarity and understanding of drawings and design data such as are furnished to design, construct, test, and inspect passenger ropeways, and that he or she has an understanding

and working knowledge of the governing standard and this rule.

(c) The Committee may approve qualifications based on experience gained by an applicant through work under direct supervision of a qualified ropeway inspector or qualified ropeway designer.

(d) The Committee may approve employees of the state or individuals retained by the state as qualified ropeway inspectors. Such engineers may be given certain assignments where time is of the essence or a private engineer is not available or willing to undertake the inspection or investigation. It shall be the policy of the Committee to use the services and talents of qualified private engineers wherever possible.

(3) Revocation or suspension of approval as ropeway inspector or qualified engineer.

The committee may revoke or suspend the approval of any qualified engineer or ropeway inspector who is found by the committee to have:

(a) practiced any fraud, misrepresentation, or deceit in applying for approval;

(b) caused damage to another by gross negligence in the practice of passenger ropeway designing, construction, or inspection; or

(c) been engaged in acts of unlawful or unprofessional conduct.

R920-50-18. Violations.

The Committee may address violations of this rule pursuant to Utah Code Sections 72-11-212 and 72-11-213.

R920-50-19. Administrative Procedures.

Appeals from orders issued pursuant to any provision of this rule shall be governed by R907-1.

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