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 March 6, 2019

R23. Administrative Services, Facilities Construction and Management.
R23-33. Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board.
R23-33-1. Purpose.

The purpose of this Rule R23-33 is to establish a prioritization and scoring process for capital improvements that occurs annually before the Building Board.

R23-33-2. Authority.

This Rule R23-33 is authorized under Subsection 63A-5-104(10) indicating that the Board may adopt a rule allocating Capital Improvements subject to terms in the statute. The Building Board has administrative rulemaking authority under Subsection 63A-5-103(2).

R23-33-3. Definitions.

The following definitions shall apply to this Rule R23-33:

(1) "Board" means the Utah State Building Board established under Title 63A, Chapter 5, Utah Code.

(2) "Building Board Director" means the employee of the Department of Administrative Services that is assigned as an administrator to the Utah State Building Board and hereinafter referred to as the "BBD."

(3) Definitions provided in Utah Code Section 63A-5-104 shall apply to the terms used in this Rule R23-33.

R23-33-4. General Overview of Process.

The capital improvement prioritized scoring process consists of five steps as follows:

(1) A Project Needs Request;

(2) Preliminary Project Prioritization and Preliminary Scoring by the BBD;

(3) Preliminary BBD Scored Project Review and Revisions Process involving agencies and institutions, the Division of Facilities Construction and Management, and the BBD;

(4) Submitting the revised Scored List to Board and a Utah State Legislature subcommittee involved with State facility design and construction; and

(5) Review and Final Approval by the Utah State Building Board of the list for submittal to the Utah Legislature.

R23-33-5. Step One: Project Needs Request.

(1) Submission guidelines and formatting requirements shall be approved by the Board prior to submission by the BBD to the agencies and institutions.

(i) Submission guidelines include the Project Scoping Form which describes in detail the work that needs to be accomplished, statutory requirements, identification of hard and soft costs, submission deadlines and other requirements.

(ii) The guidelines shall also describe the priority classifications which are in the following ranked order of priority: 1-life safety; 2-critical; 3-necessary; and 4-programatic, as well as the scoring criteria.

(2) Prior to June of each calendar year, the BBD shall notify agencies and institutions to begin developing their Project Needs Request which includes the agency or institution's prioritized list for the next fiscal year's funding cycles as well as the prioritized scoring process submission guidelines; all to be consistent with applicable law.

(3) The BBD may provide agencies and institutions with a list of existing Facility Condition Assessment Data ("FCA"), including Risk Management property number, life cycle related to the need, unique FCA project number, and the estimated cost. To the extent the BBD does not provide such information, the agency or institution is required to obtain the information from the FCA database maintained by DFCM and any supplemental information obtained by the agency or institution.

(4) The Project Needs Request, including the prioritization, shall be submitted by the agencies and institutions to the BBD no later than August 15th immediately following the BBD's notice referred to above.

R23-33-6. Step Two: Preliminary Project Prioritization and Preliminary Scoring by the BBD.

(1) The BBD shall review the agency or institution's Project Needs Request, including the prioritization and classification.

(2) The BBD shall provide a copy of the submittal to the State Building Energy Efficiency Program Director to determine if any listed projects qualify for energy savings components, energy improvements/developments or qualification for revolving loans.

(3) The BBD then compiles all the submittals from every agency and institution into one comprehensive list. The comprehensive list includes the classification codes. The BBD applies the prioritized scoring method to each of the submittals. The comprehensive list shall be consistent with the statutory standards set forth by the Utah Legislature and utilized throughout the process.

(4) The BBD shall notify the agency or institution of any concerns regarding the Project Needs Request.

(5) At any time, the BBD may initiate conversations and meetings with the agency or institution to obtain information, clarification or seek to reach an agreement on any concerns.

R23-33-7. Step Three: Scored Project Review and Revisions Process involving agencies and institutions, the Division of Facilities Construction and Management, BBD and the Board.

(1) The BBD shall distribute the BBD's preliminary master capital improvement list including categorization, prioritization and scoring, to the Division of Facilities Construction and Management as well as the agencies and institutions for review and comment.

(2) A Construction Budget Estimate (CBE) shall be prepared by the appropriate State employee responsible for preparing a CBE for the particular project using the CBE form provided by the BBD. The CBE shall be based on the Project Scoping Form provided by the BBD.

(3) Each completed CBE form and Project Scoping Form shall be submitted promptly to the BBD and no later than October 15th of the particular year.

(4) The BBD will review each CBE and Project Scoping Form. The BBD will prepare the preliminary scoring along with packet of prioritized capital improvement projects intended for the Board meeting in December. This preliminary scoring and packet shall be submitted by the BBD to the affected agencies or institutions. If there is any disagreement between the BBD and any particular agency or institution, the BBD and the particular agency or institution may endeavor to resolve this matter prior to the packet being sent to the Board. During any such resolution process between the BBD and an agency or institution, the BBD's preliminary scoring and packet may be modified.

(5) The resulting packet and scoring prepared by the BBD under subsection (4) of this Rule, shall be distributed to the Board members as well as the agencies and institutions at least seven days in advance of the December Board meeting.

(6) The Board meeting to review the BBD's capital improvement submittal shall be on or about December 15th of each year.

(7) At the December Board meeting, the Board shall consider input from the BBD, an affected agency or institution as well as interested persons as appropriate.

R23-33-8. Step Four: Submitting the Scored List to the

Appropriate Subcommittee of the Utah State Legislature.

(1) At the January Board meeting, the Board shall make a final prioritization recommendation for submission to the appropriate subcommittee of the Utah Legislature. The recommendation must be consistent with the statutory standards set forth by the Utah Legislature and utilized throughout the process.

(2) The Board's list is submitted to the appropriate subcommittee of the Utah Legislature as required by law, no later than the January 15th following the January Board meeting.

R23-33-9. Step Five: Review and Final Approval by the Utah State Building Board.

After the consideration by the Utah Legislature, the Board will make its final approval of the capital improvements lists consistent with any direction from the Legislature.

KEY: building board, capital improvements, prioritization, scoring

March 10, 2014 63A-5-103(2)
Notice of Continuation March 6, 2019 63A-5-104(10)

R65. Agriculture and Food, Marketing and Development.
R65-1. Utah Apple Marketing Order.
R65-1-1. Authority.

Promulgated under authority of Subsection 4-2-103(1)(e).

R65-1-2. Definitions of Terms.

A. "Commissioner" means the Commissioner of Agriculture and Food of the State of Utah.

B. "Person" means an individual, partnership, corporation, association, legal representative, or any organized group of individuals.

C. "Apples" means apples produced for market.

D. "Producer" means any person in this State in the business of producing or causing to be produced apples for the commercial market, provided such producers shall not include producers who sell all the commodity direct to the consumer.

E. "Handler" means any person engaged in the operation of selling, marketing, or distributing in commerce, or affecting commerce, apples which are produced in Utah; but no rule under this Order shall apply to the sale of such apples to Retail Outlets.

F. "Registered" producers means a producer who has indicated that he/she wants to be included in the marketing order voting process by registering to vote in the referendum. Registration forms may be mailed out with the ballots.

G. "Known" producers means a producer of a specific commodity who has been identified by the commodity group, her/himself, or a third party as being eligible to register to vote in a referendum affecting that specific commodity.

R65-1-3. Board.

A. A Board of Control is hereby established consisting of seven members, two of whom shall be handlers to carry out the provisions of this order.

B. The original members of the Board of Control shall be selected by the Commissioner from a list of names submitted by the industry. Two grower members and one handler shall be appointed for a period of two years - the first appointment only. Three grower members and one handler member shall be appointed for a period of four years. All appointments after the first year shall be for a period of four years.

C. Successors to original members shall be appointed by the Commissioner from names submitted by the industry.

D. No member of such Board shall receive a salary but each shall be entitled to his actual expenses incurred while engaged in performing his duties herein authorized in accordance with Sections 63A-3-106 and 63A-3-107.

E. The duties of the Board shall be administrative only and may include only the acts mentioned in this order.

F. A majority of the Board of Control must attend a meeting to conduct business. All decisions of the Board of Control shall be by majority vote.

G. The officers of the Board shall be selected from the seven Board members at their first meeting after reorganization. The officers shall consist of a Chairman and a Vice Chairman, to be elected yearly by the members of the Board. In the event of a vacancy or unfilled office; it shall be filled by the Commissioner from a list of names submitted by the industry.

H. No member of the Board, nor any employee of the Board, shall be deemed responsible individually in any way whatsoever to any producer, distributor, handler, processor, or any other person, for errors of judgment, mistakes, or other acts, either of commission or omission of principal, agent, person, or employee, except for his own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members of such Board shall be several and not joint, and no member shall be liable for the default of any other member.

R65-1-4. Provisions of the Order.

A. This order provides for:

1. Advertising and sales promotion to create and expand the market of Utah Apples. This shall be done without reference to brand or trade names.

2. Research projects and experiments for the purpose of improving the quality, size, health and general conditions of the apples grown in the State of Utah and for the purpose of protecting the health of the citizens of the State.

3. Uniform grading of apples sold or offered for sale by producers or handlers. Such grading standards shall not be established below any minimum standards now prescribed by law for this State.

4. The Board may cooperate with any other state or federal agency whose activities may be deemed beneficial to the purpose of this Order which is to strengthen the apple businesses in the state.

B. Expenses - Assessments - Collection and Disbursement

1. Each producer or handler subject to this order shall pay to the Board of Control such producer's or handler's pro rata share of such expenses as the Commissioner may find will necessarily be incurred by the Board for the maintenance and functioning of said Board. Each producer shall pay up to 5 cents per 40 lb. box to the Board annually. The discretionary assessment shall be set by majority vote of the board, and approved by the Commissioner. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in commerce by such cooperative association of producers. The Board may maintain in its own name, or in the name of its members, a suit against any handler or producer, subject to this Order, for the collection of such handler's or producer's pro rata share of expenses.

2. The Board shall retain records of the receipt of the assessment. The records shall be audited annually by an auditor approved by the Commissioner. Copies of the audit shall be available to any contributor upon request.

3. The Board of Control is required to reimburse the Commissioner for funds which are expended by the Commissioner in performing his duties, as provided in this Order, such reimbursement to include only funds actually expended in connection with this Order.

4. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the Commissioner. The Board shall receive and disburse all funds received by it pursuant to paragraph 5. Any funds remaining at the end of any year over and above the necessary expenses of said Board of Control may be divided among all persons from whom such funds were collected, or, at the discretion of the Board, such amounts may be applied to the necessary expenses of the Board for the continuation of its program during the next succeeding year, and in such case the Board shall credit all persons from whom such funds were collected with their proper proportions thereof.

R65-1-5. Division of Funds.

Assessments made and monies collected under provisions of this Order shall be divided into assessments and funds for

A. administrative purposes,

B. advertising and promotional purposes, and

C. research purposes. Such assessments and funds shall be used solely for the purposes for which they are collected; provided, that funds remaining at the end of any year may be used in the succeeding year and provided, that no funds be used for political or lobbying activities.

R65-1-6. Complaints for Violations - Procedure.

Complaints for violations shall be handled by the

responsible legal agencies and shall be enforced in the civil courts of the State.

R65-1-7. Refund.

Any producer who wishes a refund of their assessments may receive such by notifying the Board in writing of their request by December 31 for apples harvested in that harvest year.

R65-1-8. Termination of Order.

The Commissioner may terminate the Marketing Order at such time as he may determine there is no longer an industry need for such order. This order shall be reviewed or amended at least every five years by the industry, Subsection 4-2-2(3)(a). Once a year, a referendum vote may be called at the request of the producers through a petition of ten percent of the producers.

KEY: promotions
1987 4-2-103(1)(e)
Notice of Continuation September 8, 2014

R65. Agriculture and Food, Marketing and Development.
R65-5. Utah Red Tart and Sour Cherry Marketing Order.
R65-5-1. Authority.

Promulgated under authority of Section 4-2-103(1)(e).

R65-5-2. Definitions of Terms.

A. "Commissioner" means the Commissioner of Agriculture and Food of the State of Utah.

B. "Person" means an individual, partnership, corporation, association, legal representative, or any organized group of individuals.

C. "Cherries" mean all marketable Red Tart and Sour cherries produced and sold to manufacturers or consumers.

D. "Producer" means any person in this state in the business of producing or causing to be produced Red Tart or Sour cherries, that has a minimum of 300 trees or has received $500.00 or more from a processor for the previous year's production.

E. "Registered" producer means a producer who has indicated that he/she wants to be included in the marketing order voting process by registering to vote in the referendum. Registration forms may be mailed out with the ballots. Only registered voting producers will be counted.

F. "Known" producers means a producer of a specific commodity who has been identified by the commodity group, her/himself, or a third party as being eligible to register to vote in a referendum affecting that specific commodity.

G. "Processor" means any person engaged in canning, freezing, dehydrating, fermenting, distilling, extracting, preserving, grinding, crushing, or in any other way preserving or changing the form of cherries for the purpose of marketing them.

H. "Board" means Red Tart and Sour Cherry Marketing Board.

R65-5-3. Board.

A. A Board is hereby established consisting of seven members, two of whom shall be processors to carry out the provisions of the order.

B. The original members of the Board of Control shall be selected by the Commissioner from a list of names submitted by the industry. Three grower members and one processor member shall be appointed for a term of four years. Two grower members and one processor member shall be appointed for four years.

C. Successors to original members may be appointed by the Commissioner from names submitted by the industry.

D. No member of such Board shall receive a salary but each shall be entitled to his actual expenses incurred while engaged in performing his duties herein authorized in accordance with Sections 63A-3-106 and 63A-3-107.

E. The duties of the Board shall be administrative only and may include only the acts mentioned in this Marketing Order.

F. All decisions of the Board of Control shall be by majority vote.

G. No member of the Board, nor any employee of the Board, shall be deemed responsible individually in any way whatsoever to any producer, distributor, handler, processor, or any other person, for errors of judgment, mistakes, or other acts, either of commission or omission of principal, agent, person, or employee, except for his own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members of such Board shall be several and not joint, and no member shall be liable for the default of any other member.

R65-5-4. Provisions of the Order.

A. This order shall provide for:

1. Uniform grading Red Tart and Sour cherries for fresh or frozen markets, sold or offered for sale by producers or processors. Such grading standards shall not be established below any minimum standards now prescribed by law for this state.

2. Advertising and sales promotion to create new or larger markets for cherries grown in Utah, provided that any such plan shall be directed towards increasing the sale of such commodity without any reference to a particular brand or trade name. Provided further, that no advertising or sales promotion program shall be authorized which shall make use of false or unwarranted claims in behalf of the product covered by this Order, or disparage the quality, value, sale or use of any other agricultural commodity to supply the market demands of consumers of such commodity.

3. Labeling, marketing, or branding of cherries which does not conflict with any rules of the Commissioner or laws of the State of Utah.

4. The Board of Control to cooperate with any other state or federal agency whose activities may be deemed beneficial to the purposes of the Order.

B. Expenses-Assessments-Collections and Disbursement.

1. Each producer or processor subject to this Order shall pay to the Board his or her pro rata share (as approved by the Commissioner) of such expenses as the Board may find necessary to be incurred for the functioning of said Marketing Order. This assessment levied in the specified amount shall constitute a personal debt of every person so assessed and shall be due and payable when payment is called for thereby. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in commerce by such cooperative association of producers or processors. The Board may maintain in its own name, or in the name of its members, a suit against any producer, or processor subject to this Order, for the collection of such producer's pro rata share of expenses.

2. This assessment shall be determined to be up to $10.00 per ton for Red Tart and Sour cherries. The discretionary assessment shall be set by majority vote of the board, as approved by the Commissioner. The assessment is effective May 1, 1983.

3. The assessment of each producer shall be deducted from the producer's gross receipt of Red Tart and Sour cherries by the producer-processor. All proceeds from the deducted portion shall be paid annually to the Board on or before October 1, for that crop year.

4. The Board shall retain records of the receipt of the assessment which will be available for public inspection upon request. The Board shall issue an annual financial statement to the Commissioner showing receipts and reimbursement. This statement shall be made available to any contributor upon request.

5. The Board is required to reimburse the Commissioner for any funds as are expended by him in performing his duties as provided in this Order. Such reimbursement shall include only funds actually expended in connection with this Order.

6. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the Commissioner. The Board shall receive and disburse all funds received by it pursuant to Section R65-5-5.

7. The Board shall retain records of the receipt of the assessment. These records shall be audited annually by an auditor approved by the Commissioner. Copies of the audit shall be available to any contributor upon request.

R65-5-5. Division of Funds.

Assessment made and monies collected under provisions of this order shall be divided into assessments and funds for

administrative, advertising and research purposes. Such assessments and funds shall be used solely for the purposes for which they are collected; provided, that no funds be used for political or lobbying activities.

R65-5-6. Complaints for Violation - Procedure.

Complaints for violation shall be handled by the responsible legal agencies and shall be enforced in the civil courts of the State.

R65-5-7. Termination of Order.

The Commissioner may terminate the Marketing Order at such time as he may determine there is no longer an industry need for such order. This order shall be reviewed or amended at least every five years by the industry. Once a year, a referendum vote may be called at the request of the producers through a petition of ten percent of the registered producers.

KEY: promotions
1989 4-2-103(1)(e)
Notice of Continuation June 29, 2017

R65. Agriculture and Food, Marketing and Development.
R65-8. Management of the Junior Livestock Show Appropriation.
R65-8-1. Authority.

A. Promulgated under authority of Subsections 4-2-103(1)(i) and 4-2-103(1)(m) for the management of the Junior Livestock Show Appropriation.

B. It is the intent of these rules to regulate the following elements:

1. Establishment of a forum to carry out the intent of these rules
2. Participation in the appropriation
3. Establishment of official show dates and entry deadlines
4. Equitable distribution of the appropriation
5. Maintenance of administrative control of the fund

R65-8-2. Establishment of a Forum.

A. There is established a Utah Junior Livestock Show Association to be composed of the President, or the President's representative, of each of the Junior Livestock Shows that are currently participating in the appropriation. The President of each show, or the President's representative, may vote on issues at the annual meeting.

B. The Association will hold an annual meeting to conduct the business associated with carrying out the intent of these rules. The meeting will be held at a time decided upon by the officers.

C. The Association will conduct an election during even numbered years to elect a Vice-President and Secretary. The Vice-President will succeed the President on even numbered years. The Treasurer function will be carried out by the Commissioner's designated liaison to the Association as contained in R65-8-6.

D. The President of each participating show, or the President's representative, will attend the annual meeting or submit a written explanation for non-attendance to the President of the Association.

E. Representatives from at least one-third of the member shows will constitute a quorum for conducting business at the annual meeting.

F. Membership dues will be set by the officers of the Association, but may not exceed $50.00 per year, payable at the annual meeting. Allocations from the show fund may not be used to pay dues.

R65-8-3. Participation in the Appropriation.

A. Junior Livestock Shows which are not currently participating in the appropriation but who would like to participate must submit a request in writing to the President of the Association. This request will be acted on at the next annual meeting.

B. Any resident of the state who is a 4-H or FFA member and who meets the age requirements of the specific show must be allowed to participate in any show receiving funds under the terms of these rules.

R65-8-4. Establishment of Official Show Dates and Entry Deadlines.

A. By November 15 of each year, each show will submit, on an official form provided, all entrance requirements, including show dates, entry deadlines, and livestock ownership requirements. These documents will be filed with the Secretary for compilation into an official notice of show dates, entry deadlines and ownership requirements for distribution to the members.

R65-8-5. Equitable Distribution of Appropriation.

A. The association will be responsible for developing and maintaining an official formula for distribution of the appropriation. This formula will be filed with the Treasurer for general review, and will be used to develop the allotment for each show.

R65-8-6. Maintenance of Administrative Control of the Fund.

A. The Commissioner will designate a department employee as liaison to the Association. This designee will act as Association Treasurer and will insure, on behalf of the Commissioner, that the fund is being managed according to Legislative intent.

KEY: exhibitions, livestock
June 23, 2016 4-2-103(1)(i)
Notice of Continuation February 29, 2016 4-2-103(1)(m)

R65. Agriculture and Food, Marketing and Development.
R65-11. Utah Sheep Marketing Order.
R65-11-1. Authority.

A. Promulgated under authority of Subsection 4-2-103(e), which authorizes issuing marketing orders to promote orderly market conditions for agricultural products.

B. The Commissioner of Agriculture and Food finds that it is in the public interest to establish a marketing order to improve conditions in the sheep producing industry. The commissioner finds that the issuance of this marketing order is approved and favored by at least 50 percent of the producers and handlers voting on the referendum. It is therefore ordered by the commissioner that this Order be established to assure an effective and coordinated program to maintain and expand the Utah sheep industry's market position, and that the producers shall be subject to the terms and provisions of the Order.

R65-11-2. Definition of Terms.

A. "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food.

B. "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, legal representative, or any other entity.

C. "Sheep" means rams, ewes, or lambs.

D. "Producer" means a person owning at least 100 rams, ewes, or lambs.

E. "Registered producers" means producers who have indicated that they want to be included in the marketing order voting process by registering to vote in the referendum. Registration forms may be mailed out with the ballots.

F. "Handler" means an individual or an organization engaged in the merchandising of sheep or sheep products.

R65-11-3. Board.

A. The Utah Sheep Board is hereby established consisting of five members of the sheep industry, plus ex-officio non-voting members from BYU and USU and the Utah Department of Agriculture and Food.

B. The original members of the Board shall be selected by the commissioner from a list submitted by the industry.

C. Successors to original members shall be appointed by the commissioner from names submitted by the industry. Two members shall be appointed for a period of three years. Three members shall be appointed for a period of four years. After the first three years, each appointed member shall serve for a period of four years. This rotation shall be in effect for the term of the marketing order. In the event of a vacancy the commissioner shall appoint a new member from names submitted by the Board.

D. Members of the Board shall only succeed themselves once and not serve on the Board for more that eight consecutive years.

E. The officers of the Board shall be selected from the five Board members at their first meeting after organization. The officers shall consist of a Chairman and a Vice Chairman, to be elected yearly by the members of the Board. In the event of a vacancy or unfilled office, it shall be filled through an election as soon as practical and shall be for the remainder of the unexpired term.

F. The Board shall exercise the following functions, powers and duties:

1. to receive and expend funds collected for the benefit of the Utah sheep producers,

2. to cooperate with any local, state or national organization engaged in activities similar to those of the Sheep Marketing Board,

3. to conduct educational programs and advertizing to promote sheep and sheep products.

4. to conduct research projects to improve the profitability of the Utah Sheep Industry,

5. to engage in any activity to promote the Utah sheep industry.

G. Attendance of three members at a duly called meeting shall constitute a quorum for the transaction of official business. The Board shall meet at least quarterly.

H. Each member of the Board is entitled to per diem and expenses in accordance with Sections 63A-3-106 and 63A-3-107.

I. A financial report will be made available annually for the Board and members of the industry by the Utah Department of Agriculture and Food.

R65-11-4. Provisions of the Order.

A. This order provides for:

1. Uniform grading and inspection of sheep products sold or offered for sale by producers or handlers and for the establishment of grading standards of quality, conditions, and size. Such grading standards shall not be established below any minimum standards now prescribed by law for the State.

2. Advertising and sales promotion to create new or larger markets for sheep products produced in Utah, provided that any such plan shall be directed towards increasing the sale of such commodity without reference to particular brand or trade name.

3. The labeling, marketing, or branding of sheep products in conformity with the regulations of the commissioner or the laws of the State of Utah already in existence and written in the Utah Code.

4. Research projects and experiments for the purpose of improving the general condition of the Sheep Industry and for the purpose of protecting the health of the people of Utah.

5. The Board may cooperate with any other state or federal agency whose activities may be deemed beneficial to the purpose of this Order.

B. Expenses - Assessments - Collection and Disbursement.

1. Each producer subject to this Order shall pay to the board his or her pro rata share of such expenses as the commissioner may find necessary to be incurred by the Board for the functioning of said Marketing Order. Each producer shall pay up to 5 cents per pound of wool shorn to the Board annually. The discretionary assessment shall be set by majority vote of the Board, and approved by the commissioner. The initial assessment shall be 2 cents per pound. This assessment levied in the specified amount shall constitute a personal debt of every person so assessed and shall be due and payable upon sale of wool. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in commerce by such cooperative association of producers.

2. The assessment of each producer shall be deducted from the producer's gross receipt by the wool purchaser or handler. All proceeds from the deducted portion shall be paid at least quarterly to the Sheep Board. Sheep spending part of the year in Utah shall be assessed pro rata based on the time spent in Utah.

3. The Board shall retain records of the receipt of the assessment. The records shall be audited annually by an auditor approved by the commissioner. Copies of the audit shall be available to any contributor upon request.

4. The Board is required to reimburse the commissioner for any funds as are expended by the commissioner in performing his duties, as provided in this Order. Such reimbursement to include only funds actually expended in connection with this Order.

5. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the commissioner. The Board shall receive and disburse all funds received by it pursuant to Section R65-6-5. Any funds

remaining at the end of any year over and above the necessary expenses of said Board may be divided among all persons from whom such funds were collected. At the discretion of the Board, such amounts may be applied to the necessary expenses of the Board for the continuation of its program during the next succeeding year.

6. Any producer who wishes a refund of their paid assessment may request such by notifying the Board in writing within thirty days of payment of the assessment subject to approval of the Board.

7. The Order shall become operational only if it is approved by at least 50 percent of the producers and handlers voting in the referendum or by producers and handlers who account for at least two-thirds of the production represented by persons voting in the referendum.

R65-11-5. Division of Funds.

Assessments made and monies collected under provisions of this order shall be divided into assessments and funds for:

A. administrative purposes,

B. educational purposes, advertising and promotional purposes, and

C. research purposes. Such assessments and funds shall be used solely for the purposes for which they are collected; provided, that funds remaining at the end of any year may be used in the succeeding year and provided, that no funds be used for political or lobbying activities.

R65-11-6. Board - Member's Liability.

No member of the Board, nor any employee of the Board, shall be deemed responsible individually in any way whatsoever to any producer, distributor, handler, processor, or any other person, for errors of judgment, mistakes, or other acts, either of commission or omission of principal, agent, person, or employee, except for his own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members of such Board shall be several and not joint, and no member shall be liable for the default of any other member.

R65-11-7. Complaints for Violations - Producer.

Complaints for violations shall be handled by the responsible legal agencies and shall be enforced in the civil courts of the state.

R65-11-8. Termination of Order.

The commissioner may terminate the Marketing Order at such time as he may determine there is no longer an industry need for such order. A referendum vote may be called at the request of the producers through a petition of 40 percent of the producers.

R65-11-9. Quarterly Meeting.

The Board shall meet at least quarterly.

KEY: promotions
March 19, 1998 **4-2-103(1)(e)**
Notice of Continuation June 29, 2017

R65. Agriculture and Food, Marketing and Development.
R65-12. Utah Small Grains and Oilseeds Marketing Order.
R65-12-1. Authority.

A. Promulgated under authority of Subsection 4-2-103(1)(e), which authorizes issuing marketing orders to promote orderly market conditions for agricultural products.

B. The Commissioner of Agriculture and Food finds that it is in the public interest to establish a marketing order to improve conditions in the small grains and oilseeds producing industry. The Commissioner finds that the issuance of this marketing order is approved and favored by at least 50 percent of the registered producers and handlers voting on the referendum. It is therefore ordered by the Commissioner that this Order be established to assure an effective and coordinated program to maintain and expand the Utah small grains and oilseed industry's market position, and that the producers shall be subject to the terms and provisions of the Order.

R65-12-2. Definition of Terms.

A. "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food.

B. "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, legal representative, or any other entity.

C. "Small grains and oilseeds" means wheat, barley, safflower, canola and any other small grain or oilseed produced or to be produced in Utah.

D. "Producer" means a person owning or leasing cropland consisting of at least 40 acres producing grain and/or oilseed.

E. "Registered producers" means producers who meet the minimum threshold of producing at least 40 acres of grain and/or oilseed for registration to vote on the referendum and have indicated that they want to be included in the marketing order voting process by certifying their eligibility to vote in the referendum.

F. "Handler" means an individual or an organization that purchases small grains or oilseed products.

G. "Purchase" means payment made to a producer by an individual or other entity.

R65-12-3. Board.

A. The Utah Small Grains and Oilseeds Board is hereby established consisting of five members of the small grains and oilseeds industry (no more than 2 individuals from the same county can serve simultaneously), plus up to two ex-officio non-voting members from Utah State University, the Utah Department of Agriculture and Food or farm organization of the Board's choice. An ex-officio non-voting member can serve as Secretary for the Board.

B. The original members of the Board shall be selected by the Commissioner.

C. Successors to original members shall be appointed by the Commissioner. Two members shall be appointed for a period of three years. Three members shall be appointed for a period of four years. After the first three years, each appointed member shall serve for a period of four years. This rotation shall be in effect for the term of the marketing order. In the event of a vacancy the Commissioner shall appoint a new member from names submitted by the Board.

D. Members of the Board shall only succeed themselves once and not serve on the Board for more than eight consecutive years without a break in term of at least one year.

E. The officers of the Board shall be selected from the five Board members at their first meeting after organization. The officers shall consist of a Chairman and a Vice Chairman, to be elected yearly by the members of the Board. In the event of a vacancy or unfilled office, it shall be filled through an election as soon as practical and shall be for the remainder of the unexpired term.

F. The Board shall exercise the following functions, powers and duties:

1. to receive and expend funds collected for the benefit of the Utah small grains and oilseeds producers,

2. to cooperate with any local, state or national organization engaged in activities similar to those of the Small Grains and Oilseeds Marketing Board,

3. to support, fund and/or conduct educational programs and advertising to promote grains, oilseeds and their products.

4. to support and/or fund research projects to improve the profitability of the Utah small grains and oilseeds industry.

5. to engage in any activity to promote the Utah small grains and oilseeds industry.

G. Attendance of three members at a duly called meeting shall constitute a quorum for the transaction of official business. The Board shall meet at least once annually and more often as deemed necessary by the Board.

H. Each member of the Board is entitled to per diem and expenses in accordance with Sections 63A-3-106 and 63A-3-107.

I. A financial report will be made available annually for members of the industry by the Small Grains and Oilseed Marketing Board.

R65-12-4. Provisions of the Order.

A. This order provides for:

1. Grading standards shall not be established below any minimum standards now prescribed by law for the State.

2. Advertising and sales promotion to create new or larger markets for small grains and oilseeds products produced in Utah, provided that any such plan shall be directed towards increasing the sale of such commodity without reference to particular brand or trade name.

3. The labeling, marketing, or branding of grain and oilseed products in conformity with the regulations of the Commissioner or the laws of the State of Utah already in existence and written in the Utah Code.

4. Research projects and experiments for the purpose of improving the general condition of the small grains and oilseeds industry and for the purpose of protecting the health of the people of Utah.

5. The Board may cooperate with any other state or federal agency whose activities may be deemed beneficial to the purpose of this Order.

B. Expenses - Assessments - Collection and Disbursement.

1. Each producer subject to this Order shall pay to the board his or her pro rata share of such expenses as the Commissioner may find necessary to be incurred by the Board for the functioning of said Marketing Order. Each producer shall pay up to 5 cents per bushel of wheat sold (after all dockage has been deducted), and up to 10 cents per hundred weight on barley, safflower and canola sold (after all dockage has been deducted), to the Board quarterly. The discretionary assessment shall be set by majority vote of the Board, and approved by the Commissioner. The initial assessment shall be 3.5 cents per bushel on wheat and 7 cents per hundred weight on barley safflower and canola. This assessment levied in the specified amount shall constitute a personal debt of every person so assessed and shall be due and payable upon sale of the product. The pro rata share of the expenses payable by a cooperative association of producers shall be computed on the basis of the quantity of the product covered by the Order which is distributed, sold, or shipped in commerce by such cooperative association of producers.

2. Only grains and oilseeds produced in Utah shall be assessed. The assessment of each producer shall be deducted from the producer's gross receipt by the purchaser or handler. All proceeds from the deducted portion shall be paid at least quarterly to the Small Grains and Oilseeds Board. Failure of a

purchaser or handler to collect and submit the assessment to the Board will result in a penalty to the purchaser or handler of two times the assessment amount. A purchaser or handler who collects the assessment but fails to submit payment to the Board is subject to a penalty equal to three times the assessment amount.

3. The Board shall retain records of the receipt of the assessment. The records shall be audited annually by an auditor approved by the Commissioner. Handlers may be audited on a random basis as deemed necessary by the Board with results included in the annual audit. Copies of the annual audit shall be available to any contributor upon request.

4. The Board is required to reimburse the Commissioner for any funds as are expended by the Commissioner in performing his duties, as provided in this Order. Such reimbursement to include only funds actually expended in connection with this Order.

5. The Board is authorized to incur such expenses as are necessary to carry out its functions subject to the approval of the Commissioner. The Board shall receive and disburse all funds received by it pursuant to this Order. Any funds remaining at the end of any year over and above the necessary expenses of said Board may be carried over to the next year, or divided among all persons from whom such funds were collected. At the discretion of the Board, such amounts may be applied to the necessary expenses of the Board for the continuation of its program during the next succeeding year. If carry over funds exceed $300,000 at the end of any fiscal year, with the Commissioner's approval, the Board may suspend assessments of funds for the ensuing year or longer if deemed appropriate.

6. The Order shall become operational only if it is approved by at least 50 percent of the registered and certified producers and handlers voting in the referendum.

R65-12-5. Board - Member's Liability.

No member of the Board, nor any employee of the Board, shall be deemed responsible individually in any way whatsoever to any producer, distributor, handler, processor, or any other person, for errors of judgment, mistakes, or other acts, either of commission or omission of principal, agent, person, or employee, except for his own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board. The liability of the members of such Board shall be several and not joint, and no member shall be liable for the default of any other member.

R65-12-6. Complaints for Violations - Producer.

Complaints for violations shall be handled by the responsible legal agencies and shall be enforced in the civil courts of the state.

R65-12-7. Termination of Order.

The Commissioner may terminate the Marketing Order at such time as he/she may determine there is no longer an industry need for such order. A referendum vote may be called at the request of the producers through a petition of 40 percent of the producers.

R65-12-8. Annual Meeting.

The Board shall meet at least annually and as often as the Board deems necessary.

KEY: promotions
April 16, 2014 **4-2-103(1)(e)**

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

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

R68-25-2. Definitions.

1) "CBD" means cannabidiol.

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

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

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

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

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

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

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

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

R68-25-3. Application Requirements.

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

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

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

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

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

a) a complete application form provided by the department;

b) a physical description of the processing facility;

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

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

e) the planned source of industrial hemp material;

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

g) a research plan.

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

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

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

R68-25-4. Processing Facility Restrictions.

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

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

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

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

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

R68-25-5. CBD Extraction Methods.

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

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

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

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

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

R68-25-6. Processing Practices.

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

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

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

R68-25-7. Required Reports.

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

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

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

R68-25-8. Additional Records.

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

a) the date of receipt;

b) quantity received; and

c) an identifying lot number created by the licensee;

d) the seller's information including;

i) the seller's department license number;

ii) seller's contact information; and

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

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

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

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

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

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

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

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

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

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

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

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

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

R152. Commerce, Consumer Protection.
R152-34a. Utah Postsecondary School State Authorization Act Rule.
R152-34a-101. Authority and Purpose.

(1) These rules are promulgated under the authority of Section 13-2-5(1) and Section 13-34a-103.

(2) These rules are promulgated to:

(a) administer and enforce the Utah Postsecondary School State Authorization Act; and

(b) provide standards by which persons subject to the Utah Postsecondary School State Authorization Act shall operate.

R152-34a-102. Definition.

"Accredited" means public recognition by a national or regional accrediting agency, as defined in Section 13-34a-102(2).

R152-34a-201. Application Process.

(1) To obtain a certificate of postsecondary state authorization, an applicant shall:

(a) submit to the division a completed application form, as provided by the division;

(b) attach to the application:

(i)(A) a copy of the school's accreditation statement; and

(B) if the applicant does not meet the criteria stated in Section 13-34a-203, audited financial statements pursuant to this Subsection (2);

(ii) a list of all current course offerings;

(iii) a copy of the school's tuition schedule and total program cost(s); and

(iv) a copy of the school's refund policy;

(c) comply in all respects with Section 13-34a-203 or Section 13-34a-204 as applicable;

(d) sign and notarize a statement that the owner of the school or similar controlling individual:

(i) has read and understood Section 13-34a et seq and these rules; and

(ii) agrees to operate in full compliance with Section 13-34a et seq and these rules; and

(e) pay the nonrefundable application fee.

(2) A school that is required to submit audited financial statements pursuant to this Subsection (1)(b)(i)(B) shall submit:

(a) the audited financial statements that were completed or provided to an accrediting agency in conjunction with the school's most recent accreditation review; and

(b) audited financial statements for the most recent fiscal year.

(3)(a) A postsecondary school that submits an application for a certificate of authorization under this Subsection R152-34a-201 is not required to apply concurrently with the division for registration as a postsecondary proprietary school under Section 13-34 et seq.

(b) For the purpose of Section 13-34-107(1)(b)(ii), a certificate of state authorization issued under this Subsection R152-34a-3 establishes an exemption to the registration requirement that otherwise applies to a person operating as a postsecondary proprietary school.

R152-34a-206. Complaint Process.

To file a complaint under Section 13-34a et seq against a postsecondary school that holds a certificate from the division, a person shall submit to the division:

(1) a completed complaint form as provided by the division; or

(2) a letter, signed by the complainant, and including:

(a) all documentary evidence related to the complaint; and

(b) contact information for the complainant.

R152-34a-302. Grounds for Investigation and Enforcement - Requirements Upon Termination of Certificate of Authorization.

(1) A postsecondary school that holds a certificate of authorization shall:

(a) as to an entity granted a certificate under Section 13-34a-204, maintain financial capability pursuant to Section 13-34a-204(2)(a);

(b) disclose to each student, in writing, the school's tuition schedule, total program cost, and refund policy before requiring a student to make any payment to the school;

(c) if cited or investigated by the division, provide:

(i) copies of all advertised claims;

(ii) copies of any documents signed by or on behalf of the complainant and other interested person(s), as identified by the division;

(iii) all academic records of the complainant and other student(s), as identified by the division and permitted under any applicable confidentiality law or agreement; and

(iv) all other records requested by the division;

(d)(i) maintain each student's transcript(s) for a period of at least 60 years from the date of the student's last attendance:

(A) in either paper or electronic form; and

(B) at a physical location within the continental United States; and

(ii) provide a student's transcript(s):

(A) within 20 days of a request from the student or the division; and

(B)(I) without charge, if the request is from the division; or

(II) with or without a reasonable charge, if the request is from a student;

(e) if terminating operations, within the 30-day period following the date of termination:

(i) surrender to the division the school's current state certificate of authorization; and

(ii) identify:

(A) the name and contact information of the individual who will maintain custody of student records pursuant to this Subsection (1)(d); and

(B) the physical location where student transcripts will be maintained in compliance with this Subsection (1)(d); and

(f) notify the division within 10 business days of:

(i) any change in information on record with division; and

(ii) any action taken against the school by an accrediting body or a regulatory agency, including a state or the federal government.

(2) A postsecondary school that holds a certificate of state authorization may not:

(a) promulgate to the public a fraudulent or misleading statement relating to a program or service offered; or

(b) withhold information or documents requested by the division in an investigation.

(3) Pursuant to Section Subsection 13-34a-103(2)(iv), the violation of a rule in this Subsection R152-34a-302 may be sanctioned by denial, suspension, or revocation of a certificate of the postsecondary school state authorization.

KEY: postsecondary schools, certificate of state authorization, application requirements, consumer protection
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Notice of Continuation April 1, 2019 13-34a-103

R156. Commerce, Occupational and Professional Licensing.
R156-28. Veterinary Practice Act Rule.
R156-28-101. Title.

This rule is known as the "Veterinary Practice Act Rule".

R156-28-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 28, as used in Title 58, Chapters 1 and 28 or this rule:

(1) "In association with licensed veterinarians", as used in Subsection 58-28-307(6), means the out of state licensed veterinarian is performing veterinarian services in this state as the result of a request for assistance or consultation initiated by a Utah licensed veterinarian regarding a specific client or patient and the services provided by the out of state licensed veterinarian are limited to that specific request.

(2) "NBEC" means the National Board Examination Committee of the American Veterinary Medical Association.

(3) "Patient" means any animal receiving veterinarian services.

(4) "Practice of veterinary medicine, surgery, and dentistry" as defined in Subsection 58-28-102(11) does not include the implantation of any electronic device for the purpose of establishing or maintaining positive identification of animals.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 28, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-28-502.

(6) "Working under" as used in Subsection 58-28-102(13), means when an individual performs services in Utah as unlicensed assistive personnel while supervised by a licensed veterinarian, provided:

(a) the manner and means of work performance are subject to the right of control of, or are controlled by, a licensed veterinarian; and

(b) the delegated tasks are maintained in the supervising veterinarian's medical records.

R156-28-103. 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 28.

R156-28-104. 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.

R156-28-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the education requirements for licensure in Subsection 58-28-302 are defined, clarified, or established as follows.

(1) Each applicant for licensure as a veterinarian shall comply with one of the following:

(a) an official transcript demonstrating that the applicant has graduated from a veterinary college which held current accreditation by the Council on Education of the American Veterinary Medical Association (AVMA) at the time of the applicant's graduation; or

(b) if the applicant received a veterinary degree in a foreign country, demonstrate that the applicant's foreign education is equivalent to the requirements of Subsection R156-28-302a(1)(a) by submitting a Certificate of Competence issued by the AVMA Educational Commission for Foreign Veterinary Graduates (ECFVG) or the American Association of Veterinary State Boards (AAVSB) Program for Assessment of Veterinary Education Equivalence (PAVE).

(2) Each applicant for licensure as a veterinarian intern shall demonstrate that the applicant has met the education provided in Subsection R156-28-302a(1); however, if the applicant has graduated, but the educational institution has not yet posted the degree on the official transcript, the applicant may submit the official transcript together with a notarized letter from the dean or registrar of the educational institution, which certifies that the applicant has obtained the degree but it is not yet posted to the official transcript.

R156-28-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the experience requirements for licensure in Subsection 58-28-302 are defined, clarified, or established as follows.

(1) Each applicant for licensure as a veterinarian shall:

(a) complete 1000 hours of experience while licensed as a veterinarian intern under the supervision of a licensed veterinarian in accordance with the following.

(i) Experience shall be earned in not less than six months and completed within two years of the date of the application.

(ii) Experience in the following settings is not acceptable to fulfill this experience requirement:

(A) temporary employment experiences of less than eight weeks in duration;

(B) part time experience of less than 20 hours per week; or

(C) experience completed while employed as unlicensed assistive personnel.

(iii) If the experience is completed in a jurisdiction outside of Utah which does not issue veterinarian, veterinarian intern, or comparable licenses, or else was completed in a setting which does not require licensure, the applicant shall demonstrate that the experience was:

(A) lawfully obtained;

(B) obtained after the applicant met the education requirement specified in Section R156-28-302a;

(C) supervised by a competent supervisor who was licensed as a veterinarian, or who was exempted from licensure but possessed substantially equivalent qualifications; and

(D) comparable to experience that would be obtained in a standard veterinarian practice setting in Utah.

(iv) Supervision of the intern by the licensed veterinarian may be obtained by "indirect supervision" as defined in Section 58-28-102 provided that the supervisor supplements the indirect supervision with routine face to face contact as the licensed veterinarian deems appropriate using professional judgment.

(v) Each applicant shall demonstrate completion of the experience required by submitting a verification of experience signed by the applicant and the applicant's supervising veterinarian on forms approved by the Division.

(vi) If a supervisor is unavailable or refuses to provide a certification of qualifying experience, the applicant shall submit a complete explanation of why the supervisor is unavailable and submit verification of the experience by alternative means acceptable to the board, which shall demonstrate that the work was profession-related work, competently performed, and sufficient accumulated experience for the applicant to be granted a license without jeopardy to the public health, safety or welfare.

(b) In accordance with Subsections 58-37-6(1)(a), 58-37-6(5)(b)(i) and R156-37-305(1), a veterinary intern is not eligible to obtain a controlled substance license during the internship.

R156-28-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the examination requirements for licensure in Subsection 58-28-302(1)(b) are defined, clarified, or established as follows:

(1) Applicants who passed examinations prior to May 1, 2000 shall submit documentation showing they passed:

(a) the National Board Examination (NBE) of the National Board Examination Committee (NBEC) of the American

Veterinary Medical Association (AVMA) with a minimum passing score as determined by the NBEC; and

(b) the Clinical Competency Test (CCT) of the NBEC with a minimum passing score as determined by the NBEC.

(2) Applicants who passed examinations after May 1, 2000, shall submit documentation showing they passed the North American Veterinarian Licensing Examination (NAVLE) with a score as determined by the NBEC.

(3) To be eligible to sit for the NAVLE, an applicant shall submit the following to the International Council for Veterinary Assessment (ICVA), in the manner directed by the ICVA:

(a) an application for approval to sit for the NAVLE;

(b) the application fee; and

(c) documentation showing the applicant:

(i) has graduated from, or is enrolled in, a school or college of veterinary medicine accredited by the Council on Education of the American Veterinary Medical Association (AVMA); or

(ii) holds a certificate issued by, or is enrolled in and has completed the Step 3 examination requirement for, one of the following programs:

(A) the Educational Commission for Foreign Veterinary Graduates (ECFVG); or

(B) the Program for the Assessment of Veterinary Education Equivalence (PAVE).

(4) An applicant who has not graduated from veterinary school at the time of application must have an expected graduation date no later than ten months from the last date of the applicable testing window.

(5) The following conditions apply to retaking the NAVLE exam:

(a) an applicant may not sit for the NAVLE more than five times;

(b) an applicant may not sit for the NAVLE at a date that is later than five years after the applicant's initial attempt; and

(c) each of the applicant's final two attempts must be at least one year from the previous attempt.

R156-28-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 28 is established by rule in Section R156-1-308a(1).

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

(3) Applicants for renewal shall meet the continuing education requirements specified in Section R156-28-304.

R156-28-304. Continuing Professional Education.

In accordance with Section 58-28-306, there is created a continuing professional education requirement as a condition for renewal or reinstatement of licenses issued under Title 58, Chapter 28. Continuing professional education shall comply with the following criteria:

(1) During each two year period commencing on September 30 of each even-numbered year, a licensee shall be required to complete at least 24 hours of qualified continuing professional education directly related to the licensee's professional practice.

(2) If a licensee first becomes licensed during the two-year period, the licensee's required number of continuing professional education hours shall be decreased proportionately according to the date of licensure.

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a veterinarian;

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

(c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training, and experience; and

(e) have a competent method of registration of individuals who actually completed the professional education program, with records of that registration and completion available for review.

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

(a) Unlimited hours shall be recognized for continuing professional education as a student or presenter, completed in blocks of time of not less than one hour in formally established classroom courses, seminars, lectures, wet labs, or specific veterinary conferences approved or sponsored by one or more of the following:

(i) the American Veterinary Medical Association;

(ii) the Utah Veterinary Medical Association;

(iii) the American Animal Hospital Association;

(iv) the American Association of Equine Practitioners;

(v) the American Association of Bovine Practitioners;

(vi) certifying boards recognized by the AVMA;

(vii) other state veterinary medical associations or state licensing boards; or

(viii) the Registry of Continuing Education (RACE) of the AASVB.

(b) No more than five continuing professional education hours may be counted for being the primary author of an article published in a peer reviewed scientific journal, and no more than two continuing professional education hours may be counted for being a secondary author.

(c) No more than six continuing professional education hours may be in practice management courses.

(d) Any continuing professional education where there is no instructor or where the instructor is not physically present, shall assure the licensee's participation and acquisition of the knowledge and skills intended by means of an examination. These types of continuing professional education courses include internet, audio/visual recordings, broadcast seminars, mail and other correspondence courses.

(5) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

(6) A licensee who is unable to complete the continuing professional education requirement for reasons such as a medical or related condition, humanitarian or ecclesiastical services, or extended presence in a geographical area where continuing education is not available, may be excused from the requirement for a period of up to three years as provided in Section R156-1-308d.

R156-28-502. Unprofessional Conduct.

Unprofessional conduct includes:

(1) deviating from the minimum standards of veterinary practice set forth in Section R156-28-503;

(2) permitting unlicensed assistive personnel to perform duties that the individual is not competent by education, training or experience to perform; and

(3) failing to conform to the generally accepted and recognized standards and ethics of the profession, including:

(a) the Principles of Veterinary Medical Ethics of the American Veterinarian Medical Association (AVMA), as approved by the AVMA Executive Board, revised April 2016, which are hereby incorporated by reference ("Principles"); and

(b) if a licensee fails to establish the veterinarian-client-patient relationship as required in Section II of the Principles, such failure shall not excuse the veterinarian from complying with all other duties that would be imposed on the veterinarian if the veterinarian had properly established the veterinarian-client-patient relationship.

R156-28-503. Minimum Standards of Practice.

In accordance with Subsection 58-28-102(14) and Section 58-28-603, a veterinarian shall comply with the following minimum standards of practice in addition to the generally recognized standards and ethics of the profession:

(1) A veterinarian shall compile and maintain records on each patient to minimally include:

(a) client's name, address and phone number, if telephone is available;

(b) patient's identification, such as name, number, tag, species, age and gender, except for herds, flocks or other large groups of animals which may be more generally defined;

(c) veterinarian's diagnosis or evaluation of the patient;

(d) treatments rendered including drugs used and dosages; and

(e) date of service.

(2) A veterinarian shall:

(a) maintain veterinary medical records under Subsection (1) above so that any veterinarian coming into a veterinary practice may, by reading the veterinary medical record of a particular animal, be able to proceed with the proper care and treatment of the animal; and

(b) maintain veterinary medical records under Subsection (1) above for a minimum of five years from the date that the animal was last treated by the veterinarian.

(3) A veterinarian shall maintain a sanitary environment to avoid sources and transmission of infection to include the proper routine disposal of waste materials and proper sterilization or sanitation of all equipment used in diagnosis and treatment.

KEY: veterinary medicine, licensing, veterinarian
March 25, 2019 58-1-106(1)(a)
Notice of Continuation November 3, 2016 58-1-202(1)(a)
58-28-101

R251. Corrections, Administration.
R251-111. Government Records Access and Management.
R251-111-1. Authority and Purpose.

(1) This rule is authorized Sections 63A-12-104(2), 63G-2-204, 64-13-10, 46-4-501 and 46-4-502, of the Utah Code.

(2) The purpose of this rule is to provide procedures for access to government records of the Department of Corrections and to facilitate intergovernmental, cross-boundary intercooperation.

R251-111-2. Definitions.

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

(2) "GRAMA" means Government Records Access and Management Act, Title 63G, Chapter 2, Utah Code.

(3) "Individual" means a human being.

(4) "Inmate" means any person who is committed to the custody of the Department and who is housed at a correctional facility or at a county jail at the request of the Department.

(5) "Person" means any individual, nonprofit or profit corporation, partnership, sole proprietorship, or other type of business organization.

(6) "Requester" means the person making a request for records.

R251-111-3. Requests for Access.

(1) Requests for access to records shall be directed as follows:

(a) All records requests by an inmate or offender under the jurisdiction of the Department shall be directed to:

(i) For all inmates: Institutional Operations Division, Primary Records Officer, Utah State Prison, P.O. Box 250, Draper, Utah 84020; or

(ii) For all probationers and parolees: Adult Probation and Parole Division, Primary Records Officer, Administration, 14717 Minuteman Drive, Draper, Utah 84020.

(b) All records requests by persons to obtain information for a story or report for publication or broadcast to the general public shall be directed to the Public Information Officer, 14717 Minuteman Drive, Draper, Utah 84020.

(c) All requests for access to records by persons other than those specified in subparagraphs (a) and (b) above, shall be directed to the Records Bureau, 14717 Minuteman Drive, Draper, Utah 84020.

(d) All requests from governmental agencies shall be directed to the appropriate unit of the Department, as approved by the Records Bureau or specified in Departmental policy.

(2) The time limits dictated by GRAMA Section 63G-2-204, of the Utah Code, for response to requests shall be calculated based on receipt of a valid request at the office specified in this rule.

(3) Written requests may be submitted electronically. Evidence of identity, where required, shall be based upon accepted State standards for electronic identification.

R251-111-4. Inmate Submission Requirements -- Forms.

(1) All records requests from inmates shall be submitted on the Utah State Prison Inmate GRAMA Records Request Form supplied by the Department.

(2) Records requests by inmates at the Utah State Prison or the Central Utah Correctional Facility must be accompanied by a Money Transfer Form which authorizes a deduction for fees from the inmate's account or a proper request for a waiver of fees.

(3) Inmates requesting a fee waiver because of a claimed indigent status, or other reason, shall state the claim on the request form.

KEY: criminal records, corrections, GRAMA, government records

March 26, 2014 **63A-12-104(2)**
Notice of Continuation March 19, 2019 **63G-2-204**
64-13-10
46-4-501
46-4-502

R277. Education, Administration.
R277-100. Definitions for Utah State Board of Education (Board) Rules.
R277-100-1. 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 provide definitions that are used in the Board rules beginning with R277.

R277-100-2. Definitions.

(1) "Accreditation" means the formal process for internal and external review and approval under the standards of an accrediting entity adopted by the Board.

(2) "Agency" means:

(a) an entity governed by the Board;

(b) an LEA; or

(c) a grant sub-recipient.

(3) "Board" means the State Board of Education.

(4) "Charter school" means a school established as a charter school by a charter school authorizer under Title 53G, Chapter 5, Charter Schools, and rule.

(5) "District school" means a public school under the control of a local school board elected under Title 20A, Chapter 14, Nomination and Election of State and Local School Boards.

(6) "Dual enrollment student" means a student who:

(a) is enrolled simultaneously in:

(i) a private school or home school; and

(ii) a public school; and

(b) is counted by an LEA in membership for purposes of generating state or federal funding for only those courses or subjects for which the LEA provides instruction.

(7) "Educator" means an individual licensed under Section 53E-6-201 and who meets the requirements of Board rule.

(8)(a) "Evaluate" or "review" means to observe and assess a program receiving state or federal funds with an objective of making recommendations, if appropriate, for necessary changes or improvement.

(b) An "evaluation" or "review" may include providing training and technical assistance on program-related matters and performing on-site reviews of program operations.

(9)(a) "External audit" means an appraisal activity established under the direction of an individual or entity outside of the subject agency to examine and evaluate the adequacy and effectiveness of:

(i) agency control systems;

(ii) compliance;

(iii) performance; and

(iv) financial position.

(b) An external audit is conducted in accordance with current professional and industry technical standards, as applicable, for external audits.

(10)(a) "Home school student" means a student who:

(a) attends a home school pursuant to Section 53G-6-204; and

(b) is not counted by an LEA in membership for purposes of generating state or federal funding.

(11) "Individualized education program" or "IEP" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1400 (2004), and rule.

(12) "Individuals with Disabilities Education Act" or "IDEA," 20 U.S.C. Section 1400 et seq. (2004), is a four part (A-D) piece of federal legislation that ensures a student with a disability is provided with a Free Appropriate Public Education (FAPE) that is tailored to the student's individual needs.

(13)(a) "Internal audit" means an independent appraisal activity established within an agency as a control system to examine and objectively evaluate the adequacy and effectiveness of other internal control systems within the agency.

(b) An "internal audit" is conducted in accordance with the current:

(i) International Standards for the Professional Practice of Internal Auditing; or

(ii) Government Auditing Standards, issued by the Comptroller General of the United States.

(14)(a) "LEA" or "local education agency" means a school district or charter school.

(b) For purposes of certain rules, "LEA" or "local education agency" may include the Utah Schools for the Deaf and the Blind (USDB) if indicated in the specific rule.

(15)(a) "LEA governing board" means:

(i) for a school district, a local school board; and

(ii) for a charter school, a charter school governing board.

(b) For purposes of certain rules, "LEA governing board" may include the State Board of Education as the governing board for the Utah Schools for the Deaf and the Blind if indicated in the specific rule.

(16)(a) "Monitor" or "oversee" means to formally supervise, inspect, or examine the compliance, performance, or finances of a program receiving state or federal education funding.

(b) A monitoring or oversight program may include:

(i) review of financial and performance reports required of the subject program;

(ii) follow-up to ensure the subject program takes timely and appropriate actions to correct identified deficiencies;

(iii) supervising remedial action recommended by audit or monitoring findings or required by Board rule; and

(iv) any function performed in an evaluation or review.

(17) "Parent" means a parent or guardian who has established residency of a child under Sections 53G-6-302, 53G-6-303, or 53G-6-402, or another applicable Utah guardianship provision.

(18) "Plan for College and Career Readiness" or "SEOP" means a student education occupation plan for college and career readiness that is a developmentally organized intervention process that includes:

(a) a written plan, updated annually, for a secondary student's (grades 7-12) education and occupational preparation;

(b) all Board, local board and local charter board graduation requirements;

(c) evidence of parent or guardian, student, and school representative involvement annually;

(d) attainment of approved workplace skill competencies, including job placement when appropriate; and

(e) identification of post secondary goals and approved sequence of courses.

(19)(a) "Private school student" means a student who:

(a) attends a private school; and

(b) is not counted by an LEA in membership for purposes of generating state or federal funding.

(20) "Public school student" means a student who:

(a) attends an LEA governed public school; and

(b) is counted by an LEA in membership for purposes of generating state or federal funding.

(21) "Split enrollment student" means a student who is:

(a) regularly enrolled at two schools within two LEAs at the same time;

(b) eligible for graduation and other services at both schools; and

(c) subject to the split enrollment provisions of R277-419,

counted by each LEA in membership for purposes of generating state or federal funding for only those courses or subjects for which each LEA provides instruction.

(22) "State Charter School Board" or "SCSB" means the State Charter School Board created in Section 53G-5-201.

(23) "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee.

(24) "USDB" means the Utah Schools for the Deaf and the Blind.

KEY: Board of Education, rules, definitions
March 13, 2019 **Art X Sec 3**
53E-3-401(4)

R277. Education, Administration.
R277-487. Public School Data Confidentiality and Disclosure.
R277-487-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Subsection 53E-9-302(1), which directs that the Board may make rules to establish student data protection standards for public education employees, student aides, and volunteers; and

(d) Subsection 53G-11-511(4), which directs that the Board may make rules to ensure the privacy and protection of individual evaluation data.

(2) The purpose of this rule is to:

(a) provide for appropriate review and disclosure of student performance data on state administered assessments as required by law;

(b) provide for adequate and appropriate review of student performance data on state administered assessments to professional education staff and parents of students;

(c) ensure the privacy of student performance data and personally identifiable student data, as directed by law;

(d) provide an online education survey conducted with public funds for Board review and approval; and

(e) provide for appropriate protection and maintenance of educator licensing data.

R277-487-2. Definitions.

(1) "Association" has the same meaning as that term is defined in Subsection 53G-7-1101(3).

(2) "Chief Privacy Officer" means a Board employee designated by the Board as primarily responsible to:

(a) oversee and carry out the responsibilities of this rule; and

(b) direct the development of materials and training about student and public education employee privacy standards for the Board and LEAs, including:

(i) FERPA; and

(ii) the Utah Student Data Protection Act, Title 53E, Chapter 9, Part 3.

(3) "Classroom-level assessment data" means student scores on state-required tests, aggregated in groups of more than 10 students at the classroom level or, if appropriate, at the course level, without individual student identifiers of any kind.

(4) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" means the electronic file maintained and owned by the Board on all licensed Utah educators, which includes information such as:

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history; and

(e) a record of disciplinary action taken against the educator.

(5) "Confidentiality" refers to an obligation not to disclose or transmit information to unauthorized parties.

(6) "Cyber security framework" means:

(a) the cyber security framework developed by the Center for Internet Security found at http://www.cisecurity.org/controls/; or

(b) a IT security framework that is comparable to the cyber security framework described in Subsection (6)(a).

(7) "Data governance plan" has the same meaning as defined in Subsection 53E-9-301(7).

(8) "Data security protections" means protections developed and initiated by the Superintendent that protect, monitor and secure student, public educator and public education employee data as outlined and identified in FERPA and Sections 63G-2-302 through 63G-2-305.

(9) "Destroy" means to remove data or a record:

(a) in accordance with current industry best practices; and

(b) rendering the data or record irretrievable in the normal course of business of an LEA or a third-party contractor.

(10) "Disclosure" includes permitting access to, revealing, releasing, transferring, disseminating, or otherwise communicating all or any part of any individual record orally, in writing, electronically, or by any other communication method.

(11) "Expunge" means to seal a record so as to limit its availability to all except authorized individuals.

(12) "Enrollment verification data" includes:

(a) a student's birth certificate or other verification of age;

(b) verification of immunization or exemption from immunization form;

(c) proof of Utah public school residency;

(d) family income verification; or

(e) special education program information, including:

(i) an individualized education program;

(ii) a Section 504 accommodation plan; or

(iii) an English language learner plan.

(13) "FERPA" means the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, and its implementing regulations found at 34 C.F.R., Part 99.

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

(15) "Metadata dictionary" has the same meaning as defined in Subsection 53E-9-301(14).

(16) "Personally identifiable student data" has the same meaning as defined in Subsection 53E-9-301(14).

(17) "Significant data breach" means a data breach where:

(a) an intentional data breach successfully compromises student records;

(b) a large number of student records are compromised;

(c) sensitive records are compromised, regardless of number; or

(d) a data breach an LEA deems to be significant based on the surrounding circumstances.

(18) "Student data advisory groups" has the same meaning as described in Subsection 53E-9-302(3).

(19) "Student data manager" means the individual at the LEA level who:

(a) is designated as the student data manager by an LEA under Section 53E-9-303;

(b) authorizes and manages the sharing of student data;

(c) acts as the primary contact for the Chief Privacy Officer;

(d) maintains a list of persons with access to personally identifiable student data; and

(e) is in charge of providing annual LEA staff and volunteer training on data privacy.

(20) "Student performance data" means data relating to student performance, including:

(a) data on state, local and national assessments;

(b) course-taking and completion;

(c) grade-point average;

(d) remediation;

(e) retention;

(f) degree, diploma, or credential attainment; and

(g) enrollment and demographic data.

(20) "Third party contractor" has the same meaning as defined in Subsection 53E-9-301(23).

R277-487-3. Data Privacy and Security Policies.

(1) The Superintendent shall develop resource materials

for LEAs to train employees, aides, and volunteers of an LEA regarding confidentiality of personally identifiable student data and student performance data.

(2) The Superintendent shall make the materials developed in accordance with Subsection (1) available to each LEA.

(3) An LEA or public school may not be a member of or pay dues to an association that is not in compliance with:

(a) FERPA;

(b) Title 53E, Chapter 9, Part 3, Student Data Protection Act;

(c) Title 53E, Chapter 9, Part 2, Utah Family Educational Rights and Privacy Act; and

(d) this Rule R277-487.

(4) An LEA shall comply with Title 53E, Chapter 9, Part 3, Student Data Protection Act.

(5) An LEA shall comply with Section 53E-9-204.

(6) An LEA is responsible for the collection, maintenance, and transmission of student data.

(7) An LEA shall ensure that school enrollment verification data, student performance data, and personally identifiable student data are collected, maintained, and transmitted:

(a) in a secure manner; and

(b) consistent with sound data collection and storage procedures, established by the LEA.

(8) An LEA may contract with a third party contractor to collect, maintain, and have access to school enrollment verification data or other student data if:

(a) the third party contractor meets the definition of a school official under 34 C.F.R. 99.31(a)(1)(i)(B); and

(b) the contract between the LEA and the third party contractor includes the provisions required by Subsection 53E-9-309(2).

(9) An LEA shall publicly post the LEA's definition of directory information, as defined in FERPA, and describe how a student data manager may share personally identifiable information that is directory information.

(10) An LEA shall provide the Superintendent with a copy or link to the LEA's directory information definition by October 1 annually.

(11) By October 1 annually, an LEA shall enter all student data elements shared with third parties into the Board's metadata dictionary.

(12) An LEA shall report all significant data breaches of student data either by the LEA or by third parties to the Superintendent within ten business days of the initial discovery of the significant data breach.

(13) An LEA shall provide the Superintendent with a copy or link to the LEA's data governance plan by October 1 annually.

(14) An LEA shall provide the Superintendent with the following information by October 1 annually:

(a) evidence that the LEA has implemented a cyber security framework; and

(b) the name and contacted information for the LEA's designated Information Security Officer.

(15) All public education employees, aides, and volunteers in public schools shall become familiar with federal, state, and local laws regarding the confidentiality of student performance data and personally identifiable student data.

(16) All public education employees, aides, and volunteers shall maintain appropriate confidentiality pursuant to federal, state, local laws, and LEA policies created in accordance with this section, with regard to student performance data and personally identifiable student data.

(17) An employee, aide, or volunteer may not share, disclose, or disseminate passwords for electronic maintenance of:

(a) student performance data; or

(b) personally identifiable student data.

(18) A public education employee licensed under Section 53E-6-201 may only access or use student information and records if the public education employee accesses the student information or records consistent with the educator's obligations under Rule R277-515.

(19) The Board may discipline a licensed educator in accordance with licensing discipline procedures if the educator violates this Rule R277-487.

(20) An LEA shall annually provide a training regarding the confidentiality of student data to any employee with access to education records as defined in FERPA.

R277-487-4. Retention of Student Data.

(1) An LEA shall classify all student data collected in accordance with Section 63G-2-604.

(2) An LEA shall retain and dispose of all student data in accordance with an approved retention schedule.

(3) If no existing retention schedule governs student disciplinary records collected by an LEA:

(a) An LEA may propose to the State Records Committee a retention schedule of up to one year if collection of the data is not required by federal or state law or Board rule; or

(b) An LEA may propose to the State Records Committee a retention schedule of up to three years if collection of the data is required by federal or state law or Board rule, unless a longer retention period is prescribed by federal or state law or Board rule.

(4) An LEA's retention schedules shall take into account the LEA's administrative need for the data.

(5) Unless the data requires permanent retention, an LEA's retention schedules shall require destruction or expungement of student data after the administrative need for the data has passed.

(6) A parent or adult student may request that an LEA amend, expunge, or destroy any record not subject to a retention schedule under Section 63G-2-604, and believed to be:

(a) inaccurate;

(b) misleading; or

(c) in violation of the privacy rights of the student.

(7) An LEA shall process a request under Subsection (6) following the same procedures outlined for a request to amend a student record in 34 CFR Part 99, Subpart C.

R277-487-5. Transparency.

(1) The Superintendent shall recommend policies for Board approval and model policies for LEAs regarding student data systems.

(2) A policy prepared in accordance with Subsection (1) shall include provisions regarding:

(a) accessibility by parents, students, and the public to student performance data;

(b) authorized purposes, uses, and disclosures of data maintained by the Superintendent or an LEA;

(c) the rights of parents and students regarding their personally identifiable information under state and federal law;

(d) parent, student, and public access to information about student data privacy and the security safeguards that protect the data from unauthorized access and use; and

(e) contact information for parents and students to request student and public school information from an LEA consistent with the law.

R277-487-6. Responsibilities of Chief Privacy Officer.

(1) The Chief Privacy Officer:

(a) may recommend legislation, as approved by the Board, for additional data security protections and the regulation of use of the data;

(b) shall supervise regular privacy and security compliance

audits, following initiation by the Board;

(c) shall have responsibility for identification of threats to data privacy protections;

(d) shall develop and recommend policies to the Board and model policies for LEAs for:

(i) protection of personally identifiable student data;

(ii) consistent wiping or destruction of devices when devices are discarded by public education entities; and

(iii) appropriate responses to suspected or known breaches of data security protections;

(e) shall conduct training for Board staff and LEAs on student privacy; and

(f) shall develop and maintain a metadata dictionary as required by Section 53E-9-302.

R277-487-7. Prohibition of Public Education Data Use for Marketing.

Data maintained by the state, a school district, school, or other public education agency or institution in the state, including data provided by contractors, may not be sold or used for marketing purposes, or targeted advertising as defined in Subsection 53E-9-301(22) except with regard to authorized uses of directory information not obtained through a contract with an educational agency or institution.

R277-487-8. Public Education Research Data.

(1) The Superintendent may provide limited or extensive data sets for research and analysis purposes to qualified researchers or organizations.

(2) The Superintendent shall use reasonable methods to qualify researchers or organizations to receive data, such as evidence that a research proposal has been approved by a federally recognized Institutional Review Board or "IRB."

(3) The Superintendent may post aggregate de-identified student assessment data to the Board website.

(4) The Superintendent shall ensure that personally identifiable student data is protected.

(5) The Superintendent:

(a) is not obligated to fill every request for data and shall establish procedures to determine which requests will be filled or to assign priorities to multiple requests;

(b) may give higher priority to requests that will help improve instruction in Utah's public schools; and

(c) may charge a fee to prepare data or to deliver data, particularly if the preparation requires original work.

(6) A researcher or organization shall provide a copy of the report or publication produced using Board data to the Superintendent at least 10 business days prior to the public release.

(7) Requests for personally identifiable student data that may only be provided in accordance with Section 53E-9-308 and FERPA, and may include:

(a) student data that are de-identified, meaning that a reasonable person in the school community who does not have personal knowledge of the relevant circumstances could not identify student(s) with reasonable certainty;

(b) agreements with recipients of student data where recipients agree not to report or publish data in a manner that discloses students' identities; or

(c) release of student data, with appropriate binding agreements, for state or federal accountability or for the purpose of improving instruction to specific student subgroups.

(8) Recipients of Board research data shall sign a confidentiality agreement, if required by the Superintendent.

(9) Either the Board or the Superintendent may commission research or may approve research requests.

(10) Request for records under Title 63G, Chapter 2, Government Records Access and Management Act, are not subject to this Section R277-487-8.

R277-487-9. CACTUS Data.

(1) The Board maintains information on all licensed Utah educators in CACTUS, including information classified as private, controlled, or protected under GRAMA.

(2) The Superintendent shall open a CACTUS file for a licensed Utah educator when the individual initiates a Board background check.

(3) Authorized Board staff may update CACTUS data as directed by the Superintendent.

(4) Authorized LEA staff may change demographic data and update data on educator assignments in CACTUS for the current school year only.

(5) A licensed individual may view his own personal data, but may not change or add data in CACTUS except under the following circumstances:

(a) A licensee may change the licensee's contact and demographic information at any time;

(b) An employing LEA may correct a current educator's assignment data on behalf of a licensee; and

(c) A licensee may petition the Board for the purpose of correcting any errors in the licensee's CACTUS file.

(6) The Superintendent shall include an individual currently employed by a public or private school under a letter of authorization or as an intern in CACTUS.

(7) The Superintendent shall include an individual working in an LEA as a student teacher in CACTUS.

(8) The Superintendent shall provide training and ongoing support to authorized CACTUS users.

(9) For employment or assignment purposes only, authorized LEA staff members may:

(a) access data on individuals employed by the LEA; or

(b) view specific limited information on job applicants if the applicant has provided the LEA with a CACTUS identification number.

(10) CACTUS information belongs solely to the Board.

(g) The Superintendent may release data within CACTUS in accordance with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act.

R277-487-10. Educator Evaluation Data.

(1)(a) The Superintendent may provide classroom-level assessment data to administrators and teachers in accordance with federal and state privacy laws.

(b) A school administrator shall share information requested by parents while ensuring the privacy of individual personally identifiable student data and educator evaluation data.

(2) A school, LEA, the Superintendent, and the Board shall protect individual educator evaluation data.

(3) An LEA shall designate employees who may have access to educator evaluation records.

(4) An LEA may not release or disclose student assessment information that reveals educator evaluation information or records.

(5) An LEA shall train employees in the confidential nature of employee evaluations and the importance of securing evaluations and records.

R277-487-11. Application to Third Parties.

(1) The Board and LEAs shall set policies that govern a third party contractor's access to personally identifiable student data and public school enrollment verification data consistent with Section 53E-9-301, et seq.

(2) An LEA may release personally identifiable student data and public school enrollment verification data to a third party contractor if:

(a) the release is allowed by, and released in accordance with, Section 53E-9-308, FERPA, and FERPA's implementing regulations; and

(b) the LEA complies with the requirements of Subsection R277-487-3(6).

(4) All Board contracts shall include sanctions for contractors or third party providers who violate provisions of state policies regarding unauthorized use and release of student and employee data.

(5) The Superintendent shall recommend that LEA policies include sanctions for contractors who violate provisions of federal or state privacy law and LEA policies regarding unauthorized use and release of student and employee data.

R277-487-12. Sharing Data With the Utah Registry of Autism and Developmental Disabilities.

(1) The Superintendent shall share personally identifiable student data with the Utah Registry of Autism and Developmental Disabilities as required by Subsection 53E-9-308(6)(b) through a written agreement designating the Utah Registry of Autism and Developmental Disabilities as the authorized representative of the Board for the purpose of auditing and evaluating federal and state supported education programs that serve students with autism and other developmental disabilities.

(2) The agreement required by Subsection (1) shall include a provision that:

(a) the Utah Registry of Autism and Developmental Disabilities may not use personally identifiable student data for any purpose not specified in the agreement;

(b) the Utah Registry of Autism and Developmental Disabilities shall flag all student personally identifiable data received from the Board to:

(i) ensure that the data is not used for purposes not covered by the agreement; and

(ii) allow the Superintendent access to the data for auditing purposes;

(c) the Utah Registry of Autism and Developmental Disabilities may redisclose de-identified data if:

(i) the de-identification is in accordance with HIPPA's safe harbor standard;

(ii) the de-identification is in accordance with Board rule; and

(iii) the Utah Registry of Autism and Development Disabilities annually provides the Superintendent with a description and the results of all projects and research undertaken using de-identified student data; and

(d) the Utah Registry of Autism and Developmental Disabilities shall allow an on-site audit conducted by the Superintendent to monitor for compliance with this rule no less than once per year.

(3) The Superintendent shall maintain a record of all personally identifiable student data shared with the Utah Registry of Autism and Developmental Disabilities in accordance with 34 C.F.R. 99.32.

(4)(a) A parent of a child whose personally identifiable student data was shared with the Utah Registry of Autism and Developmental Disabilities has the right to access the exact records disclosed.

(b) A parent identified in Subsection (4)(a) has the right to contest and seek to amend, expunge, or destroy any data that is inaccurate, misleading, or otherwise in violation of the privacy rights of the student.

R277-487-13. Annual Reports by Chief Privacy Officer.

(1) The Chief Privacy Officer shall submit to the Board an annual report regarding student data.

(2) The public report shall include:

(a) information about the implementation of this rule;

(b) information about the approved research studies using personally identifiable student information and data;

(c) identification of significant threats to student data privacy and security;

(d) a summary of data system audits; and

(e) recommendations for further improvements specific to student data security and the systems that are necessary for accountability in Board rules or legislation.

R277-487-14. Data Security and Privacy Training for Educators.

(1) The Superintendent shall develop a student and data security and privacy training for educators.

(2) The Superintendent shall make the training developed in accordance with Subsection (1) available through UEN.

(3) Beginning in the 2018-19 school year, an educator shall complete the training developed in accordance with Subsection (1) as a condition of re-licensure.

KEY: students, records, confidentiality, privacy

March 13, 2019	**Art X Sec 3**
Notice of Continuation November 14, 2014	**53E-9-302**
	53E-3-401
	53G-11-511

R277. Education, Administration.
R277-502. Educator Licensing and Data Retention.
R277-502-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

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

(2) This rule specifies the types of license levels and license areas of concentration available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah.

(3) This rule also provides a process and criteria for educators whose licenses have lapsed to return to the teaching profession.

R277-502-2. Definitions.

(1) "Accredited school" means a public or private school that:

(a) meets standards essential for the operation of a quality school program; and

(b) has received formal approval through a regional accrediting association.

(2) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" means the electronic file maintained on all licensed Utah educators including information such as:

(a) personal directory information;

(b) educational background;

(c) endorsements;

(d) employment history; and

(e) a record of disciplinary action taken against the educator.

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

(4) "Letter of Authorization" means a designation given to an individual employed by an LEA for one year authorizing the individual to teach in a public school, such as:

(a) an out-of-state candidate; or

(b) an individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license; or

(c) an individual who has not completed necessary endorsement requirements.

(5)(a) "License areas of concentration" means designations to licenses obtained by completing a Board-approved educator preparation program or an alternative preparation program in a specific area of educational studies to include the following:

(i) Early Childhood (k-3);

(ii) Elementary (k-6);

(iii) Elementary (1-8);

(iv) Middle (5-9), only for licenses issued before 1988;

(v) Secondary (6-12);

(vi) Administrative/Supervisory (k-12);

(vii) Career and Technical Education;

(viii) School Counselor;

(ix) School Psychologist;

(x) School Social Worker;

(xi) Special Education (k-12);

(xii) Deaf Education

(xiii) Preschool Special Education (Birth-Age 5);

(xiv) Communication Disorders;

(xv) Speech-Language Pathologist; and

(xvi) Speech-Language Technician.

(b) License areas of concentration may also bear endorsements relating to subjects or specific assignments.

(6)(a) "License endorsement" or "endorsement" means a specialty field or area earned through completing required course work established by the Superintendent or through demonstrated competency approved by the Superintendent.

(b) An endorsement shall be listed on a professional educator license indicating the specific qualifications of the holder.

(7) "Licensing Jurisdiction" means the designated educator licensing authority in any foreign country or state of the United States of America and the Department of Defense Education Activity (DoDEA).

(8) "Professional learning plan" means a plan developed by an educator in collaboration with the educator's supervisor, consistent with R277-500, which details appropriate professional learning activities for the purpose of renewing the educator's license.

(9) "Renewal" means reissuing or extending the length of a license consistent with R277-500.

(10) "State Approved Endorsement Program" or "SAEP" means a plan developed between the Superintendent and a licensed educator to direct the completion of endorsement requirements by the educator consistent with Section R277-520-11.

R277-502-3. Program Approval and Requirements.

(1) The Superintendent shall accept educator license recommendations from educator preparation programs that have applied for Board approval and have met the requirements described in this Rule R277-502 and the Standards for Program Approval established in:

(a) Rule R277-504;

(b) Rule R277-505; or

(c) Rule R277-506.

(2) The Superintendent may establish deadlines and uniform forms and procedures for all aspects of program approval.

(3) To be approved for license recommendation an educator preparation program shall:

(a) have a physical location in Utah where students attend classes or if the program provides only online instruction:

(i) have the program's primary headquarters located in Utah; and

(ii) be licensed to do business in Utah through the Utah Department of Commerce;

(b) include requirements designed to ensure that the educator meets the Utah Effective Educator Standards established in R277-530;

(c) include requirements, if the program offers content endorsement preparation, that are, at minimum, equivalent to the competency requirements for the endorsement as established by the Superintendent;

(d) establish entry requirements, approved by the Superintendent, that are designed to ensure that only high quality individuals enter the licensure program, which include measures of:

(i) previous academic success;

(ii) disposition for employment in an educational setting; and

(iii) basic skills in reading, writing, and mathematics; and

(e) include a student teaching or intern experience that meets the requirements detailed in Rules R277-504, R277-505, and R277-506.

(4) The Superintendent shall work with Board-approved educator preparation programs, LEAs, and other stakeholders to establish standards for pedagogical performance assessments that will be required under Rule R277-501 no later than January 1, 2019.

(5) The Superintendent shall lead the approval review for any Board-approved educator preparation program seeking to

maintain or receive program approval.

(6) The Superintendent shall be responsible for:

(a) observing and monitoring the approval review process;

(b) reviewing subject specific programs to determine if the program meets state standards for licensure in specific areas;

(c) reviewing program procedures to ensure that Board requirements for licensure are followed; and

(d) reviewing licensure candidate files to determine if the program followed Board requirements for licensure.

(7) After completion of the approval review site visit, a Board-approved educator preparation program, working with the Superintendent, shall prepare and submit a program approval request for consideration by the Board that includes:

(a) a program summary;

(b) approval review findings;

(c) program areas of distinction;

(d) program enrollment; and

(e) program goals and direction.

(8) If the program approval request is approved by the Board, the program shall be considered Board-approved until the next scheduled approval review visit.

(9)(a) Notwithstanding Subsection 8, the Superintendent may place a program on probation for:

(i) failure to meet program requirements detailed in applicable Board rules; and

(ii) submission of inadequate or incomplete information in a report required under this R277-502.

(b) The Board may revoke its approval of a probationary program that fails to meet probationary requirements with at least one year's notice.

(10) If a new educator preparation program seeks Board approval or a previously Board-approved educator preparation program seeks approval for additional license area preparation and endorsements, the program shall submit an application to the Superintendent including:

(a) information detailing the exact license areas of concentration and endorsements that the program intends to award;

(b) detailed requirement information, including required course lists, course descriptions, and course syllabi for all courses that will be required as part of a program;

(c) detailed information showing how the program will ensure that the educator satisfies all standards in the Utah Effective Educator Standards established in Rule R277-530 and Professional Educator Standards established in Rule R277-515;

(d) information about program timelines and anticipated enrollment.

(11) The Board shall approve or deny applications for new educator preparation programs.

(12)(a) The Superintendent shall review and approve or deny applications from previously Board-approved educator preparation programs desiring Board approval for additional license areas and endorsements.

(b) The Superintendent may grant preliminary approval pending Utah State Board of Regents approval of a new program if the program is within a public institution.

(13) An educator preparation program seeking Board approval may apply to the Board for probationary approval for a maximum of three years contingent on the completion of the approval process.

(14) A Board-approved educator preparation program shall submit an annual report to the Superintendent by July 1 of each year, which shall include the following:

(a) student enrollment counts designated by anticipated license area of concentration and endorsement and disaggregated by gender and ethnicity;

(b) information explaining any significant changes to program requirements or content;

(c) the program's response to areas of concern or areas of focus identified by the Superintendent; and

(d) information regarding any program-determined areas of concern or areas of focus and the program's planned response.

(15) The Superintendent shall provide reporting criteria to Board-approved educator preparation programs regarding the annual report and designated areas of concern or focus by January 31 annually.

(16) An individual that completes a Board-approved educator preparation program may be recommended for licensure within five years of program completion if the individual meets current licensing requirements.

(17)(a) If five years have passed since an individual completed a Board-approved preparation program, the individual may be recommended for licensure following review by the individual program.

(b) The preparation program officials shall determine whether any content or pedagogy requirement previously met meets current program standards and if additional requirements are necessary to recommend licensure.

(c) The individual shall complete all requirements established by program officials before receiving a license recommendation from the program.

R277-502-4. License Levels, Procedures, and Periods of Validity.

(1)(a) The Superintendent shall recommend an individual to the Board for a Level 1 license if the individual:

(i) is recommended by a Board-approved educator preparation program or approved alternative preparation program; or

(ii) possesses a valid professional educator license from another state.

(b) An LEA and Board-approved educator preparation program shall cooperate in preparing candidates for a Level 1 license and may use joint resources to assist candidates in preparation for licensing.

(c) A Board-approved educator preparation program may only issue a recommendation if the individual has satisfactorily completed the programs of study required for the preparation of educators and has met licensing standards in the license areas of concentration for which the individual is recommended.

(2) A Level 1 license is valid for three years unless suspended or revoked for cause by the Board.

(3) A license applicant who has received or completed license preparation activities or coursework inconsistent with this rule may present compelling information and documentation for review and approval by the Superintendent to satisfy the licensing requirements.

(4) If an educator has taught for three years in a K-12 public education system in Utah, the Superintendent may only recommend renewal of a Level 1 license if:

(a) the employing LEA has requested a one year extension consistent with Section R277-522-4; or

(b) the individual has continuous experience as a speech language pathologist in a clinical setting.

(5) The Superintendent shall recommend a Level 1 licensee to the Board for a Level 2 license upon:

(a) satisfaction of all Board requirements for the Level 2 license; and

(b) the recommendation of the employing LEA.

(6) An LEA shall make a recommendation under Subsection (5)(b), prior to the expiration of the educator's Level 1 license and following:

(a) the completion of three years of successful, professional growth and educator experience;

(b) satisfaction of all requirements of Rule R277-522; and

(c) any additional requirements imposed by the employing LEA.

(7) A Level 2 license shall be valid for five years unless suspended or revoked for cause by the Board.

(8) A Level 2 license may be renewed for successive five year periods consistent with Rule R277-500.

(9) The Superintendent shall recommend a Level 2 licensee to the Board for a Level 3 license who:

(a) has current National Board Certification;

(b) has a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school; or

(c) holds a Speech-Language Pathology area of concentration and has a current American Speech-Language Hearing Association certification.

(10) A Level 3 license is valid for seven years unless suspended or revoked for cause by the Board.

(11) A Level 3 license may be renewed for successive seven year periods consistent with Rule R277-500.

(12) The Superintendent may establish deadlines and uniform forms and procedures for all aspects of licensing.

(13)(a) All licenses expire on June 30 of the year of expiration and may be renewed any time after January of the same year.

(b) Responsibility for license renewal rests solely with the licensee.

R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.

(1) Unless excepted under rules of the Board, to be employed in a public school in a capacity covered by a license area of concentration set forth in Subsection R277-502-2(6)(a), a person shall hold a valid license issued by the Board in the respective license area of concentration.

(2) An educator who is licensed and holds the appropriate license area of concentration but who is working out of the educator's endorsement area, shall:

(a) submit an SAEP to complete the requirements of an endorsement to the Superintendent; or

(b) request, along with the educator's employing LEA, a letter of authorization from the Board if the educator has not completed requirements for an area of concentration or endorsement.

(3)(a) A letter of authorization issued under Subsection (2)(b) is valid for one year.

(b) An educator may receive no more than three Letters of Authorization throughout the educator's employment in Utah schools.

(c) The Superintendent may recommend an exception to the limitation in Subsection (3)(b) on a case by case basis following specific approval of the request by the educator's employing LEA governing board.

(d) A letters of authorization approved prior to the 2000-2001 school year shall not be counted towards the limit in Subsection (3)(b).

(e) If an educator's letter of authorization expires before the individual is approved for licensing, the educator falls into under-qualified status.

(4) A licensed educator may receive an endorsement to indicate qualification in a subject or content area.

(a) An LEA shall recognize a STEM endorsement as a minimum of 16 semester hours of university credit toward lane change on the LEA's salary schedule.

(b) The Superintendent shall determine the courses and experiences necessary for a STEM endorsement.

(c) The Superintendent shall determine which content area endorsements qualify as STEM endorsements.

(5) An endorsement is not valid for employment purposes without a current license and license area of concentration.

R277-502-6. Returning Educator Relicensure.

(1) A previously licensed educator with an expired license may renew an expired license upon satisfaction of the following:

(a) Completion of a criminal background check including review of any criminal offenses and clearance in accordance with Rule R277-214;

(b) Employment by an LEA;

(c) Completion of a one-year professional learning plan developed jointly by the educator's school principal or charter school director and the returning educator consistent with R277-500 that also considers the following:

(i) previous successful public school teaching experience;

(ii) formal educational preparation;

(iii) period of time between last public teaching experience and the present;

(iv) school goals for student achievement within the employing school and the educator's role in accomplishing those goals;

(v) returning educator's professional abilities, as determined by a formal discussion and observation process completed within the first 30 days of employment; and

(vi) completion of additional necessary professional development for the educator.

(d) Filing of the professional learning plan within 30 days of hire;

(e) Successful completion of required Board-approved exams for licensure;

(f) Satisfactory experience as determined by the LEA with a trained mentor; and

(g) Submission to the Superintendent of the completed and signed Return to Original License Level Application, available on the Board website prior to June 30 of the school year in which the educator seeks to return.

(2) A returning educator is eligible for renewal of an educator license following completion of a professional learning plan notwithstanding the license renewal point requirements of Section R277-500-3.

(3)(a) A returning educator who previously held a Level 2 or Level 3 license under this rule shall receive a Level 1 license during the first year of employment following renewal of an expired license.

(b) Upon completion of the requirements listed in Subsection (1) and a satisfactory LEA evaluation, the employing LEA may recommend the educator's return to Level 2 or Level 3 licensure.

(4) A returning educator who taught less than three consecutive years in a public or accredited private school shall complete the requirements of Rule R277-522 before being recommended by an LEA to move from a Level 1 to Level 2 license.

R277-502-7. Professional Educator Licenses Issued by Licensing Jurisdictions Outside of Utah.

(1) The Superintendent shall review applications for a Utah educator license for individuals holding educator licenses issued by licensing jurisdictions outside of Utah to determine if the applicant has met the requirements for a Utah license under this rule and Rule R277-503.

(2) The Superintendent shall accept scores from an applicant that meet the Utah standard for passing on assessments from licensing jurisdictions outside of Utah that utilize the same assessment as Utah as meeting the assessment requirements of Rule R277-503.

(3) The Superintendent shall accept scores from an applicant on reasonably equivalent content knowledge or pedagogical assessments utilized by licensing jurisdictions outside of Utah that meet the passing standard of that jurisdiction as meeting the requirements of Rules R277-503 and R277-522.

(4) The Superintendent shall accept demonstrations of content knowledge and pedagogical competencies for specific license areas or endorsements from an applicant that are utilized by licensing jurisdictions outside of Utah and reasonably equivalent to Utah competencies.

(5) Individuals with 4 or more years of successful experience in a public or accredited private school under a standard license issued by a licensing jurisdiction outside of Utah shall be considered to have met both the content knowledge and pedagogical assessment requirements for a Utah license under this rule, Rule R277-503, and Rule R277-522.

KEY: professional competency, educator licensing

May 8, 2018	**Art X Sec 3**
Notice of Continuation July 19, 2017	**53E-6-201**
	53E-3-401

R277. Education, Administration.
R277-524. Paraprofessional/Paraeducator Programs, Assignments, and Qualifications.
R277-524-1. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Subsection 53E-3-401(4), which gives the Board authority to adopt rules in accordance with its responsibilities, Subsection 53E-3-501(1)(a)(i), which requires the Board to establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and NCLB, P.L. 107-110, Title 1, Sec, 1119 which requires that each local education agency receiving assistance under this part shall ensure that all paraprofessionals shall be appropriately qualified.

B. The purpose of this rule is to designate appropriate assignments of paraprofessionals and qualifications for paraprofessionals hired before and after January 6, 2002 consistent with NCLB requirements.

C. This rule establishes the formula for distribution of Paraeducator funding under Section 53F-2-411 to eligible schools. The rule provides minimum standards for use of funds and reporting requirements.

R277-524-2. Definitions.

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

B. "Core academic subjects or areas" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB).

C. "Direct supervision of a licensed teacher" means:

(1) the teacher prepares the lesson and plans the instruction support activities the paraprofessional carries out, and the teacher evaluates the achievement of the students with whom the paraprofessional works; and

(2) the paraprofessional works in close and frequent proximity with the teacher.

D. "Eligible school," for purposes of this rule and the Paraeducator Funding Program, means a Title I school that is one of the state's lowest-performing Title I priority schools as defined by ESEA.

E. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.

F. "Paraeducator funding" means supplemental state funding provided under Section 53F-2-411 to Title I schools identified as in need of improvement under the Elementary and Secondary Education Act (ESEA), Title IX, Part A, 20 U.S.C. 7801 to hire additional paraeducators to assist students in achieving academic success.

G. "Paraprofessional" or "paraeducator" means an individual who works under the supervision of a teacher or other licensed/certificated professional who has identified responsibilities in the public school classroom.

R277-524-3. Appropriate Assignments or Duties for Paraprofessionals.

Paraprofessionals may:

A. provide individual or small group assistance or tutoring to students under the direct supervision of a licensed teacher during times when students would not otherwise be receiving instruction from a teacher.

B. assist with classroom organization and management, such as organizing instructional or other materials;

C. provide assistance in computer laboratories;

D. conduct parental involvement activities;

E. provide support in library or media centers;

F. act as translators;

G. provide supervision for students in non-instructional settings.

R277-524-4. Requirements for Paraprofessionals.

A. Paraprofessionals hired before January 6, 2002 who function under R277-504-3A, and working in programs supported by Title I funds shall satisfy one of the following:

(1) The individual has completed at least two years (minimum of 48 semester hours) at an accredited higher education institution; or

(2) The individual has obtained an associates (or higher) degree from an accredited higher education institution; or

(3) The individual has satisfied a rigorous state assessment, approved by the Board, that demonstrates:

(a) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(b) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate; or

(4) The individual has satisfied a rigorous local assessment, approved by the local board, that demonstrates:

(a) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(b) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

B. Paraprofessionals hired after January 6, 2002 in programs supported by Title I funds shall satisfy R277-524-4B(1)(2)(3) or (4).

(1) Individual shall have earned a secondary school diploma or a recognized equivalent; and

(2) The individual has completed at least two years (minimum of 48 semester hours) at an accredited higher education institution; or

(3) The individual has obtained an associates (or higher) degree from an accredited higher education institution; or

(4) The individual has satisfied a rigorous state or local assessment about the individual's knowledge of an ability to assist students in core courses under NCLB.

C. The individual shall satisfactorily complete a criminal background check consistent with Section 53G-11-402 and R277-516.

R277-524-5. Variances.

The provisions of this rule do not apply to:

A. paraprofessionals who are proficient in English and a language other than English who provide translator services; or

B. paraprofessionals who have only parental involvement or similar responsibilities.

R277-524-6. Use of Funds.

Local education agencies may use Title I funds in addition to other funds available and identified by the local education agency to support ongoing training and professional development for paraprofessionals.

R277-524-7. Board Responsibilities.

A. The Board shall annually distribute funds provided under Section 53F-2-411 to eligible Title I schools. The funds shall be divided equally among eligible schools.

B. The Board shall submit an annual report to the Public Education Appropriations Subcommittee on the implementation of this program.

R277-524-8. Responsibilities of Eligible Schools Receiving Paraeducator Funding.

A. Paraeducators hired with these funds shall meet the qualifications under R277-524-4.

B. Paraeducators hired with these funds shall provide additional aid in the classroom to assist students in achieving academic success as defined in R277-524-3A.

C. Schools that accept the Paraeducator Funding shall demonstrate, as required by USOE reporting, that funds are used to supplement other state and federal funds to provide paraeducator services.

D. Schools accepting these funds shall provide an annual report as directed by the USOE that includes the following:

(1) the number of paraeducators hired with program money;

(2) school funding, in addition to funds provided under this rule, the school used to supplement program money to hire paraeducators; and

(3) accountability measures, including student test scores and other student assessment elements for students served by the program.

KEY: paraprofessional qualifications, NCLB
May 8, 2014 **Art X Sec 3**
Notice of Continuation March 14, 2019 **53E-3-401(4)**
53E-3-501(1)(a)(i)
P.L. 107-110, Title 1, Sec. 1119

R277. Education, Administration.
R277-551. Charter Schools - General Provisions.
R277-551-1. Authority and Purpose.

(1) This rule is authorized under:

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

(b) Section 53F-2-702, which directs the Board to distribute funds for charter school students directly to the charter school;

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

(d) Subsection 53G-5-205(5), which requires the Board to make rules establishing minimum standards that a charter school authorizer is required to apply.

(2) The purpose of this rule is to provide operational requirements for charter schools.

R277-551-2. Alternate Methods for Determining the Economically Disadvantaged Status of a Charter School's Students.

(1) A charter LEA with a charter school that does not participate in the National School Lunch Program shall comply with the requirements of this Section R277-551-2 to identify the economically disadvantaged status of students in the school's daily UTREx submission.

(2) A charter LEA described in Subsection (1):

(a) shall determine the economically disadvantaged status for its students on the basis of criteria no less stringent than those established by the U.S. Department of Agriculture for identifying students who qualify for reduced price lunch for the fiscal year in question; or

(b) may use the Charter School Declaration of Household Income form provided by the Superintendent for this purpose.

(3) A school that does not use the form identified in Subsection (2)(b) shall maintain equivalent documentation in its records, which may be subject to review by the Superintendent.

R277-551-3. Transportation.

(1) A charter school may not receive to-and-from school transportation funds except as provided under Section 53F-5-211.

(2) A charter school that provides transportation to students shall comply with the inspection and safety requirements of Section 53-8-211.

(3) A school district may provide transportation for charter school students on a space-available basis on approved routes.

(4)(a) A school district may provide transportation or transportation information to charter school students and their parents who participate in transportation by the school district as guests.

(b) Charter schools or charter school students may forfeit with no recourse the privilege of transportation, as described in Subsection (4)(a), for violation of district policies.

R277-551-4. Student Health, Safety, and Welfare Reporting Requirements.

(1)(a) The State Charter School Board shall provide a form for a charter school to report threats to health, safety or welfare of students consistent with Subsection 53G-5-503(4).

(b) The State Charter School Board shall provide reports received, as described in Subsection (1)(a):

(i) to the Superintendent; and

(ii) for charter schools from other authorizers, to the applicable authorizer.

(2) Individuals making reports about threats shall report suspected criminal activity to local law enforcement and suspected child abuse to local law enforcement or the Division of Child and Family Services consistent with:

(a) Section 62A-4a-403;

(b) Subsection 53G-9-203(3)(a); and

(c) Rule R277-401.

(4) A charter school shall verify that potential criminal activity or suspected child abuse has been reported consistent with state law and this rule.

(5) A charter school shall act promptly to investigate and take disciplinary action, if appropriate, against students who may be participants in threatening activities or take appropriate and reasonable action to protect students or both.

(6) All charter schools shall be subject to accountability standards established by the Board and to monitoring and internal auditing by the Board.

R277-551-5. Charter School Information for Students and Parents.

(1) An authorizer shall ensure that each of the authorizer's charter schools has a website that contains the following information:

(a) the charter school s governance structure, including the name, qualification, and contact information of all charter school governing board members;

(b) the number of new students that will be admitted into the school;

(c) the school calendar, which shall include:

(i) the first and last days of school;

(ii) scheduled holidays;

(iii) scheduled professional development days; and

(iv) scheduled non-school days;

(d) timelines for acceptance of new students consistent with Section 53G-6-503;

(e) the requirement and availability of a charter school student application;

(f) the application timeline to be considered for enrollment in the charter school;

(g) procedures for transferring to or from a charter school;

(h) timelines for a transfer;

(i) provisions for payment, if required, of a one-time fee per secondary school enrollment, not to exceed $5.00, consistent with Subsection 53G-6-503(9);

(j) the charter school governing board s policies; and

(k) other items required by:

(i) the charter school s authorizer;

(ii) statute; and

(iii) Board rule.

(2) The fee described in Subsection 1(I) is subject to fee waiver in accordance with Rule R277-407.

(3) A charter school shall have an operative and readily accessible website containing the information described in Subsection (1) at least 180 days before the proposed opening day of school.

KEY: education, charter schools
March 13, 2019 **Art X Sec 3**
53E-3-401
53G-5-205

R277. Education, Administration.
R277-601. Standards for Utah School Buses and Operations.
R277-601-1. Definitions.

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

B. "Local board" means the local school board of education.

R277-601-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education in the Board, Subsection 53E-3-501(1)(d) which directs the Board to adopt rules for state reimbursed bus routes, bus safety and operational requirements, and other transportation needs and Subsection 53E-3-401(4) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards for state student transportation funds, school buses, and school bus drivers utilized by school districts.

R277-601-3. Standards.

A. The local board and school district personnel shall act consistent with the manual entitled STANDARDS FOR UTAH SCHOOL BUSES AND OPERATIONS, 2010, which includes information received from Utah school districts, the Utah Transportation Commission, and the Utah Department of Public Safety and is available at each department or agency. The STANDARDS shall include the following:

(1) Electronic and telecommunications devices

(a) A school bus operator's primary responsibility, consistent with training and policy, is the safety of passengers and the safety of the public at all times.

(b) A school bus operator shall not use a cell phone, wireless electronic device, or any headset, earpiece, earphones or other equipment that might distract a driver from his responsibilities, whether hand held or not, while the school bus is in motion and not appropriately parked or secured. This prohibition does not apply to the safe and appropriate use of two-way radios or to mounted, GPS systems. All school districts and public schools that regularly transport students shall maintain documentation of training for bus drivers and employees in the safe and appropriate use of two-way radios.

(c) Once the bus is stopped and safely parked, a school bus operator may use an electronic device for emergencies, to assist special needs students, for behavior management, for appropriate assistance for field/activity trips or for other business-related issues.

(d) A school bus operator may use an electronic device for personal use once a school bus is safely parked, appropriately secured and all passengers are safely off and at a safe distance from the bus, consistent with school district policy.

(e) Any violation of these provisions for emergency or compelling reasons may require documentation and will be addressed by the employing education entity.

(f) Violations of these provisions may result in personnel action(s) against the school bus operator consistent with school district/employer policies.

(g) Private contractors employed by school districts for student transportation shall also adhere strictly to these provisions in addition to the policies of the employer.

(2) End of bus route inspection

(a) At the end of a student delivery, both during the day and after the final route of the day, a school bus operator shall complete the delivery, stop and park the bus, and insure that all students are off the bus.

(b) Where possible, this inspection shall be completed at each school site when delivering students to school.

(c) Following each from-school route of the day, the bus operator shall complete the same type of inspection at a safe location a short distance from where the final student(s) left the bus. If children are found on the bus, they shall be immediately returned to their assigned bus stop location or to an alternate location, consistent with district policy, with express permission from the parents(s).

KEY: school, buses, school transportation
June 9, 2014 53E-3-501(1)(d)
Notice of Continuation March 29, 2019 53E-3-401(3)

R277. Education, Administration.
R277-724. Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program.
R277-724-1. Definitions.

A. "Child and Adult Care Food Program (CACFP)" means the section of the USOE that administers the initiation, maintenance, and expansion of non-profit food service programs for children in non-residential centers and homes which provide child care. The definition also includes the administration of food service programs for non-residential adult day care.

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

C. "Child care center" means any public or private nonprofit organization, or any proprietary title XX center, licensed or approved to provide nonresidential child care services to enrolled children, primarily of preschool age. Child care centers may participate in the CACFP as independent centers or under the auspices of a sponsoring organization.

D. "Day care home" means an organized nonresidential child care program for children enrolled in a private home, licensed or approved as a family or group day care home and under the auspices of a sponsoring organization.

E. "Facilities" means a sponsored center or a family day care home.

F. "Institution" means an organization with whom the USOE has an agreement to accept final administrative and financial responsibility for CACFP operation.

G. "Recruited facilities" means potential daycare centers or homes that a prospective sponsor seeks to enroll in CACFP participation.

H. "Service area" means the geographic area from which a sponsoring organization draws its client facilities.

I. "Sponsoring organization" means a public or nonprofit private organization which is entirely responsible for the administration of the food program in:

(1) one or more day care homes;

(2) a child care center, outside-school-hours care center, or adult day care center which is a legally distinct entity from the sponsoring organization;

(3) two or more child care centers, outside-school-hours care centers, or adult day care centers are part of the organization; or

(4) any combination of child care centers, adult day care centers, day care homes, and outside-school-hours care centers.

J. "State agency" means the state educational agency or any other State agency that has been designated by the Governor or other appropriate executive or by the legislative authority of the state, and has been approved by the Department to administer the Program within the state.

K. "USOE" means the Utah State Office of Education.

R277-724-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Subsection 53E-3-501(3), which authorizes the Board to administer and distribute funds made available through programs of the federal government and by Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish eligibility criteria for new sponsors to recruit participants for child care centers and day care homes in unserved areas.

R277-724-3. Criteria for Recruiting Facilities.

The following criteria shall be met before a sponsor is approved:

A. The recruited facilities are not currently participating or were recently terminated for convenience by another sponsoring organization due to being outside the sponsoring organization's service area; and

B. The recruited facilities have not been terminated for cause, have no unresolved serious deficiency pending with another sponsoring organization and do not owe a refund to another sponsoring organization; and

C. The state agency certifies other sponsoring organizations are unable to accommodate the targeted facilities or the area(s) where it/they are located because:

(1) other sponsoring organizations generate insufficient resources to properly train and monitor facilities; or

(2) supervising additional facilities would threaten currently participating sponsoring organization's viability, capability or accountability.

R277-724-4. New and Renewing Institution Performance Standards.

A. The new or renewing institution shall ensure:

(1) it is financially viable and program funds are spent and accounted for consistent with the requirements of federal law and regulations;

(2) that management practices are in effect to ensure that the institution and participating facilities operate in accordance with federal law and regulations; and

(3) it has internal controls and other management systems in effect to ensure fiscal accountability and to ensure that the CACFP operates in accordance with federal law and regulations.

B. The USOE Child Nutrition Program Section shall regulate and ensure that these performance criteria are met consistent with federal law and regulations.

KEY: facilities, food programs

January 15, 2004	**Art X Sec 3**
Notice of Continuation March 13, 2019	**53E-3-501(3)**
	53E-3-401(4)

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-1. Incorporation by Reference.

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan (SIP) must be incorporated by reference into these rules. Copies of the SIP are available on the division's website.

R307-110-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on March 8, 2006, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on January 2, 2019, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on January 5, 2005, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on June 6, 2018, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on January 3, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-16. (Reserved.)

Reserved.

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits and Operating Practices, as most recently amended by the Utah Air Quality Board on January 2, 2019, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-18. Reserved.

Reserved.

R307-110-19. Section XI, Other Control Measures for Mobile Sources.

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on February 9, 2000, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-20. Section XII, Transportation Conformity Consultation.

The Utah State Implementation Plan, Section XII, Transportation Conformity Consultation, as most recently amended by the Utah Air Quality Board on May 2, 2007, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-21. Section XIII, Analysis of Plan Impact.

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-22. Section XIV, Comprehensive Emission Inventory.

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

R307-110-24. Section XVI, Public Notification.

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-25. Section XVII, Visibility Protection.

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-26. Section XVIII, Demonstration of GEP Stack Height.

The Utah State Implementation Plan, Section XVIII, Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-27. Section XIX, Small Business Assistance Program.

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on December 2, 2015, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-30. Section XXII, General Conformity.

The Utah State Implementation Plan, Section XXII, General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on October 6, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-36. Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County, as most recently adopted by the Utah Air Quality Board on November 6, 2013, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-37. Section XXIII, Interstate Transport.

The Utah State Implementation Plan, Section XXIII, Interstate Transport, as most recently adopted by the Utah Air Quality Board on February 7, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone
March 5, 2019 19-2-104
Notice of Continuation January 27, 2017

R307. Environmental Quality, Air Quality.
R307-511. Oil and Gas Industry: Associated Gas Flaring.
R307-511-1. Purpose.

R307-511 establishes control requirements for the flaring of produced gas associated with well sites.

R307-511-2. Definitions.

"Emergency release" means a temporary, infrequent and unavoidable situation in which the loss of gas is uncontrollable or necessary to avoid risk of an immediate and substantial adverse impact on safety, public health, or the environment. An "emergency" is limited to a short-term situation of 24 hours or less caused by an unanticipated event or failure that is out of the operator's control and is not due to operator negligence.

"Flaring" means use of a thermal oxidation system designed to combust hydrocarbons in the presence of a flame.

"Associated Gas" means the natural gas that is produced from an oil well during production operations and is either sold, re-injected, used for production purposes, vented (rarely) or flared. Low pressure gas associated with the working, breathing, and flashing of oil is not considered associated gas under this definition and shall be controlled in accordance with R307-506 and R307-507.

R307-511-3. Applicability.

(1) R307-511 applies to each producing well located at a well site as defined in 40 CFR 60.5430a Subpart OOOOa Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.

(2) VOC control devices used for controlling associated gas are subject to R307-508.

(3) R307-511 does not apply to producing wells that are subject to an approval order issued under R307-401-8.

R307-511-4. Associated Gas Flaring Requirements.

(1) Associated gas from a completed well shall either be routed to a process unit for combustion, routed to a sales pipeline, or routed to an operating VOC control device except for emergency release situations as defined in R307-511-2.

R307-511-5. Recordkeeping.

(1) The owner or operator shall maintain records for releases under R307-511-4(1)(a).

(a) The time and date of event, volume of emissions and any corrective action taken shall be recorded.

(b) These records shall be kept for a minimum of three years.

KEY: air quality, nonattainment, offset
March 5, 2019 **19-2-104**
19-2-108

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.
R398-5. Birth Defects and Critical Congenital Heart Disease Reporting.
R398-5-1. Authority and Purpose.

(1) This rule is authorized by sections 26-1-30(5), (6), (7), (9), (18), (22), 26-10-1(2), 26-10-2, and 26-10-6(1)(d).

(2) This rule establishes reporting requirements for birth defects, critical congenital heart disease, and stillbirths in Utah and for related test results.

R398-5-2. Definitions.

As used in this rule:

(1) "Birth defect" means any medical disorder of organ structure, function or biochemistry which is of possible genetic or prenatal origin. This includes any congenital anomaly, indication of hypoxia or genetic metabolic disorder listed in the ICD-9-CM (International Classification of Diseases, 9th Revision, Clinical Modification, established by the United States Center for Health Statistics) with any of the following diagnostic codes: 243, 255.2, 255.4, from 269.2 to 279.9, from 740.0 to 759.9, 760.72, from 768.0 to 768.9, and 779.5 or listed in the ICD-10 (International Classification of Diseases, 10th Revision, established by the World Health Organization) with any of the following diagnostic codes: A92.5, E03, E25, from E70 to E90, from D55 to D58, H90.0 to H90.8, H90.A, H91.0 to H91.9, J96.00 to J96.91, P09, P35.1, P35.4, P96.1 to P96.2 and from Q00 to Q99.

(2) "Birthing center" means a birthing center licensed under Title 26, Chapter 21.

(3) "CCHD" means Critical Congenital Heart Disease.

(4) "Clinic" means physician-owned or operated clinic which regularly provide services for the diagnosis or treatment of birth defects, genetic counseling, or prenatal diagnostic services.

(5) "Critical Congenital Heart Disease (CCHD) Screening" is a non-invasive test using pulse oximetry measuring how much oxygen is in the blood and can help to identify newborns affected with CCHD. Screening should begin after 24 hours of age or shortly before discharge if the baby is less than 24 hours of age.

(6) "Department" means the Utah Department of Health, Utah Birth Defect Network and Critical Congenital Heart Disease programs.

(7) "Hospital" means general acute hospital, children's specialty hospital, remote-rural hospital licensed under Title 26, Chapter 21.

(8) "Institution" means a hospital, alternate birthing facility, or midwife service providing maternity or nursery services or both.

(9) "SpO2" stands for peripheral capillary oxygen saturation, an estimate of the amount of oxygen in the blood.

(10) "Stillbirth" means a pregnancy resulting in a fetal death at 20 weeks gestation or later.

R398-5-3. Birth Defects Reporting.

Each hospital, clinic, institution, or birthing center which admits a patient and detects or screens for a birth defect as a result of any outcome of pregnancy, or admits a child under 24 months of age with a birth defect, or is presented with the event of a stillbirth shall report or cause to report to the department within 40 days of discharge the following:

(1) if live born, child's name;
(a) last name;
(b first name;
(2) child's date of birth (or date of delivery);
(3) child's medical record number;
(4) child's gender;
(5) mother's name;
(a) last name;
(b) first name;
(c) maiden name;
(6) mother's date of birth;
(7) mother's medical record number;
(8) delivery institution;
(9) ICD - 9 - CM or ICD - 10 birth defect codes;
(10) mother's state of residency at delivery; and
(11) mother's zip code of residency at delivery.

R398-5-4. Birth Defects Reporting by Laboratories.

Each laboratory operating in the state which identifies a human chromosomal or genetic abnormality or other evidence of a birth defect shall report the following on a calendar quarterly basis to the department within 40 days of the end of the preceding calendar quarter:

(1) if live born, child's name;
(a) last name;
(b) first name;
(2) child's date of birth;
(3) mother's name;
(a) last name;
(b) first name;
(4) mother's date of birth;
(5) date the sample is accepted by the laboratory;
(6) test conducted;
(7) test result; and
(8) mother's state of residency at delivery.

R398-5-5. Critical Congenital Heart Disease (CCHD) Screening Reporting.

CCHD Screening results shall report or cause to report to the department within 40 days of discharge the following:

(1) newborn's name;
(a) last name;
(b) first name;
(2) newborn's date of birth;
(3) newborn's gender;
(4) newborn's gestational age;
(5) newborn's birth weight;
(6) newborn's medical record number;
(7) newborn's newborn screening kit number;
(8) newborn's delivery institution;
(9) newborn's discharge unit (if applicable);
(10) newborn's CCHD Screening result for each attempt:
(a) date;
(b) time;
(c) probe location;
(d) SpO2 result; and
(e) outcome of attempt.
(11) Newborn's first echocardiogram (if indicated):
(a) date; and
(b) time.
(12) mother's name;
(a) last name;
(b) first name;
(c) maiden name;
(13) mother's date of birth; and
(14) mother's medical record number.

R398-5-6. Record Abstraction.

Hospitals, birthing centers, institutions, and clinics as well as community health care providers shall allow personnel from the department or its contractors to abstract information from the mother's and child's files on their demographic characteristics, family history of birth defects, prenatal and postnatal procedures or treatments (including diagnostics) related to the birth defect or stillbirth, and outcomes of this and other pregnancies of the mother. Hospitals, birthing centers,

institutions, and clinics as well as community health care providers shall allow personnel from the department or its contractors to abstract information from the affected child's files, throughout their lifespan.

R398-5-7. Liability.

As provided in Title 26, Chapter 25, persons who report, either voluntarily or as required by this rule, information covered by this rule may not be held liable for reporting the information to the Department of Health.

R398-5-8. Penalties.

Pursuant to Section 26-23-6, any person that willfully violates any provision of this rule may be assessed an administrative civil money penalty not to exceed $1,000 upon an administrative finding of a first violation and up to $3,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court.

KEY: birth defects, birth defect reporting, critical congenital heart disease (CCHD), CCHD screening

March 11, 2019	**26-1-30(2)(c), (d), (e), (g), (p), (t)**
Notice of Continuation September 2, 2014	**26-10-1(2)**
	26-10-2
	26-25-1

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-515. Long Term Acute Care.
R414-515-1. Introduction and Authority.

This rule defines the scope of inpatient long-term acute care hospital (LTAC) services that are available to Medicaid members for the treatment of disorders other than mental disease.

This rule is authorized by Subsection 1886(d)(1)(B)(iv)(I) of the Social Security Act and Sections 26-1-5, 26-18-2.1, 26-18-2.3, and 26-18-3.

R414-515-2. Definitions.

(1) "Admission" means the acceptance of a Medicaid member for LTAC care and treatment when the member meets established evidence-based criteria for severity of illness and intensity of service and the required service cannot be provided in a lesser level of care setting.

(2) "Comprehensive documentation" means applicable relevant information including a history and physical, operative reports, daily physician progress notes, vital signs, laboratory test results, medications administration records, respiratory therapy notes, wound care notes, nutrition notes, physical therapy notes, occupational therapy notes, speech therapy notes, and any other pertinent information the Division needs to make a decision regarding the LTAC request.

(3) "Continued stay review" means a periodic, supplemental, or interim review of clinical information for an LTAC member.

(4) "Inpatient" means an individual whose severity of illness and intensity of service meet the evidence-based criteria for an LTAC stay.

(5) "Intensity of Service" means measure of the number, technical complexity, or attendant risk of services provided.

(6) "Long-term acute care hospital" or "Long-term care hospital" (LTAC) means an inpatient transitional care hospital designed to treat members with multiple, serious medical conditions requiring intense, acute care as determined by a physician.

(7) "Retroactive review" means a review of clinical information for a patient who had previously been admitted to an LTAC, but never received a prior authorization for the initial or continued stay due to retroactive eligibility approval.

(8) "Severity of Illness" means the extent of organ system derangement or physiologic decompensation for a patient.

R414-515-3. Client Eligibility Requirements.

A patient must be eligible for Medicaid services.

R414-515-4. Program Access Requirements.

(1) A member must meet the severity of illness and intensity of service for LTAC level of care as determined through an evidence-based criteria review process.

(a) The Department shall deny an LTAC request for reimbursement if the member does not meet the evidence-based criteria.

(b) The evidence-based criteria subsets must be utilized correctly (e.g., the primary diagnosis may not additionally be used as a secondary diagnosis).

(2) LTAC preadmissions, continued stays, and retroactive stays that do not meet the evidence-based criteria subsets may be forwarded for secondary medical review if:

(a) the LTAC requests the secondary medical review; or

(b) documentation shows that LTAC is the most appropriate level of care for the member.

R414-515-5. Service Coverage.

(1) An LTAC provider must submit to the Department a request for coverage that includes current and comprehensive documentation, or the Department will return the request as incomplete.

(2) The Department shall consider LTAC coverage upon the date it receives the request and current, comprehensive documentation.

(3) The Department shall review the documentation to determine preadmission, continued stay, or retroactive stay within three business days of the request.

(4) Prior authorization is not transferable from one LTAC to another.

(5) Prior authorization is required for preadmission, continued stay, and retroactive reviews.

(6) If a member transfers from an LTAC to an acute care hospital for any reason, and is away from the LTAC for greater than 24 hours, the LTAC shall submit a new preadmission review before transferring the member back to the LTAC.

(7) Each approved prior authorization is for a seven-day period.

R414-515-6. Preadmission Review.

An LTAC provider shall submit prior authorization requests to the Department at least 24 hours before the expected admission.

R414-515-7. Continued Stay Review.

An LTAC provider shall submit prior authorization requests to the Department two days before the end of the approved period. The continued stay prior authorization request must include all pertinent medical record comprehensive documentation supporting the evidence-based LTAC continued stay review.

R414-515-8. Reimbursement Methodology.

Reimbursement for LTAC is in accordance with the Utah Medicaid State Plan.

KEY: Medicaid, long term acute care, LTAC
March 21, 2019 **26-1-5**
26-18-3

R414. Health, Health Care Financing, coverage and Reimbursement Policy.
R414-516. Nursing Facility Non-State Government-Owned Upper Payment Limit Quality Improvement Program.
R414-516-1. Introduction and Authority.

This rule defines the participation requirements for the Quality Improvement (QI) program within the Nursing Care Facility Non-State Government-Owned Upper Payment Limit (NF NSGO UPL) program. This rule applies only to nursing facility providers who are part of a contract with the Department to participate in the NF NSGO UPL program. This rule is authorized by Sections 26-1-5 and 26-18-3.

R414-516-2. Definitions.

The definitions in Rule R414-505 apply to this rule. In addition:

(1) "American Health Care Association (AHCA)" means the national association of long term and post-acute providers for quality care and services for frail, elderly, and disabled Americans.

(2) "Certification And Survey Provider Enhanced Reports (CASPER)" means a quality measure report used by the Centers for Medicare and Medicaid Services (CMS) to compare data between nursing facility programs.

(3) "Certified Nurse Aid (CNA)" means any person who completes a nurse aid training and competency evaluation program (NATCEP) and passes the state certification examination.

(4) "Division" means the Division of Medicaid and Health Financing (DMHF).

(5) "Eden Certification" means a program achieving Eden Milestones as approved by the Eden Alternative organization.

(6) "Fair Rental Value (FRV)" means the definition provided in Attachment 4.19-D of the Medicaid State Plan.

(7) "Five-Star Quality Rating System" means a rating system developed by CMS to help consumers, their families, and other caregivers compare health inspection reports, staffing, and quality measures (QM) between nursing programs.

(8) "Nurse" means an individual who is licensed under Title 58, Chapter 31b as:

(a) a licensed practical nurse (LPN);

(b) a registered nurse (RN);

(c) an advanced practice registered nurse (APRN); or

(d) a nurse practitioner (NP).

(9) "Program" means each distinct NF program participating in the NF NSGO UPL program.

(10) "Qualified Activity Professional" means:

(a) a qualified therapeutic recreation specialist or an activities professional who is licensed or registered in the state of Utah;

(b) an activities professional who is recognized by an accrediting body;

(c) a person who has two years of experience in a social or recreational program within the last five years, one year of which was full-time in a therapeutic activities program;

(d) an occupational therapist (OT); or

(e) an occupational therapy assistant (OTA).

(11) "Qualified Clinician" means:

(a) a physician;

(b) a surgeon;

(c) a chiropractic physician;

(d) a physician assistant;

(e) a physical therapist;

(f) a physical therapist assistant;

(g) an OT; or

(h) an OTA.

(12) "Resident" means a Utah Medicaid eligible individual who resides in and receives nursing facility services in a Utah Medicaid-certified nursing facility.

R414-516-3. Quality Improvement Program Requirements of Participation.

(1) A program is required to earn quality improvement (QI) points to participate in the NF NSGO UPL Program. A program shall earn and document:

(a) In Calendar Year 2018, 10 or more QI points with a minimum of five QI points from Section R414-516-6;

(b) In Calendar Year 2019, 12 or more QI points with a minimum of six QI points from Section R414-516-6;

(c) In Calendar Year 2020 and beyond, 14 or more QI points with a minimum of seven from Section R414-516-6.

(2) QI points may be earned from any combination of the QI Program Categories as long as the minimum number of QI points are earned from Section R414-516-6.

(3) When calculating compliance under Section R414-516-6, a program shall not count residents who are in the facility less than 14 days.

(4)(a) Each program shall submit to the Division a compliance form, using the current Division form, within 30 days of the end of the calendar year documenting that the program qualifies to earn points under the selected QI program categories.

(b) A compliance form must be mailed or electronically mailed to the correct address found at https://health.utah.gov/stplan/longtermcarenfqi.htm.

(c) In all cases, no additional compliance forms, documentation, unless requested as part of an audit, or explanation will be accepted if submitted after the annual submission deadline.

(d) Any program that does not submit its compliance form by the deadline shall receive zero points for that program year.

(5) The Division does not require a provider that enters the NF NSGO UPL program for only part of a calendar year, based on provider participation start date, to comply with the QI provisions of Section R414-516-3 in the first program calendar year.

R414-516-4. Quality Awards.

(1) A program may earn QI points through achieving the following quality awards, certifications, and ratings:

(2) The AHCA National Quality Award;

(a) A program that has earned the Gold AHCA quality award may earn six QI points for the duration of the award;

(b) A program that has earned the Silver AHCA quality award may earn four QI points for the duration of the award;

(c) A program that has earned the Bronze AHCA quality award may earn two QI points for the duration of the award.

(3) The HealthInsight Quality Award;

(a) A program that has earned a HealthInsight Quality Award may earn two QI points for the year awarded.

(4) Eden Certification Milestones; and

(a) A program that achieves an Eden Certification Milestone at the time of implementation of this rule may receive QI points in the same formula for a program achieving the initial milestone;

(b) A program may earn, in the initial year of the achievement, one QI point for achieving milestone one;

(c) A program may earn, in the initial year of the achievement, three QI points for achieving milestone two and two QI points the following year;

(d) A program may earn, in the initial year of the achievement, five QI points for achieving milestone three, three QI points the following year, and two QI points the third year.

R414-516-5. Construction and Renovation.

A program may earn up to seven QI points by constructing or renovating its physical facility or increasing access to care by providing services in a rural county as follows:

(1) Constructing or renovating its physical facility:

(a) A program may earn seven QI points for having a FRV facility age of eight years or less;

(b) A program may earn five QI points for having a FRV facility age of fifteen years or less;

(c) A program may earn up to four QI points for using a percentage of UPL monies on facility renovations. The percentage is calculated by dividing the monies spent on a major renovation, replacement beds, or additional beds as reported in the program's audited FRV Data Report as described in the Attachment 4.19-D of the Medicaid State Plan, (numerator) by the amount of NF NSGO UPL monies paid in the same period as the FRV Data Reported renovation project (denominator).

(i) A program may earn four QI points for using greater than 75 percent of UPL monies.

(ii) A program may earn two QI points for using greater than 50 percent of UPL monies.

(2) Access to care by providing services to Medicaid members in a rural county.

(a) A program located in a county other than Cache, Davis, Salt Lake, Utah, Washington, or Weber may receive one QI point.

(b) A program located in an area where no other Utah Medicaid-certified nursing facility is within a 35-mile radius may receive one QI point.

R414-516-6. Direct Resident Services.

A program may earn QI points by providing Direct Resident Services as follows:

(1) Providing a denture replacement policy. A program may earn one QI point by providing a denture replacement policy where the program will replace lost or damaged dentures for residents within 90 days of the loss or damage.

(2) Providing optional dining services. A program may earn up to three QI points for dining service options provided in the categories below:

(a) A program may earn one QI point for providing a menu option of at least five meal choices outside of the planned meal;

(b) A program may earn one QI point for providing a cook-to-order menu;

(c) A program may earn three QI points for providing a five-meal program for the entire calendar year; or

(d) A program may earn one QI point for providing a four-meal program for the entire calendar year.

(3) Providing a Preferred Snack Program with 80 percent compliance. A program may earn two QI points by providing distinct resident preferences for snacks.

(a) A program shall provide a snack survey including food and beverage options, snack time options, the date of the survey, and the name of the person completing the survey.

(b) The program shall complete the survey within two weeks of admission or by March 31, 2018, whichever is later.

(c) A program shall provide the snack and beverage at each resident's preferred time.

(d) If a resident requires assistance for feeding, the facility shall provide a dining assistant during the snack.

(e) A program shall complete a snack survey for each distinct resident quarterly or as requested by the resident.

(f) The program shall calculate compliance by dividing the number of distinct residents who complete a preferred snack survey (numerator) by the number of distinct residents during the quarter, who desired to complete a snack survey (denominator).

(4) Providing a Preferred Bedtime Program with 80 percent compliance. A program may earn two QI points by providing resident preferences for bedtime.

(a) The program shall provide a bedtime survey, in which the resident was asked about preferred bedtime options and preferred rituals. The program must include the date of the survey and the name of the person who completed it.

(b) The program shall complete the survey within two weeks of admission or by March 31, 2018, whichever is later.

(c) The program shall provide each resident their preferred bedtime options and rituals.

(d) The program shall complete a bedtime survey annually or as requested by the resident.

(e) The program shall calculate compliance by dividing the number of distinct residents who complete a bedtime survey (numerator) by the number of distinct residents during the calendar year, subtracted by the distinct residents who declined to complete a bedtime survey (difference is denominator).

(5) Providing consistent CNA or nursing staff assignments to residents with 80 percent compliance. A program may earn up to five QI points by providing consistent CNA or nursing staff assignments to residents. The points may be earned by providing the same CNA or nurse for a distinct resident for 32 waking hours during a standard Sunday through Saturday week.

(a) A program may earn one QI point for having a staffing schedule providing consistent CNA's and nurses for the entire program.

(b) The program may earn one QI point for providing consistent CNA assignment to a distinct hall containing at least 10 residents.

(c) The program may earn two QI points for providing consistent CNA assignment to an entire program.

(d) The program may earn one point for providing consistent nurse assignment to a hall containing at least 10 residents.

(e) A program may earn two QI points for providing consistent nurse assignment to an entire program.

(f) The program shall provide the consistent assignment for 40 of 52 weeks during the calendar year.

(g) The program shall calculate compliance by dividing the number of distinct residents who have consistent assignment in the hall or program (numerator) by the number of distinct residents during the calendar year in the hall or program (denominator).

(6) Providing a Range of Motion (ROM) program to residents with 80 percent compliance. A program may earn four QI points by providing ROM assessments to residents semi-annually by a qualified clinician; or, may earn two QI points by providing a ROM assessment to residents semi-annually by a restorative nurse aid under the direct supervision of a qualified clinician.

(a) The program shall include a ROM assessment for passive range of motion (PROM) or an active range of motion (AROM) assessment for shoulder, elbow, wrist, digits of the hand, hip, knee, and ankle joints. The program shall also include a ROM assessment of which joint has limitations, the reduced anatomical motion to the joint, how the restriction limits function, the title and name of the person completing the plan of care (POC), and the date of the POC.

(b) If a reduction in ROM is found and the clinician recommends a ROM POC, the POC shall include:

(i) a goal to return the resident to the highest practicable level of function;

(ii) the frequency and duration of the POC;

(iii) the title and name of the person completing the POC; and

(iv) the date of the POC.

(c) If the program develops a POC for a resident, a qualified clinician or another qualified professional shall complete the POC under the supervision of a qualified clinician.

(d) If a resident qualifies for a ROM POC, but desires not to participate, the qualified clinician shall document the refusal and provide a ROM assessment semi-annually.

(e) The program shall calculate compliance by dividing the number of distinct residents who received a ROM assessment semi-annually plus the number of residents refusing to complete

a ROM assessment semi-annually (sum is numerator) by the number of distinct residents during the calendar year (denominator).

(7) Providing a One-on-One Activity program with 80% compliance. A program may earn up to four QI points by providing a one-on-one activity program. A one-on-one activity program shall provide a 30-minute minimum individual activity onsite or within the community each month for each resident; and

(a) A program may earn one QI point by providing a schedule for one-on-one activity participation for residents desiring to participate;

(b) A program may earn three QI points if compliant with providing one-on-one activities;

(c) A qualified activity professional shall complete an activity interest (AI) survey for each resident including recreational, educational, physical, arts and crafts, and any additional activity options preferred by the resident. The AI survey shall include the name and title of the surveyor and the date the survey was completed;

(d) For each resident who desires to participate in a one-on-one activity program:

(e) A qualified activity professional shall develop a POC including the preferred list of activities and a method of grading the importance of the activities to the resident. The activity POC shall include:

(i) the activities to be completed during the one-on-one activity;

(ii) the goal of the activity;

(iii) what the activity is promoting

(iv) the date the POC was completed; and

(v) the title and name of the person completing the POC.

(f) The person who completes the activity with the resident shall document:

(i) the preferred activity completed;

(ii) the duration of the activity;

(iii) the goal of the activity;

(iv) which quality of life measures were promoted; and

(v) any relevant comments made by the resident.

(g) The qualified activity professional shall modify the POC as appropriate or when requested by the resident.

(h) If a resident who desires to participate in the one-on-one activity program cannot participate in a given month, the nursing facility program shall document the refusal.

(i) If a resident refuses to participate in the one-on-one activity program, the qualified activity professional shall document the refusal and continue to complete an AI survey with the resident and offer the one-on-one activity program annually.

(j) If a resident who initially refuses to participate in a one-on-one activity program and desires to participate before the annual AI survey, the qualified activity professional shall complete the steps noted for residents desiring to participate in a one-on-one activity program.

(k) The program shall calculate compliance by adding the number of distinct residents who participated in but declined a monthly one-on-one activity, the number of distinct residents who completed the program, and the number of distinct residents who declined to complete the program (distinct sum is numerator) divided by the number of distinct residents during the calendar year (denominator).

(8) Providing a Mobility Program to qualifying residents with 80 percent compliance. A program may earn four QI points by providing a mobility program to qualifying residents. The nursing facility program shall offer residents who qualify for a walking program a walking activity five of seven days in a standard week for 40 out of 52 weeks during the calendar year.

(a) A nurse shall complete the mobility and sit-stand survey and a one-step command (OSC) survey. The Division shall provide the mobility surveys.

(b) A resident who achieves a combined score of eight or higher on the mobility and sit-stand surveys and a score of one on the OSC survey qualifies to participate in a walking program.

(c) The nurse who completes the mobility surveys shall establish a POC for the walking program to determine:

(i) the distance of the walk;

(ii) duration of the walk; and

(iii) the amount of assistance required by the resident, including mobility devices to be provided by the staff.

(d) The nursing facility program shall provide weekly documentation to illustrate program completion, including modifications to a residents walking program.

(e) If a resident qualifies for but refuses to participate in a walking program, the nurse shall document the refusal and complete the mobility, sit-stand, and one-step command surveys annually.

(f) If a resident initially declines to participate in a walking program and then requests to engage in a walking program before the annual follow-up surveys, the program shall complete the survey and develop a walking POC for the resident.

(g) The nursing facility program shall calculate compliance by adding the number of distinct residents who completed the walking program with the distinct residents who qualified for but requested limited participation in the program, and residents who qualified for but declined participation in the walking program (distinct sum is numerator) by the number of distinct residents who qualified for a walking program during the calendar year (denominator).

R414-516-7. Quality Metrics.

(1) A program may earn up to six QI points for demonstrating quality metric scores equal to or better than the industry average noted.

(a) Quality metrics shall include:

(i) CMS 5-Star quality measure rating, for long-stay residents, obtained from CMS online data sources. The industry average is 3.62%. To qualify, the nursing facility program must equal or exceed the industry average.

(ii) CASPER Quality Measures for urinary tract infections obtained from CMS online data sources. The industry average is 6.68%. To qualify, the nursing facility program must have less than or equal to the industry average.

(iii) CASPER Quality Measures for pressure ulcers obtained from CMS online data sources. The industry average is 6.15%. To qualify, the nursing facility program must have less than or equal to the industry average.

(iv) CASPER Quality Measures for falls with a major injury obtained from CMS online data sources. The industry average is 4.17%. To qualify, the nursing facility program must have less than or equal to the industry average.

(v) Nurse staffing hours per resident day obtained from CMS online data sources. The industry average is 3.81%. To qualify, the nursing facility program must equal or exceed the industry average.

(vi) Survey deficiency scope and severity obtained from the Utah Bureau of Health Facility Licensing, Certification and Resident Assessment. The industry average is 3.57%. To qualify, the nursing facility program must have less than or equal to the industry average.

(b) A program may earn QI points as follows:

(i) Four QI points may be earned for achieving metrics scores equal to or superior to the industry average in four of six targets;

(ii) Three QI points may be earned for achieving metrics scores equal to or superior to the industry average in four of six targets; or

(iii) Two QI points may be earned for achieving metrics scores equal to or superior to the industry average in three of six

targets.

(c) A program may earn QI points from demonstrating metrics score improvement as follows:

(i) Two QI points may be earned by demonstrating metrics score improvement in greater than four of six targets; or

(ii) One QI point may be earned by demonstrating metrics score improvement in four of six targets.

(2) One QI point may be earned by demonstrating a 20% improvement in two specific quality metrics scores on the CASPER report at the end of the 12-month data (October through September) period as compared to the prior 12-month data period.

R414-516-8. Staffing.

(1) A program may earn up to four QI points for providing employee retention programs in the categories below:

(a) A program may earn one QI point by offering health insurance to all full-time employees;

(b) A program may earn one QI point by demonstrating improved staff retention of 20% facility wide compared to the previous calendar year. The program shall calculate staff retention by dividing the number of staff who separated from the program during the calendar year (numerator) by the number of all staff employed during the calendar year (denominator), and subtracting the retention percentage of the previous calendar year from the retention percentage of the current calendar year;

(c) A program may earn two QI points by demonstrating a staff turnover rate below 50% during the calendar year. The program shall calculate turnover rate by dividing the number of distinct staff who separated from the program during the calendar year (numerator) by the number of all distinct staff employed during the calendar year (denominator).

(d) A program may earn one QI point by offering:

(i) a 401K plan that includes an employer contribution; or

(ii) a pension or retirement program.

(e) A program may earn one QI point by:

(i) providing tuition reimbursement for formal education;

(ii) providing reimbursement for continuing education; or

(iii) providing reimbursement for certification courses.

(2) Providing staff training. A program may earn one QI point by providing staff training through a nursing facility industry-recognized source using virtual or onsite resources.

R414-516-9. Exceptions and Holdings.

(1) A program that does not earn the minimum required QI points during a calendar year shall:

(a) earn the number of QI points not achieved from that calendar year in addition to the required QI points the subsequent calendar year; and

(b) submit to the Division a plan of correction that details how the program will come into compliance with the QI Program.

(c) A plan of correction must be mailed electronically to the correct address found at https://health.utah.gov/stplan/longtermcarenfqi.htm.

(2) The Division shall remove from the UPL Seed Contract, a program that fails to earn the minimum QI points for a second consecutive year as required by Subsection R414-516-9(1)(a).

(a) Once the Division determines that the program failed to meet QI program qualifications, the Division shall send the program a notice of failure to meet the requirements.

(b) The program shall have the opportunity to appeal the determination in accordance with Rule R410-14, or shall waive the right of appeal.

(c) If the program does not file an appeal or the Division's determination is upheld, the Division shall amend the UPL seed contract to remove the program effective the last day of the quarter in which the determination was made.

(3) If a program that has been removed from the UPL Seed Contract desires to be added back to the contract prospectively, the program shall demonstrate compliance to Subsection R414-516-3(1)(c) for one full year ("trial period") after the effective date of the removal.

(a) The program shall submit to the Division within 30 days of the trial period:

(i) the current compliance form; and

(ii) documentation of compliance with all QI programs in which points were earned.

(b) If the Division determines that the program was compliant during the trial period, the Division may add the program back to the UPL Seed Contract effective the first day of the quarter following the date compliance was determined.

(4) The Division may audit a program at any time to ensure compliance.

(a) The Division shall provide notice that indicates the period of the audit and the QI programs being audited.

(b) When an audit is performed, all documentation requested by the Division shall be postmarked or demonstrate proof of delivery to the Division within 10 business days of the request.

(c) Failure to submit the requested documentation in a timely manner shall result in the program forfeiting the QI points for the specific QI program category being audited.

(d) If an audit is completed, as applicable, the findings of the audit shall supersede the program's reported QI points.

(e) The program shall have the opportunity to appeal the determination in accordance with Rule R410-14, or shall waive the right of appeal.

KEY: Medicaid
March 21, 2019 **26-1-5**
26-18-3

R432. Health, Family Health and Preparedness, Licensing.
R432-10. Specialty Hospital - Long-Term Acute Care Construction Rule.
R432-10-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-10-2. Purpose.

The purpose of this rule is to establish construction standards for hospitals that provide services for the diagnosis, treatment or care of persons needing medical services and care in excess of services usually provided in a general acute hospital or skilled nursing home for chronic or long-term illness, injury or infirmity.

R432-10-3. General Design Requirements.

(1) Refer to R432-4-1 through R432-4-23.

(2) All fixtures in public and resident toilet and bathrooms shall be wheelchair accessible with wheelchair turning space within the room.

R432-10-4. General Construction, Patient Facilities.

(1) The requirements of R432-4-24 and the requirements of Sections 2.1 and 2.6 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 the Guidelines.

(2) The maximum number of beds on each nursing unit shall be 60.

(a) The minimum number of beds in a nursing unit shall be four.

(b) Rooms and spaces comprising the nursing unit shall be contiguous.

(3) At least two single-bed rooms, with a private toilet room containing a toilet, lavatory, and bathing facility, shall be provided for each nursing unit.

(a) The minimum patient room area shall be 120 feet.

(b) In addition to the lavatory in the toilet room, in new construction a lavatory or handwashing sink shall be provided in the patient room.

(c) Ventilation shall be in accordance with Part 6, Table 7-1 of Guidelines with all air exhausted to the outside.

(4) The nurses' station shall have handwashing facilities located near the nurses' station and the drug distribution station. The nurses' toilet room, located in the unit, may also serve as a public toilet room.

(5) A nurse call system is not required in facilities that care for developmentally disabled or mentally retarded persons. With the prior approval of the Department, facilities which serve patients who pose a danger to themselves or others may modify the system to alleviate hazards to patients.

(6) 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.

(7) A clean workroom or clean holding room with a minimum area of 80 square feet for preparing patient care items which shall contain a counter, handwashing facilities, and storage facilities.

(a) 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.

(8) A soiled workroom with a minimum area of 80 square feet which shall contain a clinical sink, a sink equipped for handwashing, a work counter, waste receptacles and a linen receptacle.

(a) Handwashing sinks and work counters may be omitted in rooms used only for temporary holding of soiled, bagged materials.

(9) If a medication dispensing unit is used it shall be under visual control of staff, including double locked storage for controlled drugs.

(10) Clean Linen Storage.

(a) If a closed cart system is used it shall be stored in a room with a self closing door.

(b) Storage of a closed cart in an alcove in a corridor is prohibited.

(11) 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.

(12) At least one room for toilet training, accessible from the nursing corridor, shall be provided on each floor containing a nursing unit.

(a) All fixtures in this room shall comply with the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADA/ABA-AG).

(b) A toilet room, with direct access from the bathing area, shall be provided at each central bathing area.

(c) Doors to toilet rooms shall comply with ADA/ABA-AG. The doors shall permit access from the outside in case of an emergency.

(d) A handwashing fixture shall be provided for each toilet in each toilet room.

(13) Storage. There shall be an equipment storage room with a minimum area of 120 square feet for portable storage.

(14) Resident Support Areas Shall Include the Following:

(a) Occupational Therapy may be counted in the required space of Guidelines section 2.6-2.3 Patient Living Areas.

(b) Physical Therapy, personal care room and public waiting lobbies may not be included in the calculation of space of Guidelines section 2.6-2.3 Patient Living Areas.

(c) Storage space for recreation equipment and supplies shall be provided and secured for safety.

(d) There shall be a general purpose room with a minimum area of 100 square feet equipped with table, and comfortable chairs.

(e) A minimum area of ten square feet per bed shall be provided for outdoor recreation. Recreation areas shall be enclosed by a secure fence.

(15) An examination and treatment Room shall be provided except when all patient rooms are single-bed rooms.

(a) The examination and treatment room may be shared by multiple nursing units.

(b) The room shall have a minimum floor area of 100 square feet, excluding space for vestibules, toilet, closets, and work counters, whether fixed or movable.

(c) The minimum allowable room dimension shall be ten feet.

(d) The room shall contain a lavatory or sink equipped for handwashing; work counter; storage facilities; and desk, counter, or shelf space for writing.

(16) A room shall be arranged to permit evaluation of patient needs and progress.

(a) The room shall include a desk and work area for the evaluators, writing and work space for patients, and storage for supplies.

(b) If psychological services are provided, then the unit shall contain an office and work space for testing, evaluation, and counseling.

(c) If social services are provided, then the unit shall contain office space for private interviewing and counseling.

(d) If vocational services are provided, then the unit shall contain office and work space for vocational training, counseling, and placement.

(e) Evaluation, psychological services, social services, and

vocational services may share the same office space when the owner provides evidence in the functional program that the needs of the population served are met in the proposed space arrangement.

(17) Pediatric and Adolescent Unit.

(a) Pediatric and adolescent nursing units shall comply with the spatial standards in section 2.2-2.13 of the Guidelines.

(b) There shall be an area for hygiene, toileting, sleeping, and personal care for parents if the program allows parents to remain with young children.

(c) Service areas in the pediatric and adolescent nursing unit shall conform to the standards of section 2.2-2.13.6 of the Guidelines and the following:

(i) Multipurpose or individual rooms shall be provided in the nursing unit for dining, education, and recreation.

(ii) A minimum of 20 square feet per bed shall be provided.

(iii) Insulation, isolation and structural provisions shall minimize the transmission of impact noise through the floor, walls, or ceiling of multipurpose rooms.

(iv) Service rooms may be shared by more than one pediatric or adolescent nursing unit, but may not be shared with adult patient units.

(v) A patient toilet room, in addition to those serving bed areas, shall be conveniently located to each multipurpose room and to each central bathing facility.

(vi) Storage closets or cabinets for toys, educational, and recreational equipment shall be provided.

(d) At least one single-bed isolation room shall be provided in each pediatric unit. Each isolation room shall comply with the following:

(i) Room entry shall be through an adjacent work area which provides for aseptic control, including facilities separate from patient areas for handwashing, gowning, and storage of clean and soiled materials. The work area entry may be a separate, enclosed anteroom.

(ii) A separate, enclosed anteroom for an isolation room is not required but, when provided, shall include a viewing panel for staff observation of the patient from the anteroom.

(iii) One anteroom may serve several isolation rooms.

(iv) Toilet, bathing, and handwashing facilities shall be arranged to permit access from the bed area without entering or passing through the work area of the vestibule or anteroom.

(17) Rehabilitation therapy, Physical Therapy and Occupational Therapy areas shall include:

(a) Waiting areas to accommodate patients in wheelchairs, including room for turning wheelchairs.

(b) Storage space, with separate storage rooms for clean and soiled linen.

R432-10-5. General Construction.

(1) Yard equipment and supply storage areas shall be located so that equipment may be moved directly to the exterior without passing though building rooms or corridors.

(2) Grab bars and handrails shall comply with ADA/ABA-AG and shall be installed in all toilet rooms.

(a) Handrails shall be provided on both sides of corridors used by patients.

(b) The top of the rail shall be 32 inches above the floor, except for special care areas.

(c) Ends of the handrails and grab bars shall be constructed to prevent persons from snagging their clothes.

(3) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers may not be used.

(4) Signs. The following signs shall comply with ADA/ABA-AG and be located in corridors:

(a) general circulation direction signs in corridors.

(b) identification sign or number at each door.

(c) emergency evacuation directional signs.

(6) At least one window in each patient sleeping room shall open to the exterior and shall be operable.

R432-10-6. Construction Features.

(1) Mechanical tests shall be conducted prior to the final Department construction inspection. Written test results shall be retained in facility maintenance files and available for Department review.

(2) The heating system shall be capable of maintaining temperatures of 80 degrees F. in areas occupied by patients.

(a) The cooling system shall be capable of maintaining temperatures of 72 degrees F. in areas occupied by patients.

(b) Furnace and boiler rooms shall be provided with sufficient outdoor air to maintain equipment combustion rates and to limit work station temperatures to a temperature not to exceed 90 degrees F. When ambient outside air temperature is higher, maximum temperature may be 97 degrees F.

(c) A relative humidity between 30 percent and 60 percent shall be provided in all patient areas.

(d) The bottom of ventilation supply and return opening shall be at least three inches above the floor.

(3) All hoods over cooking ranges shall be equipped with grease filters, fire extinguishing systems, and heat actuated fan controls. Cleanout openings shall be provided every 20 feet in horizontal sections of the duct systems serving these hoods.

(4) Kitchen grease traps shall be located and arranged to permit easy access without the need to enter the food preparation or storage area.

(5) Hot water systems. Hot water provided in patient tubs, showers, whirlpools, and handwashing facilities shall be regulated by thermostatically controlled automatic mixing valves. Mixing valves may be installed on the recirculating system or on individual inlets to appliances.

(6) Drainage Systems. Building sewers shall discharge into community sewerage except, where such a system is not available, the facility shall treat its sewage in accordance with local requirements and Department of Environmental Quality requirements.

(7) Piping and Valve systems. All piping and valves in all systems, except control line tubing, shall be labeled to show content of line and direction of flow. Labels shall be permanent type, either metal or paint, and shall be clearly visible to maintenance personnel.

(8) Oxygen and suction systems shall be installed in accordance with the requirements of a level 1 system per NFPA 99 and Table 2.1-6 of the Guidelines.

(9) Electric materials shall be new and listed as complying with standards of Underwriters Laboratories, Inc., or other equivalent nationally recognized standards. The owner shall provide written certification to the Department verifying that systems and grounding comply with NFPA 99 and NFPA 70.

(10) Approaches to buildings and all spaces within buildings occupied by people, machinery, or equipment shall have fixtures for lighting in accordance with requirements shown in Tables 3A and 3B of Illuminating Engineering Society of North America IESNA, publication RP-29-06, Lighting for Hospitals and Health Care Facilities, 2006 edition. Automatic Emergency lighting shall be provided in accordance with NFPA 99 and NFPA 101.

(11) Receptacles shall include:

(a) Each examination and work table shall have access to minimum of two duplex receptacles.

(b) Receptacle cover plates on electrical receptacles supplied for the emergency system shall be red.

(12) Emergency Electrical Service shall include:

(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 receptacle in each patient room;

(viii) one duplex receptacle at each nurse station;

(ix) duplex receptacles in the emergency heated area at a ratio of one for each ten patients.

(c) fuel storage capacity shall permit continuous operation for 48 hours.

R432-10-7. Excluded Section of the Guidelines.

The following sections of the Guidelines do not apply:

(1) Linen Services, Section 2.6-5.2.

R432-10-8. 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 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 March 4, 2019	**26-21-2.1**
	26-21-20

R432. Health, Family Health and Preparedness, Licensing.
R432-11. Orthopedic Hospital Construction.
R432-11-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-11-2. Purpose.

The purpose of this rule is to establish construction standards for a specialty hospital for orthopedic services.

R432-11-3. General Design Requirements.

(1) See R432-4-1 through R432-4-22.

(2) All fixtures in resident toilet and bathrooms shall be wheelchair accessible with wheelchair turning space within the room.

R432-11-4. General Construction.

See R432-4-23 with the following modifications:

(1) Corridors in patient use areas shall be a minimum eight feet wide.

(2) Handrails shall be provided on both sides of corridors and hallways used by patients and meet the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines requirements. The top of the rail shall be 34 inches above the floor except for areas serving children and other special care areas.

(3) Plumbing, including medical gas and suction systems are required.

(4) An emergency electrical service is required. An on-site emergency generator shall be provided and the following services shall be connected to the emergency generator:

(a) life safety branch, as defined in section 517-32 of the National Electric Code NFPA 70, which is adopted and incorporated by reference;

(b) critical branch as defined in 517-33 of the National Electric Code NFPA 70, which is adopted and incorporated by reference;

(c) equipment system, as defined in 517-34 of the National Electric Code NFPA 70, which is adopted and incorporated by reference;

(d) telephone;

(e) nurse call;

(f) heating equipment necessary to provide adequate heated space to house all patients under emergency conditions;

(g) one duplex receptacle in each patient room;

(h) one duplex receptacle at each nurse station;

(i) duplex receptacles in the emergency heated area at a ratio of one for each ten patients;

(j) fuel storage capacity shall permit continuous operation for at least 48 hours.

(5) If installed, fixed and mobile X-ray equipment shall comply with Articles 517 and 660 of NFPA 70, which is adopted and incorporated by reference.

R432-11-5. General Construction. Patient Service Facilities.

(1) Requirements of R432-4-24 and the requirements of Sections 2.1 and 2.2 of 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 the Guidelines.

(2) Nursing Units shall meet the following:

(a) At least two single-bed rooms, with private toilet rooms, shall be provided for each nursing unit.

(b) Minimum room areas exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, shall be 140 square feet in single-bed rooms and 125 square feet per bed in multiple-bed rooms. The listed areas are minimum and do not prohibit larger rooms.

(3) Imaging Suites. Imaging facilities for diagnostic procedures, include the following: radiology, mammography, computerized scanning, ultrasound and other imaging techniques.

(a) Imaging facilities may be provided within the facility or through contractual arrangement with a qualified radiology service or nearby hospital.

(b) If imaging facilities are provided in-house, they shall meet the requirements for an imaging suite defined in Guidelines for Design and Construction of Health Care Facilities, section 2.2-3.4.

(4) Laboratory Services.

(a) Laboratory space and equipment shall be provided in-house for testing blood counts, urinalysis, blood glucose, electrolytes, blood urea nitrogen (BUN), and for the collection, processing, and storage of specimens.

(b) In lieu of providing laboratory services in-house, contractual arrangements with a Department-approved laboratory may be provided. Even when contractual services are arranged, the facility shall maintain space and equipment to perform on-site rapid testing.

(5) Pharmacy Guidelines.

(a) The size and type of services provided in the pharmacy shall depend on the drug distribution system chosen and whether the facility proposes to provide, purchase, or share pharmacy services. A description of pharmacy services shall be provided in the functional program.

(b) There shall be a pharmacy room or suite, under the direct control of staff, which is located for convenient access and equipped with appropriate security features for controlled access.

(c) The room shall contain facilities for the dispensing, basic manufacturing, storage and administration of medications, and for handwashing.

(d) In lieu of providing pharmacy services in-house, contractual arrangements with a licensed pharmacy shall be provided. If contractual services are arranged, the facility shall maintain space and basic pharmacy equipment to prepare and dispense necessary medications in back-up or emergency situations.

(e) If additional pharmacy services are provided, facilities shall comply with requirements of Guidelines section 2.2-4.2.

(6) Linen Services shall comply with R432-4-24(8).

(7) Toilet Facilities. A toilet room, with direct access from the bathing area shall be provided at each central bathing area.

(a) Doors to toilet rooms shall be equipped with hospital privacy locks or other hardware that protects patient privacy and permits access from the outside without the use of keys or special tools in case of an emergency.

(b) A handwashing fixture shall be provided for each toilet in each toilet room.

(c) Fixtures shall be wheelchair accessible.

(8) Patient Day Spaces.

(a) The facility shall include a minimum total inpatient space for dining, recreation, and day use computed on the basis of 30 square feet per bed for the first 100 beds and 27 square feet per bed for all beds in excess of 100.

(b) In addition to the required space defined for inpatients, the facility shall include a minimum of 200 square feet for outpatient and visitors when dining is part of a day care program. If dining is not part of a day care 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.

(9) Examination and Treatment Room. An examination and treatment room 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) When provided, the room shall have a minimum floor

area of 120 square feet, excluding space for vestibules, toilet, closets, and work counters, whether fixed or movable.

(c) The minimum 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.

(10) Consultation Room. A consultation room, arranged to permit an evaluation of patient needs and progress, shall be provided. The room shall include a desk and work area for the evaluators, writing and work space for patients, and storage for supplies.

(11) Surgical Unit. If surgical services are offered, facilities shall be provided in accordance with the Guidelines.

R432-11-6. Excluded Guideline Sections.

The following sections of the Guidelines do not apply:

(1) Oncology Nursing Unit, Section 2.2-2.3

(2) Pediatric and Adolescent Oncology Nursing Unit, Section 2.2-2.4

(3) Intermediate Care Unit, Section 2.2-2.5.

(4) Critical Care Unit, Section 2.2-2.6.

(5) Coronary Critical Care Unit, Section 2.2-2.7.

(6) Combined Medical/Surgical Critical Care and Coronary Care Unit, Section 2.2-2.8.

(7) Pediatric Critical Care Unit, Section 2.2-2.9.

(8) Newborn Intensive Care Unit, Section 2.2-2.10.

(9) Obstetrical Unit, Section 2.2-2.11.

(10) Nursery Unit, Section 2.2-2.12.

(11) Pediatric and Adolescent Unit, Section2.2-2.13.

(12) Psychiatric Nursing Unit, Section 2.2-2.14.

(13) In-Hospital Skilled Nursing Unit, Section 2.2-2.15.

(14) Bariatric Care Unit, Section 2.2-2.16.

(15) Freestanding Emergency Care Facility, Section 2.2-3.2.

(16) Interventional Imaging Services, Section 2.2-3.5.

(17) Nuclear Medicine Services, Section 2.2-3.6.

(18) Renal Dialysis Services, Section 2.2-3.9.

(19) Cancer Treatment/Infusion Therapy Service, Section 2.2-3.10.

(20) Gastrointestinal Endoscopy Service, Section 2.2-3.11.

(21) Hyperbaric Suite, Section 2.2-3.12.

(22) Linen Services, Section 2.2-5.2.

(23) Morgue Facilities, Section 2.2-5.7.

R432-11-7. 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

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	26-21-20

R432. Health, Family Health and Preparedness, Licensing.
R432-12. Small Health Care Facility (Four to Sixteen Beds) Construction Rule.
R432-12-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-12-2. Purpose.

This rule defines construction standards for small health care facilities which are categorized as Level I, Level II, Level III, or Level IV according to the resident's ability or capability to exit a building unassisted in an emergency.

R432-12-3. General Design Requirements.

Refer to R432-4-1 through R432-4-22.

R432-12-4. General Construction Requirements.

(1) Table 1 identifies the levels of care and construction requirements which apply.

TABLE 1
CONSTRUCTION REQUIREMENTS SUMMARY

	LEVEL I	LEVEL II	LEVEL III	LEVEL IV
No. residents	1-16	4-16	4-16	4-16
Resident Capable of Self Preservation Unassisted	No, they are non ambulatory non-mobile	No, they are non ambulatory non-mobile	Yes, they are ambulatory mobile	Yes, they are ambulatory mobile
Resident Exit Ability in an Emergency	restricted, physical or mental disability and medical condition	restricted, physical or mental disability	restricted, chemical or physical restraints	not restricted
Accessible Rooms	100%	10% or 100% if Rehab.	10%	10%
Physical Construction Requirements code or regulation	NFPA 101	NFPA 101	NFPA 101	Utah Fire Prevention Board Rules R710-3; IBC R-4 occupancy
fire rating of const	1 hour	1 hour	1 hour	No requirement
sprinkler	yes	yes	yes	Only if bldg. larger than 4,500 SF
smoke detector	yes	yes	yes	yes
manual fire alarm	yes	yes	yes	yes
above 3 systems interconnected	yes	yes	yes	no
corridor	8 feet	6 feet	5 feet	As required by IBC
resident room door width	44 inch	44 inch	36 inch	36 inch
nurse call system	yes	yes	optional	yes

(2) General Requirements.

(a) Level I facilities shall meet the Nursing Facility Construction standards in R432-5.

(b) Level II and III facilities shall meet the construction and design requirements identified in this section, unless specifically exempted.

(c) Level IV facilities shall meet the Assisted Living Facility Type I Construction standards in R432-6.

(d) Level I, II, III and IV facilities shall comply with the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (ADA/ABA-AG).

(e) Level I, II and III facilities shall conform to the life safety code requirements of NFPA 101, Chapter 18, which is adopted and incorporated by reference.

(f) Level IV facilities shall conform to the fire safety provisions of R432-710-3.

R432-12-5. Common Areas.

There shall be a common room or rooms for dining, sitting, meeting, visiting, recreation, worship, and other activities that is of sufficient space or separation to promote and facilitate the activity without interfering with concurrent activities or functions.

(1) There shall be at least 30 square feet computed per license bed capacity but no less than a total of 225 square feet.

(2) There shall be sufficient space for necessary equipment and storage of recreational equipment and supplies.

R432-12-6. Resident Rooms.

(1) The maximum room capacity shall be two residents. Provisions shall be made for individual privacy.

(2) There shall be at least 100 square feet for a single-bed room and 160 square feet in shared rooms, exclusive of toilets and closets.

(a) Minor encroachments such as columns, lavatories, and door swings may be ignored in determining space requirements if function is not impaired.

(b) In a facility licensed prior to 1977, the Department may grant a variance, pursuant to R432-2-18, to allow 80 square feet per bed for a single-bed room and 60 square feet per bed for a multiple-bed room.

(3) In multiple-bed rooms there shall be enough clearance between beds to allow movement of beds, wheelchairs, and other equipment without disturbing residents.

(4) No room commonly used for other purposes shall be used as a sleeping room for any resident. This includes any hall, unfinished attic, garage, storage area, shed, or similar detached building.

(5) No bedroom may be used as a passageway to another room, bath, or toilet.

(6) Bedrooms shall open directly into a corridor or common living area, but not into a food-preparation area.

(7) Bedrooms shall not be located in a basement or on an upper floor unless residents have access to one exit from that level leading directly to the exterior at grade level.

(8) Each bedroom shall be provided with light and ventilation by means of an operable window which opens to the outside or to a court that opens to the sky. Where the window requires the use of tools or keys for operation, such devices shall be stored in a prominent location on each floor convenient for staff use.

(9) Each resident shall have a wardrobe, closet, or space suitable for hanging clothing and personal belongings with minimum inside dimensions of 22 inches deep by 36 inches wide by 72 inches tall. Space accommodations shall be provided within each resident's room. Facilities serving infants or children may substitute a chest of drawers for the closet.

R432-12-7. Toilet and Bathing Facilities.

Toilet rooms and bathrooms shall be mechanically

exhausted, conveniently located, and accessible to, and usable by all persons accepted for care.

(1) There shall be one toilet and washbasin on each floor for each four occupants, including staff and live-in family. A facility licensed for eight beds or more shall have distinct and separate toilet and bathing facilities for live-in family and staff.

(2) There shall be at least one bathtub or shower for each six residents.

(a) In a multi-story building there shall be at least one bathtub or shower on each floor that has resident bedrooms.

(b) Each resident shall have access to at least one bathtub and one shower.

(c) There shall be at least one shower or bathtub which opens from a corridor designed for use by resident using a wheelchair with room for staff assistance that meets ADA/ABA-AG standards.

(3) Each central shared bathroom shall have a toilet and washbasin.

(4) Toilet and bathing facilities may not open directly into food preparation areas.

(5) There shall be adequate provision for privacy and safety, including grab bars, in accordance with ADA/ABA-AG, at each toilet, tub, and shower used by residents.

(6) All toilets, showers, and tub facilities shall have walls of impermeable, cleanable, and easily sanitized surfaces.

R432-12-8. Service Areas.

There shall be adequate space and equipment for the following services or functions. Except where the word "room" or "office" is used, service may be provided in a multi-purpose area.

(1) Administrator's office with space for private interviews, storage of files and records, and a public reception or information area.

(2) Telephone area for private use by residents or visitors.

(3) A control station with a well-lighted desk, and equipment for keeping records and supplies.

(4) Closets or compartments for the safekeeping of staff's personal items.

(5) Medication preparation and storage area, including locked drug cabinets, work counter, refrigerator, and sink with running water located near the control station.

(6) Clean linen storage area.

(7) Soiled workroom mechanically ventilated to the outside. In a Level II facility this room shall contain a clinical sink or equivalent flushing rim fixture, handwashing facilities, work counter, waste and soiled linen receptacle.

(8) Housekeeping room, which in large facilities over eight residents shall contain a service sink.

(9) Equipment room or separate building for mechanical and electrical equipment.

(10) Storage room for maintenance supplies.

(11) General storage area within the facility or in a separate building convenient for daily access with at least five square feet of storage per bed;

(12) Area outside the facility for sanitary storage and disposal of waste.

R432-12-9. Dietary Services.

Food service facilities and equipment shall comply with the Utah Department of Health Food Service Sanitation Regulations. According to the size of the facility and services offered, there shall be adequate space and equipment for the following:

(1) Food preparation;

(2) Handwashing located in the food preparation area;

(3) Serving and distributing resident meals;

(4) Dining space for residents, staff, and visitors;

(5) Dishwashing, receiving, scraping, sorting, and stacking soiled tableware and for transferring clean tableware to use areas;

(6) Storage, including cold storage and space for at least a seven-day supply of staple foods and a three-day supply of perishable foods, shall be maintained in the facility.

R432-12-10. Linen Services.

(1) Each facility shall have provisions for storage and processing of clean and soiled linen as required for resident care. Processing may be done within the facility, in a separate building on or off site, or in a commercial or shared laundry.

(2) The capacity of central storage shall be sufficient for four days operation or two normal deliveries, whichever is greater.

(3) Handwashing facilities shall be provided in each area where unbagged soiled linen is handled.

(4) Provisions shall be made to keep soiled linen separate from clean linen.

(5) Provision shall be made for storage of laundry supplies.

(6) Equipment shall be arranged to permit an orderly work flow and reduce cross traffic that may mingle clean and soiled operations.

(7) At least one washing machine and dryer, and ironing equipment shall be available for use by residents who wish to do their personal laundry.

R432-12-11. Nurse Call System.

A nurse call system is required in Level I, II and IV facilities. A nurse call system is optional in Level III facilities.

(1) Each resident's room shall be served by at least one calling station and each bed shall be provided with a call button including operating switch and cord from the wall station to each bed.

(2) Two call buttons serving adjacent beds may be served by one calling station.

(3) Calls shall activate a visible signal in the corridor at the resident's door and the control station.

(4) The system shall be designed so that a signal light activated at the resident's station will remain lighted until turned off at the resident's calling station.

(5) A system that provides two-way voice communication shall be equipped at each calling station with an indicator light that remains lit as long as the voice circuit is operating.

R432-12-12. Rehabilitation Therapy.

A facility that offers on-site specialized rehabilitation services shall provide space and equipment necessary to meet the intent of the approved program. The following shall be available in the facility:

(1) Supplies and equipment storage, including separate clean and soiled linen;

(2) Convenient handwashing facilities;

(3) Space and equipment to carry out specific types of therapy;

(4) Provision for resident privacy;

(5) Convenient access to a room that can be used to train and educate staff and residents;

(6) Dressing rooms for residents.

R432-12-13. Doors and Windows.

(1) Doors to all rooms containing bathtubs, sitz baths, showers and water closets for resident use shall be equipped with hardware which may be secured for privacy yet permit emergency access from the outside without the use of keys.

(2) Each room, including all resident toilet rooms and bathing rooms that may be used by residents, staff, or employees confined to wheelchairs, shall have at least one door with a minimum clear width of 34 inches.

(3) Resident-room doors and exit doors shall be at least 36 inches wide, defined by the width of the door leaf.

(4) Thresholds and expansion-joint covers shall be flush with the floor surface to facilitate use of wheelchairs and carts and to prevent tripping.

(5) Every room intended for 24-hour occupancy shall have a window that opens to the building exterior or to a court that is open to the sky.

(6) Windows and outer doors shall have insect screens.

R432-12-14. Grab Bars and Handrails.

(1) Grab bars shall meet the requirements of ADA/ABA-AG.

(2) In Level I and II facilities, there shall be handrails on both sides of all corridors normally used by residents. Handrail profiles shall be graspable in accordance with NFPA 101 Chapter 7, which is adopted and incorporated by reference and the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines.

(3) Ends shall be returned to the wall or otherwise arranged to minimize potential for injury.

R432-12-15. Lavatories and Plumbing Fixtures.

(1) All lavatories used by residents shall be trimmed with valves, with cross, tee or single lever devices.

(2) Showers and tubs shall have slip-resistant surfaces.

(3) Lavatories shall be securely anchored to withstand a vertical load of not less than 250 pounds on the front of the fixture.

(4) A mirror shall be provided at each handwashing facility except as otherwise noted.

(a) The tops and bottoms of mirrors may be at levels for use by sitting and standing individuals, or additional mirrors may be provided for residents using a wheelchair.

(b) One separate full-length mirror in a single room may serve for wheelchair occupants in that room.

R432-12-16. Ceilings.

(1) Ceiling height in the facility shall be a minimum of eight feet with the following exceptions:

(a) Rooms containing ceiling-mounted equipment shall have adequate height for the proper functioning of that equipment.

(b) Ceilings in corridors, storage rooms, and toilet rooms shall be at least seven feet ten inches.

(c) Building components and suspended tracks, rails and pipes located in the path of normal traffic may not be less than seven feet above the floor.

(2) Where existing conditions make the above impractical, clearances shall be sufficient to avoid injury and at least six feet four inches above the floor.

R432-12-17. Heat and Noise Reduction.

(1) Rooms containing heat producing equipment such as a furnace, heater, washer, or dryer shall be insulated and ventilated to prevent floors of overhead occupied areas and adjacent walls from exceeding a temperature of 10 degrees Fahrenheit (6 degrees C) above the ambient room temperature of such occupied areas.

(2) Recreation rooms, exercise rooms, and similar spaces where impact noises may be generated may not be located directly over resident-bed areas unless special provisions are made to minimize such noise.

(3) Sound transmission limitations shall conform to Table 2.

TABLE 2
SOUND TRANSMISSION LIMITATIONS
IN LONG-TERM CARE FACILITIES

	AIRBORNE SOUND TRANSMISSIONS Class (STC)(a)	
	Partitions	Floors
Residents' room to residents' room	35	40
Public space to residents' room(b)	40	40
Service areas to residents' room(c)	45	45

(a) Sound transmission class (STC) shall be determined by tests in accordance with methods set forth in ASTM Standard E 90 and ASTM Standard E 413. Where partitions do not extend to the structure above, sound transmission through ceilings and composite STC performance must be considered.

(b) Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

(c) Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boiler and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above residents' rooms, offices, nurses' stations, and similarly occupied space shall be effectively isolated from the floor.

R432-12-18. Floor, Wall, and Ceiling Finishes.

(1) Floor materials shall be easily cleanable and appropriate for the location.

(a) Floors and floor joints in areas used for food preparation and food assembly shall be water-resistant, grease proof, and resistant to food acids.

(b) In all areas subject to frequent wet cleaning, floor materials may not be physically affected by germicidal cleaning solutions.

(c) Floors that are subject to traffic while wet, (such as shower and bath areas, kitchen and similar work areas), shall have a non-slip surface.

(d) Carpet and carpet pads in resident areas shall be applied with adhesive or stretched taut and maintained without loose edges or wrinkles which might create hazards or interfere with the operation of wheelchairs, walkers, or wheeled carts.

(2) Wall bases in areas subject to wet cleaning shall be coved and tightly sealed.

(3) Wall finishes shall be washable.

(a) Walls in the immediate area of plumbing fixtures shall be smooth and moisture resistant.

(b) Finish, trim, walls, and floor constructions in dietary and food preparation and storage areas may not have spaces that may harbor rodents and insects.

(4) Floor and wall openings for pipes, ducts, and conduits shall be sealed tightly to resist fire and smoke and to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(5) All exposed ceilings and ceiling structures in resident and staff work areas shall have finishes that are readily cleanable with ordinary housekeeping equipment. Ceilings in the dietary area and other areas where dust fallout might create a potential problem shall have a finished ceiling that covers all conduits, piping, duct work, and exposed construction systems.

R432-12-19. Heating and Cooling.

There shall be adequate and safe heating and cooling equipment to maintain comfortable temperatures in the facility.

(1) The heating system shall be capable of maintaining temperatures of 80 degrees F (27 degrees C) in areas occupied by residents.

(2) The cooling system shall be capable of maintaining temperatures of 72 degrees F (22 degrees C) in areas occupied by residents.

R432-12-20. Ventilation.

(1) All rooms and areas in the facility shall have provision for positive ventilation.

(a) While natural window ventilation for nonsensitive areas and resident rooms may be utilized where weather permits, mechanical ventilation shall be provided for interior areas and

during periods of temperature extremes.

(b) Fans serving exhaust systems shall be located at the discharge end and shall be conveniently accessible for service.

(2) Fresh air intakes shall be located as far as possible from exhaust outlets of ventilating systems, combustion equipment stacks, plumbing vents, or from areas which may collect vehicular exhaust or other noxious fumes.

(3) Furnace rooms shall be provided with sufficient outdoor air to maintain equipment combustion rates and to limit work station temperatures to an Effective Temperature of 90 degrees F (32.5 degrees C). When the ambient outside air temperature is higher than 90 degrees F, then the maximum temperature may be 97 degrees F (36 degrees C).

(4) Exhaust hoods in food-preparation centers shall comply with R392, the Utah Department of Health Food Service Sanitation Regulations. All hoods over cooking ranges shall be equipped with grease filters.

(5) Non-resident as well as resident areas where specific requirements are not given shall be ventilated in accordance with ASHRAE Standard 62-2004, "Ventilation for Acceptable Indoor Air Quality Including Requirements for Outside Air."

(6) Air from areas with odor problems, including toilet rooms, baths, soiled linen storage and housekeeping rooms, shall be exhausted to the outside and not recirculated.

(7) In Level II facilities, fans and dampers shall be interconnected so that activation of dampers will automatically shut down all but exhaust fans.

(8) Supply and return systems shall be in duct. Common returns using corridors or attic spaces as plenums are prohibited.

R432-12-21. Plumbing and Hot Water Systems.

(1) Water supply systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand periods.

(2) Water distribution systems shall be arranged to provide for continuous hot water at each hot water outlet.

(3) Hot water provided to resident tubs, showers, whirlpools, and handwashing facilities shall be regulated by thermostatically controlled automatic-mixing valves at appropriate temperatures for comfortable use within a range of 105 to 115 degrees F. These valves may be installed on the recirculating system or on individual inlets to appliances.

(4) As a minimum, water heating systems shall provide capacity at temperatures and amounts indicated in Table 3, Hot Water Use. Water temperature is taken at the point of use or inlet to the equipment.

TABLE 3
HOT WATER USE

	Clinical	Dietary(1)	Laundry
Gallons per Hour per Bed(a)	3	2	2
Temperature (C)(b)	43	49	71(b)
Temperature (F)(b)	105	120	160(b)

(1) Provisions shall be made to provide 180 degree F (82 degree C) rinse water at warewasher (may be by separate booster).

(a) Quantities indicated for design demand of hot water are for general reference minimums and may not substitute for accepted engineering design procedures using actual number and types of fixtures to be installed. Design shall also be affected by temperatures of cold water used for mixing, length of run and insulation relative to heat loss, etc.

(b) Provisions shall be made to provide 160 degree F (71 degree C) hot water at the laundry equipment when needed.

R432-12-22. Drainage Systems.

(1) Drainage piping may not be installed within the ceiling or installed in an exposed location in food preparation centers, food serving facilities, food storage areas, central services, and other sensitive areas. Where overhead drain piping is unavoidable in these areas, as may occur in existing facilities, special provision shall be made to protect the space below from possible leakage, condensation, or dust particles.

(2) Building sewers shall discharge into a community sewerage system. Where such a system is not available, the facility shall treat its sewage in accordance with local and state regulations.

R432-12-23. Electrical Systems.

(1) All electrical materials shall be tested and approved by Underwriters Laboratory.

(2) The electrical installations, including alarm and nurse call system, if required, shall be tested to demonstrate that equipment installation and operation is as intended and appropriate. A written record of performance tests of special electrical systems and equipment shall show compliance with applicable codes.

(3) Switchboards and Power Panels.

(a) The main switchboard shall be located in an area separate from plumbing and mechanical equipment and be accessible only to authorized persons.

(b) The switchboards shall be convenient for use, readily accessible for maintenance, clear of traffic lanes, and located in a dry, ventilated space.

(c) Overload protection devices shall operate properly in the ambient room temperatures, except for existing Level IV facilities.

(d) Panelboards serving normal lighting and appliance circuits shall be located on the same floor as the circuits they serve.

(4) Lighting. All spaces within buildings that house people, machinery, equipment, or approaches to buildings shall have fixtures for lighting. (See Table 4.)

(a) Resident rooms shall have general and night lighting.

(i) A reading light shall be provided for each resident.

(ii) Flexible light arms, if used, shall be mechanically controlled to prevent the bulb from coming in contact with bed linen.

(iii) At least one night light fixture shall be controlled at the entrance to each resident room.

(iv) All controls for lighting in resident areas shall operate quietly.

(b) Parking lots shall have fixtures for lighting to provide light at levels recommended in the Illuminating Engineering Society of North America (IESN) Lighting for Parking Facilities (RP-20-1998).

(c) Lighting levels shown in Table 4 shall be used as minimum standards and do not preclude the use of higher levels that may be needed to insure the health and safety of the specific facility population served. Values in Table 4 are minimum maintained average illuminance measured at the task plane. Corridor lighting shall be adjustable so that light levels may be reduced at night and still provide a maximum brightness ratio of 1:10.

TABLE 4
SMALL HEALTH CARE FACILITIES LIGHTING STANDARDS

	MINIMUM FOOT-CANDLES	
Physical Plant Area	Level I, II, III Facilities	Level IV Facilities
Corridors		
Day	20	15
Night	10	10
Exits	20	20
Stairways	20	20
Nursing Station		
General	30	30
Charting	75	75
Med. Prep.	75	75
Pt./Res. Room		
General	10	10
Reading/Mattress Level	30	30

Toilet area	30	30
Lounge		
General	10	10
Reading	30	30
Recreation	30	30
Dining	30	30
Laundry	30	30

(5) Each resident room shall have duplex grounding type receptacles as follows:

(a) one located on each side of the head of each bed;

(b) one for television, if used; and

(c) one on each other wall.

(6) Receptacles may be omitted from exterior walls where construction would make installation impractical.

(7) Duplex grounded receptacles for general use shall be installed in all corridors.

R432-12-24. Emergency Power System.

(1) Facilities that provide skilled nursing care or care for persons who require electrically operated life-support systems, shall be equipped with an emergency power system.

(2) The following services shall be connected to the emergency generator:

(a) Life Safety Branch as defined in NFPA 70, section 517-32,

(b) critical branch as defined in NFPA 70, section 517-33 and

(c) Equipment systems defined in NFPA 70, section 517-34.

(3) Power need not be provided to all building heating and ventilation equipment if it is provided to a common area sufficient in size to accommodate temporary beds on a short-term emergency basis.

(4) Automatic transfer switches shall transfer essential electrical loading to the circuits described above within 10 seconds of any interruption of normal power.

(5) The emergency generator shall be fueled with a storable fuel source such as diesel fuel, gasoline, or propane. At least 48 hours of fuel shall be available.

(6) All other facilities shall make provision for essential emergency lighting and heating during an emergency to meet the needs of residents. All emergency heating devices shall be approved by the local Fire Marshal.

R432-12-25. 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 March 4, 2019

R432. Health, Family Health and Preparedness, Licensing.
R432-13. Freestanding Ambulatory Surgical Center Construction Rule.
R432-13-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-13-2. Purpose.

The purpose of this rule is to establish construction and physical plant standards for the operation of a freestanding surgical facility that provides surgical services to patients not requiring hospitalization.

R432-13-3. General Design Requirements.

(1) Ambulatory Surgical Centers shall be constructed in accordance with the requirements of R432-4-1 through R432-4-23 and the requirements of the Guidelines for Design and Construction of Health Care Facilities, Sections 3.1 and 3.7, 2010 edition (Guidelines). Where a modification is cited, the modification supersedes conflicting requirements of R432-4 or the Guidelines.

(2) Ambulatory Surgical Centers shall consist of at least two Class C operating rooms, meeting the requirements of Guidelines section 3.7-3.3.4, and support facilities.

(3) Ambulatory Surgical Centers shall be equipped to perform general anesthesia. Flammable anesthetics may not be used in Ambulatory Surgical Centers.

(4) Ambulatory Surgical Centers shall comply with NFPA 101, Life Safety Code, Chapter 20.

(5) The facility shall have at least two exits leading directly to the exterior of the building.

(6) Design shall preclude unrelated traffic through units or suites of the licensed facility.

R432-13-4. General Construction, Patient Facilities.

(1) Adequate sterile supplies shall be maintained in the facility to meet the maximum demands of one day's case load.

(2) Operating rooms for cystoscopic procedures shall comply with Section 2.2-3.3.2.4 of the Guidelines.

(3) A toilet room shall be readily accessible to recovery rooms and recovery lounge.

(4) Special or additional service areas such as radiology, if required by the functional program, shall comply with the requirements of the General Hospital Rules, R432-100.

R432-13-5. General Construction.

(1) The administration and public areas which are not part of the Ambulatory Surgical Center exiting system, may be located outside of the institutional occupancy envelope when authorized by the local building official having jurisdiction.

(2) Cubicle curtains and draperies shall be affixed to permanently mounted tracks or rods. Portable curtains or visual barriers are not permitted.

(3) An elevator shall be provided when an ambulatory surgical center is located on a level other than at grade. The minimum inside dimensions of the cab shall be at least 5'8" wide by 8'5" deep with a minimum clear door width of 3'8".

(4) 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.

(5) The facility shall provide for the sanitary storage and treatment or disposal of all categories of waste, including hazardous and infectious wastes, if applicable, using procedures established by the Utah Department of Environmental Quality and the local health department having jurisdiction.

(6) All rooms shall be mechanically ventilated.

(7) Access to medical gas supply and storage areas shall be arranged to preclude travel through clean or sterile areas. There shall be space for enough reserve gas cylinders to complete at least one routine day's procedures.

(8) An on-site emergency generator shall be provided and the following services shall be connected to the emergency generator:

(a) life safety branch as defined in 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.

(9) There shall be sufficient fuel storage capacity to permit at least four hours continuous operation shall be provided.

(10) Lighting shall comply with R432-4-23(21)(a).

R432-13-6. Extended Recovery Care Unit.

(1) A facility that provides extended recovery services shall maintain a patient care area that is distinct and separate from the post-anesthesia recovery area. The patient care area shall provide the following:

(a) a room or area that ensures patient privacy, including visual privacy;

(b) a minimum of 80 square feet of space for each patient bed with at least three feet between patient beds and between the sides of patient beds and adjacent walls.

(c) a nurse call system at each patient's bed and at the toilet, shower and bathrooms, which shall transmit a visual and auditory signal to a centrally staffed location which identifies the location of the patient summoning help;

(d) a patient bathroom with a lavatory and toilet;

(e) oxygen and suction equipment;

(f) medical and personal care equipment necessary to meet patient needs.

(2) A separate food nutrition area which shall include a counter, sink, refrigerator, heating/warming oven or microwave, and sufficient storage for food items.

R432-13-7. Exclusions to Guidelines.

The following sections of the Guidelines do not apply to Freestanding Surgical Center construction:

(1) Waste Management Facilities, Section 3.1-5.4.

R432-13-8. 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 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 March 21, 2019 26-21-16

R432. Health, Family Health and Preparedness, Licensing.
R432-14. Birthing Center Construction Rule.
R432-14-1. Legal Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-14-2. Purpose.

This rule provides construction and physical plant standards for birthing centers.

R432-14-3. General Design Requirements.

(1) Birthing centers shall be constructed in accordance with the requirements of R432-4-1 through R432-4-23 and the requirements of section 5.2 of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition (Guidelines) and are adopted and incorporated by reference.

(2) Birthing centers shall consist of at least one, but not more than five birth rooms. Licensure is not required for birthing centers with only one birth room.

(3) Birthing rooms and ancillary service areas shall be organized in a contiguous physical arrangement.

(4) Birthing centers with 4 or 5 birth rooms shall comply with NFPA 101, Life Safety Code, Chapter 20, New Ambulatory Health Care Occupancies. Birthing centers with one to three birth rooms shall comply with NFPA 101, Life Safety Code, Chapter 38, New Business Occupancies and NFPA 101 A.3.3.178.3, as indicated in section 5.2-7.1 of the Guidelines.

(5) A Birthing center located contiguous with a general hospital may share radiology services, laboratory services, pharmacy services, engineering services, maintenance services, laundry services, housekeeping services, dietary services, and business functions. The owner shall retain in the birthing center a written agreement for the shared services.

R432-14-4. General Construction Patient Facilities.

(1) Requirements of section 5.2 of the Guidelines shall be met except as modified in this section.

(2) When a modification is cited, the modification supersedes conflicting requirements of the Guidelines.

(3) The facility shall be designed to allow access to service areas and common areas without compromising patient privacy.

(4) Birth rooms and service areas shall be grouped to form a physically defined service unit.

(5) Spaces shall be provided for each of the required services.

(6) Interior finishes, lighting, and furnishings shall reflect a residential rather than an institutional setting.

(7) Maximum room occupancy shall be one mother and her newborn infant or infants.

(8) Windows in a birth room with a sight line which permits observation from the exterior shall be arranged or draped to ensure patient privacy.

(9) Birth rooms shall provide each patient a wardrobe, closet, or locker, having minimum clear dimensions of 24 inches by 20 inches, suitable for hanging full-length garments. A clothes rod and adjustable shelf shall be provided.

(10) A toilet room with direct access from the birth room shall be accessible to each birth room.

(a) The toilet room shall contain a toilet and a lavatory. A shower or tub shall be accessible to each birth room and may be located in the toilet room.

(b) A toilet room may serve two birth rooms.

(c) All toilet room fixtures shall be handicapped accessible and shall have grab bars in compliance with ADA/ABA-AG.

(11) Newborn infant resuscitation equipment, including electrical receptacles, oxygen, and suction shall be immediately available to each birth room in addition to resuscitation equipment provided for the mother. Portable oxygen and suction equipment shall be permitted.

(12) A mechanically exhausted area for storage of facility maintenance materials and equipment shall be provided and may be combined with the environmental services room.

(13) Special surgical lighting is not required.

(14) An examination light shall be readily available in each birth room.

(15) An emergency lighting system is required and must include:

(a) emergency exit signs;

(b) sufficient lighting to safely exit the building; and

(c) an examination light.

R432-14-5. Excluded Guidelines and Administrative Code.

(1) The following sections of the Guidelines do not apply:

(a) Location, Subsection 5.2-1.3.1.1;

(b) Soiled workroom 5.2-2.6.10.1; and

(c) Soiled holding room 5.2-2.6.10.2;

(d) Ventilation of Health Care Facilities, Part 6.

(2) The following sections of Administrative Code do not apply:

(a) General construction R432-4-23(5); and

(b) General construction R432-4-23(17).

R432-14-6. 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
August 26, 2016 26-21-5
Notice of Continuation March 21, 2019 26-21-16

R432. Health, Family Health and Preparedness, Licensing.
R432-30. Adjudicative Procedure.
R432-30-1. Purpose.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-30-2. Definitions.

(1) "Department" means the Utah Department of Health, Bureau of Licensing.

(2) "Initial agency determination" means a decision by department staff, without conducting adjudicative proceedings, of the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all determinations to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, all as limited by Subsection 63G-4-102.

(3) "Notice of agency action" means the formal notice meeting the requirements of Subsection 63G-4-201(2) that the department issues to commence an adjudicative proceeding.

(4) "Request for agency action" means the formal written request meeting the requirements of Subsection 63G-4-201(3) that requests the department to commence an adjudicative proceeding.

R432-30-3. Commencement of Adjudicative Proceedings.

(1) All adjudicative proceedings under Title 26, Chapter 21, Health Care Facility Licensure and Inspection Act, and under R432, Health Facility Licensing Rules, are formal adjudicative proceedings.

(2) The Department may commence an adjudicative proceeding by filing and serving a notice of agency action in accordance with Subsection 63G-4-201(2) when the Department's actions are of a nature that require an adjudicative proceeding before the Department makes a decision.

(3) A person affected by an initial agency determination may commence an adjudicative proceeding and meet the requirements of a request for agency action under Subsection 63G-4-201(3) by completing the "Facility Licensing Request for Agency Action" form and filing the form with the department.

R432-30-4. Responses.

(1) A respondent to a notice of agency action shall file and serve a written response within 30 calendar days of the postmarked mailing date or last publication date of the notice of agency action.

(2) A respondent who has filed a request for agency action, and has received notice from the presiding officer under Section 63G-4-201(3)(d)(iii) that further proceedings are required to determine the Department's response to the request, shall file and serve a written response within 30 calendar days of the postmarked mailing date or last publication date of the presiding officer's notice.

(3) The written response shall:

(a) include the information specified in Subsection 63G-4-204(1);

(b) be signed by the respondent or the respondent's representative; and

(c) be filed with the Department during the time period specified in Subsection R432-30-4(1) or R432-30-4(2).

(4) The respondent shall send one copy of the response by certified mail to each party.

(5) A person who has filed a request for agency action and has received notice from the presiding officer under Section 63G-4-201(3)(d)(ii) that the request is denied may request a hearing before the Department to challenge the denial. The person must complete and submit the Department hearing request form to the presiding officer within 30 calendar days of the postmarked mailing date of the presiding officer's notice.

(6) The presiding officer upon motion of a party or upon the presiding officer's own motion may allow any pleadings to be amended or corrected. Defects which do not affect substantial rights of the parties shall be disregarded.

R432-30-5. Discovery.

(1) Any party to a formal adjudicative proceeding may engage in discovery consistent with the provisions of this rule.

(2) The provisions of Rules 26, 27,28, 29. 30. 32.34.36. and 37 of the Utah Rules of Civil Procedure, current January 1, 1995, are adopted and incorporated by reference.

(a) Where the incorporated Utah Rules of Civil Procedure refer to the court or to the clerk, the reference shall be to the presiding officer.

(b) Statutory restrictions on the release of information held by governmental entity shall be honored in controlling what is discoverable.

(c) All response times that are greater than 10 working days in the incorporated Utah Rules of Civil Procedure are amended to be 10 working days from the postmark of the mailing date of the request, unless otherwise ordered by the presiding officer.

(d) The parties shall ensure that all discovery is completed at least 10 calendar days before the day of the hearing. The parties may not make discovery requests to which the response time falls beyond 10 calendar days before the day of the hearing.

(e) Depositions may be recorded by audio recording equipment. However, any deposition to be introduced at the hearing must be first transcribed to a written document.

(f) Service of any discovery request or subpoena may be made upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure. Service may be made by mail, by the party or by the party's agent.

(g) Subpoenas to compel the attendance of witnesses as provided in Rule 30(a) shall conform to R432-30-6.

R432-30-6. Witnesses and Subpoenas.

(1) Each party is responsible for the presence of that party's witnesses at the hearing.

(2) The presiding hearing officer may issue a subpoena to compel the attendance of a witness or the production of evidence, in accordance with the following:

(a) the officer may issue the subpoena upon a party's motion supported by affidavit showing sufficient need, or upon the officer's own motion;

(b) the party to whom the hearing officer has issued a subpoena shall cause the subpoena and a copy of the affidavit, if any, to be served.

(c) every subpoena shall be issued by the presiding officer under the seal of the department, shall state the title of the action, and shall command every person to whom it is directed to attend and give testimony at time and place therein specified.

(d) a supporting affidavit for a subpoena duces tecum for the production by a witness of books, accounts, memoranda, correspondence, photographs, papers, documents, records, or other tangible thing shall include the following:

(i) the name and address of the entity upon whom the subpoena is to be served;

(ii) a description of what the party seeks to have the witness bring;

(iii) a showing of the materiality to the issue involved in the hearing;

(iv) a statement by the party that to the best of his knowledge the witness has such items in his possession or under his control.

R432-30-7. Certificate of Service.

There shall appear on all documents required to be served a certificate of service dated and signed by the party or his agent in substantially the following form:

I certify that I served the foregoing document upon all

parties to this proceeding by delivering (or mailing postage prepaid and properly addressed, or causing to be delivered) a copy of it to (provide the name of the person).

R432-30-8. Stays and Temporary Remedy.

(1) During the pendency of judicial review, a party may petition for a stay of the order or other temporary remedy by filing a written petition with the presiding officer within seven calendar days of the day the order is issued.

(2) The presiding officer shall issue a written decision within ten working days of the filing date of the request. The presiding officer may grant a stay or other temporary remedy if such an action is in the best interest of the patients or residents.

(3) The request for a stay or temporary remedy shall be considered denied if the presiding officer does not issue a written decision within ten days of the filing of a written petition.

(4) The presiding officer may grant a stay or other temporary remedy on the presiding officer's own motion.

R432-30-9. Declaratory Orders.

(1) Any person or agency may petition for a department declaratory ruling of rights, status, or legal relations under a specific statute or rule by following the procedure outlined in Rule R380-1.

(2) Any person or agency may petition for a department declaratory ruling on orders issued by the Bureau of Health Facility Licensure in areas where the Health Facility Committee has statutory authority to issue orders by following the procedures outlined in Rule R380-5.

KEY: health care facilities

March 3, 1995	**26-21-5**
Notice of Continuation March 21, 2019	**26-21-14 through 26-21-16**

R432. Health, Family Health and Preparedness, Licensing.
R432-32. Licensing Exemption for Non-Profit Volunteer End-of-Life Care.
R432-32-1. Purpose and Authority.

This rule establishes the exemption from licensure requirements for non-profit facilities that provide volunteer end-of-life care pursuant to Utah Code Section 26-21-7(6).

R432-32-2. Requirements for Designation as a Non-Profit Facility Providing End-of-Life Care Using Only Volunteers.

A non-profit facility that provides end-of-life care using only volunteers is exempt from licensure if it meets all of the following requirements:

(1) The facility operates as a non-profit facility with a board of trustees to oversee its direction and operation.

(2) No more than six unrelated individuals reside in the facility.

(3) The residents of the facility do not pay for room or board.

(4) Each facility resident has a terminal illness and contracts with a licensed hospice agency to receive medical care.

(5) There is no direct compensation for direct care staff at the facility; however, administrative staff to coordinate volunteer staff may be compensated.

(6) Each resident signs an admission agreement that:

(a) indicates the level of service to be provided by volunteers;

(b) provides notice that the facility is not a regulated health care facility under Title 26, Chapter 21.

(c) provides procedures to report grievances to the Board of Directors

(8) The facility screens each staff, including volunteer staff, for criminal convictions through the Department of Public Safety and no staff serves who has a conviction for any of the crimes identified in R432-35-4.

(9) The facility provides in-service training on the reporting requirements for adult abuse, neglect and exploitation to each staff, including volunteer staff.

(10) Each resident has a self-directed medical care plan for end-of-life treatment decisions.

(11) The facility provides each resident a form for a Physician Order for Life-Sustaining Treatment.

(12) The facility complies with local zoning, health and fire inspection requirements.

(13) The facility offers adult immunizations for staff and residents as required in R432-40.

(14) The facility has an infection control program, which includes universal precautions, reporting communicable diseases, and OSHA standards.

KEY: health care facilities
September 1, 2004 **26-21-7(6)**
Notice of Continuation April 1, 2019

R433. Health, Family Health and Preparedness, Maternal and Child Health.
R433-200. Family Planning Access Act.
R433-200-1. Authority and Purpose.

This rule establishes the protocol required by the Family Planning Access Act (Title 26, Chapter 64) for issuance of a valid standing prescription drug order that authorizes pharmacists and pharmacist interns licensed under the Pharmacy Practice Act (Title 58, Chapter 17b) to dispense self-administered hormonal contraception according to the requirements of the standing order. The rule also describes information created and collected under the Family Planning Access Act and this rule.

The requirements of this rule apply to each standing order issued under the Family Planning Access Act.

R433-200-2. Definitions.

The terms used in this rule are defined in Section 26-64-102. In addition, the following definitions apply to this rule:

(1) "Department" means the Utah Department of Health.

(2) "Initiate dispensing":

(a) Means to fill or partially fill a self-administered hormonal contraceptive prescription:

(i) at the time a pharmacist or pharmacist intern evaluates a patient's self-assessment form and determines that it is safe to dispense contraceptives to the patient; or

(ii) at any subsequent date requiring review or evaluation by a pharmacist or pharmacist intern.

(b) Does not mean any prescription refill (as defined by R156-17b-102(51)) that may be provided under the applicable standing order without an evaluation or review by a pharmacist or pharmacist intern.

(3) "NDC" means the National Drug Code assigned by the U.S. Food and Drug Administration.

(4) "The Act" means the Family Planning Access Act.

R433-200-3. Protocol For Issuance of a Standing Prescription Drug Order.

Each standing prescription drug order for self-administered hormonal contraceptives issued under the Act shall adhere to the requirements of Section 26-64-105. In addition, each order shall also require the following:

(1) Persons authorized to initiate dispensing a self-administered hormonal contraceptive shall make and retain a record that includes the following information:

(a) The age and zip code of each patient receiving a self-administered hormonal contraceptive;

(b) The NDC of each self-administered hormonal contraceptive dispensed;

(c) An annual count of the number of patients who provide their self-screening risk assessment for evaluation by the pharmacist or pharmacist intern; and

(d) Any other relevant information required by the physician's standing order.

R433-200-4. Confidentiality.

Information produced or collected by a pharmacist or pharmacist intern under the Act, this rule, or a standing order is "health data" subject to Title 26, Chapter 3 and is confidential and privileged information subject to requirements of Title 26, Chapter 25.

R433-200-5. Compliance.

Upon Department request, pharmacists, pharmacist interns, and their employing pharmacies shall provide copies of records required by the Act, this rule, and standing orders to the Department. The Department may also obtain and review records and information.

KEY: family planning, contraception, hormonal contraception, birth control
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R590. Insurance, Administration.
R590-102. Insurance Department Fee Payment Rule.
R590-102-1. Authority.

This rule is adopted pursuant to Subsection 31A-3-103(3), which requires the commissioner to publish the schedule of fees approved by the legislature and to establish deadlines for payment of each of the various fees.

R590-102-2. Purpose and Scope.

(1) The purposes of this rule are to:

(a) publish the schedule of fees approved by the legislature;

(b) establish fee deadlines; and

(c) disclose this information to licensees and the public.

(2) The rule applies to:

(a) all persons engaged in the business of insurance in Utah;

(b) all licensees;

(c) applicants for licenses, registrations, certificates, or other similar filings; and

(d) all persons requesting services provided by the department for which a fee is required.

R590-102-3. Definitions.

In addition to the definitions in Title 31A, the following definitions shall apply for the purposes of this rule:

(1) "Admitted insurers" include: fraternal, health, health maintenance organization, life, limited health plan, motor club, non-profit health service, property-casualty, title insurers, and a prescription drug plan.

(2) "Agency" means:

(a) a person, other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and

(b) an insurance organization required to be licensed under Subsections 31A-23a-301, 31A-25-207, and 31A-26-209.

(3) "Captive insurer" includes association captive, branch captive, industrial insured captive, pure captive, sponsored captive, and special purpose financial captive.

(4) "Deadline" means the final date or time:

(a) imposed by:

(i) statute;

(ii) rule; or

(iii) order, and

(b) by which

(i) a payment must be received by the department without incurring penalties for late payment or non-payment; or

(ii) required information must be received by the department without incurring penalties for late receipt or non-receipt.

(5) "Fee" means an amount set by the commissioner, by statute, or by rule and approved by the legislature for licenses, registrations, certificates, and other filings and services provided by the Insurance Department.

(6) "Full-line agency" includes producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.

(7) "Full-line individual" includes a producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.

(8) "Limited-line agency" includes bail bond and limited-line producer.

(9) "Limited-line individual" includes bail bond agent, limited-lines producer and customer service representative.

(10) "Other organizations" include: home warranty, joint underwriter, purchasing group, rate service organization, risk retention group, service contract provider and health discount program.

(11) "Paper application" means an application that must be manually entered into the department's database because the application was submitted by paper, facsimile, or email when the department has provided an electronic application process and stated the electronic process is the preferred process for receiving an application.

(12) "Paper filing" means a filing that must be manually entered into the department's database because the filing was submitted by paper, facsimile, or email when the department has provided an electronic filing process and stated the electronic process is the preferred process for receiving a filing.

(13) "Received by the department" means:

(a) the date delivered to and stamped received by the department, if delivered in person;

(b) the postmark date, if delivered by mail;

(c) the delivery service's postmark date or pick-up date, if delivered by a delivery service; or

(d) the received date recorded on an item delivered, if delivered by:

(i) facsimile;

(ii) email; or

(iii) another electronic method; or

(e) a date specified in:

(i) a statute;

(ii) a rule; or

(iii) an order.

R590-102-4. General Instructions.

(1) Any fee payable to the department not included in Subsections R590-102-5 through 23, shall be due when service is requested, if applicable, otherwise by the due date on the invoice.

(2) Payment.

(a) A non-electronic payment processing fee will be added to a payment when the department has provided an electronic payment process and stated the electronic process is the preferred process for receiving a payment.

(b) Check.

(i) Checks shall be made payable to the Utah Insurance Department.

(ii) A check that is dishonored in the process of the collection will not constitute payment of the fee for which it was issued and any action taken based on the payment will be voided.

(iii) Late fees and other penalties, resulting from the voided action will apply until proper payment is made.

(iv) A check payment that is dishonored is a violation of this rule.

(c) Cash. The department is not responsible for un-receipted cash that is lost or misdelivered.

(d) Electronic.

(i) Credit Card.

(A) Credit cards may be used to pay any fee due to the department.

(B) Credit card payments that are dishonored will not constitute payment of the fee and any action taken based on the payment will be voided.

(C) Late fees and other penalties, resulting from the voided action, will apply until proper payment is made.

(D) A credit card payment that is dishonored is a violation of this rule.

(ii) Automated clearinghouse (ACH).

(A) Payers or purchasers desiring to use this method must contact the department for the proper routing and transit information.

(B) Payments that are made in error to another agency or that are not deposited into the department's account will not constitute payment of the fee and any action taken based on the payment will be voided.

(C) Late fees and other penalties resulting from the voided

action will apply until proper payment is made.

(D) An ACH payment that is dishonored is a violation of this rule.

(3) Retaliation. The fees enumerated in this rule are not subject to retaliation in accordance with Section 31A-3-401 if other states or countries impose higher fees.

(4) Refunds.

(a) All fees in this rule are non-refundable.

(b) Overpayments of fees are refundable.

(c) Requests for return of overpayments must be in writing.

(5) A non-electronic processing fee will be assessed for a particular service if the department has established an electronic process for that service. See R590-102-20.

R590-102-5. Admitted Insurer and Prescription Drug Plan Fees.

(1) Annual license fees:

(a) certificate of authority, initial license application - due with license application: $1,000;

(b) certificate of authority - renewal - due by the due date on the invoice: $300;

(c) certificate of authority - late renewal - due for any renewal paid after the date on the invoice: $350;

(d) certificate of authority - reinstatement - due with application for reinstatement: $1,000.

(2) Other license fees:

(a) certificate of authority - amendments - due with request for amendment: $250;

(b)(i) Form A - application for merger, acquisition, or change of control, due with filing: $2,000.

(ii) Expenses incurred for consultant services necessary to evaluate a Form A will be charged to the applicant and due by the due date on the invoice;

(c) redomestication filing - due with filing: $2,000; and

(d) application for organizational permit for mutual insurer to solicit applications for qualifying insurance policies or subscriptions for mutual bonds or contribution notes - due with application: $1,000.

(3) The annual initial or annual renewal license fee includes the following licensing services for which no additional fee is required:

(a) filing annual statement and report of Utah business - due annually on March 1;

(b) filing holding company registration statement - Form B;

(c) filing application for material transactions between affiliated companies - Form D;

(d) application for: stock solicitation permit, public offering filing, but not an SEC filing; an SEC filing; private placement offering; and

(e) application for individual license to solicit in accordance with the stock solicitation permit.

(4) Annual service fee:

(a) Due annually by the due date on the invoice.

(b) A prescription drug plan is exempted from payment of a service fee.

(c) The fee is based on the Utah premium as shown in the latest annual statement on file with the National Association of Insurance Commissioners and the department. Fee calculation example: the 2004 annual service fee calculation will use the Utah premium shown in the December 31, 2003 annual statement.

(d) Fee schedule:

(i) $0 premium volume: no service fee;

(ii) more than $zero but less than $1 million in premium volume: $700;

(iii) $1 million but less than $3 million in premium volume: $1,100;

(iv) $3 million but less than $6 million in premium volume: $1,550;

(v) $6 million but less than $11 million in premium volume: $2,100;

(vi) $11 million but less than $15 million in premium volume: $2,750;

(vii) $15 million but less than $20 million in premium volume: $3,500; and

(viii) $20 million or more in premium volume: $4,350.

(e) The annual service fee includes the following services for which no additional fee is required:

(i) filing of amendments to articles of incorporation, charter, or bylaws;

(ii) filing of power of attorney;

(iii) filing of registered agent;

(iv) affixing commissioner's seal and certifying any paper;

(v) filing of authorization to appoint and remove agents;

(vi) filing of producer/agency appointment with an insurer - initial;

(vii) filing of producer/agency appointment with an insurer - termination;

(viii) report filing, all lines of insurance;

(ix) rate filing, all lines of insurance; and

(x) form filing, all lines of insurance.

(f) The annual service fee is for services that the department will provide for an admitted insurer during the year. The fee is paid in advance of providing the services.

(5) Other fees:

(a) e-commerce fee: see R590-102-22; and

(b) insurer examination costs reimbursements from examined insurers - due by due date on the invoice: actual costs plus overhead expense.

R590-102-6. Foreign Surplus Lines Insurer, Accredited Reinsurer, Certified Reinsurer, Trusteed Reinsurer, and Employee Welfare Fund Administative/Service Fees.

(1) Initial Fee - due with application: $1,000.

(2) Annual Fee - due annually by the due date on the invoice: $500;

(3) Late annual payment - due for any annual payment paid after the due date on the invoice: $550;

(4) Reinstatement - due with application: $1,000.

(5) The annual fee includes the following services for which no additional fee is required and is paid in advance:

(a) filing of power of attorney; and

(b) filing of registered agent.

(6) E-commerce fee: see R590-102-22.

R590-102-7. Other Organization Fees.

(1) Annual license fee:

(a) initial - due with application: $250;

(b) renewal - due annually by the due date on the invoice: $200;

(c) late renewal - due for any renewal paid after the date on the invoice: $250;

(d) reinstatement - due with application for reinstatement: $250;

(e) The annual other organization initial or renewal fee includes the risk retention group annual statement filing - due annually on March 1.

(2) Annual service fee - due annually by the due date on the invoice: $200.

(a) The annual service fee includes the following services for which no additional fee is required:

(i) filing of power of attorney;

(ii) filing of registered agent; and

(iii) rate, form, report or service contract filing.

(b) The annual service fee is for services that the department will provide during the year. The fee is paid in

advance of providing the services.
(3) E-commerce fee: see R590-102-22.

R590-102-8. Captive Insurer Fees.
(1) Initial license application - due with license application: $200.
(2) Initial license application review - due by the due date on the invoice: actual costs incurred by the department to review the application.
(3) Annual license fees:
(a) initial - due by the due date on the invoice: $5,000;
(b) renewal - due by the due date on the invoice: $5,000;
(c) late renewal - due for any renewal paid after the date on the invoice: $5,050;
(d) reinstatement - due with application for reinstatement: $5,050.
(4) Other fees:
(a) e-commerce fee: see R590-102-22; and
(b) examination costs reimbursements from examined captive insurers - due by due date on the invoice: actual costs plus overhead expense.

R590-102-9. Captive Cell Fees.
(1) Initial license application - due with license application: $200.
(2) Initial license application review - due by the due date on the invoice: actual costs incurred by the department to review the application.
(3) Annual license fees:
(a) initial - due by the due date on the invoice: $1,000;
(b) renewal - due by the due date on the invoice: $1,000;
(c) late renewal - due for any renewal paid after the date on the invoice: $1,050.

R590-102-10. Life Settlement Provider Fees.
(1) Annual license fees:
(a) initial - due with application: $1,000;
(b) renewal - due by the due date on the invoice: $300;
(c) late renewal - due for any renewal paid after the date on the invoice: $350;
(d) reinstatement - due with reinstatement application: $1,000.
(2) Annual service fee - due by the due date on the invoice: $600.
(a) The annual service fee includes the following service for which no additional fee is required: rate, form, report or service contract filing.
(b) The annual service fee is for services that the department will provide during the year. The fee is paid in advance of providing the services.
(3) Other fees:
(a) e-commerce fee: see R590-102-22; and
(b) examination costs reimbursements from examined viatical settlement providers - due by due date on the invoice: actual costs plus overhead expense.

R590-102-11. Professional Employer Organization (PEO) Fees.
(1) Annual license fees:
(a) PEO - not certified by an assurance organization:
(i) initial - due with application: $2,000;
(ii) renewal - due by the due date on the invoice: $2,000;
(iii) late renewal - due for any renewal paid after the date on the invoice: $2,050;
(iv) reinstatement - due with reinstatement application: $2,050;
(b) PEO - certified by an assurance organization:
(i) initial - due with application: $2,000;
(ii) renewal - due by the due date on the invoice: $1,000;
(iii) late renewal - due for any renewal paid after the date on the invoice: $1,050;
(iv) reinstatement - due with reinstatement application: $1,050;
(c) PEO - small operator:
(i) initial - due with application: $2,000;
(ii) renewal - due by the due date on the invoice: $1,000;
(iii) late renewal - due for any renewal paid after the date on the invoice: $1,050;
(iv) reinstatement - due with reinstatement application: $1,050.
(5) E-commerce fee: see R590-102-22.

R590-102-12. Individual Resident and Non-Resident License Fees, Other Than Individual Navigators.
(1) Biennial resident and non-resident full-line individual initial license or renewal fee:
(a) initial license fee - due with application: $70:
(b) renewal license fee if renewed prior to license expiration date - due with renewal application: $70;
(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: $120.
(2) Biennial resident and non-resident limited-line individual initial or renewal license fee:
(a) initial license fee - due with application: $45;
(b) renewal license fee if renewed prior to license expiration date - due with renewal application: $45;
(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: $95.
(3) Other license fees: addition of producer classification or line of authority to individual producer license - due with request for additional classification or line of authority: $25.
(4) The biennial initial and renewal full-line producer and limited-line producer fee includes the following services for which no additional fee is required:
(a) issuance of letter of certification;
(b) issuance of letter of clearance;
(c) issuance of duplicate license;
(d) individual continuing education services.
(5) The biennial initial and renewal individual license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.
(6) Other fees:
(a) e-commerce fee: see R590-102-22; and
(b) title insurance product or service approval for dual licensed title licensee form filing fee - due with filing: $25.

R590-102-13. Individual Navigator.
(1) Individual navigator per annual license period:
(a) initial license fee - due with application: $35;
(b) renewal license fee if renewed prior to license expiration date - due with renewal application: $35;
(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: $60.
(2) The annual initial and renewal individual license fee includes the following services for which no additional fee is required:
(a) issuance of letter of certification;
(b) issuance of letter of clearance;
(c) issuance of duplicate license; and
(d) individual continuing education services.
(3) The annual initial and renewal individual license fee includes will provide during the year. The fee is paid in advance of providing the services.
(4) E-commerce fee: see R590-102-22.

R590-102-14. Agency License Fees, Other than Navigator or Bail Bond Agencies.

(1) Biennial resident and non-resident agency initial or renewal license for a full-line agency and for a limited-line agency:

(a) initial license fee - due with application: $75;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: $75;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: $125;

(d) resident title license:

(i) initial license fee - due with application: $100;

(ii) renewal license fee, if renewed prior to license expiration date - due with renewal application: $100.

(iii) reinstatement license fee, if reinstated within one year following the license inactivation date - due with application for reinstatement: $150.

(2) Other license fees: addition of producer classification or line of authority to agency license - due with request for additional classification or line of authority: $25.

(3) The biennial initial and renewal agency license fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;

(c) issuance of duplicate license;

(d) filing of producer designation to agency license - initial;

(e) filing of producer designation to agency license - termination;

(f) filing of amendment to agency license; and

(g) filing of power of attorney.

(4) E-commerce fee: see R590-102-22.

R590-102-15. Navigator Agency.

(1) Navigator agency per annual license period:

(a) initial license fee - due with application: $40;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: $40;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: $65.

(2) The annual initial and renewal agency license fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;

(c) issuance of duplicate license;

(d) filing of producer designation to agency license - initial;

(e) filing of producer designation to agency license - termination;

(f) filing of amendment to agency license; and

(g) filing of power of attorney.

(3) E-commerce fee: see R590-102-22.

R590-102-16. Bail Bond Agency.

(1) Annual bail bond agency per annual license period:

(a) initial license fee - due with application: $250;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: $250;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: $300.

(2) The annual initial and renewal agency license fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;

(c) issuance of duplicate license;

(d) filing of producer designation to agency license - initial;

(e) filing of producer designation to agency license - termination;

(f) filing of amendment to agency license; and

(g) filing of power of attorney.

(3) E-commerce fee: see R590-102-22.

R590-102-17. Continuing Care Provider.

(1) Annual registration fee:

(a) initial - due with application: $6,900;

(b) renewal - due by the due date on the invoice: $6,900;

(c) reinstatement - due with application for reinstatement: $6,950.

(2) Disclosure statement:

(a) initial - due with application: $600;

(b) renewal - due with annual renewal disclosure statement: $600.

(3) E-commerce fee: see R590-102-22.

R590-102-18. Guaranteed Asset Protection.

(1) Annual guaranteed asset protection provider registration fee per annual period:

(a) initial - due with application: $1,000;

(b) renewal - due by the due date on the invoice: $1,000; and

(c) late renewal - due for any renewal paid after the date on the invoice: $1,050.

(2) Annual guaranteed asset protection retail seller assessment per annual period:

(a) annual assessment - due by the due date on the invoice: $50; and

(b) late fee - due for any retail seller assessment fee paid after the due date on the invoice: $50.

R590-102-19. Continuing Education Fees.

(1) Annual continuing education provider license fees per annual license period:

(a) initial license fee - due with application: $250;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: $250;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: $300.

(2) Continuing education course post-approval fee - due with request for approval: $5 per credit hour, minimum fee $25.

R590-102-20. Non-electronic Processing or Payment Fees.

(1) Non-electronic filing processing fee - assessed on a non-electronic filing when the department has provided an electronic filing process and stated the electronic process is the preferred process for receiving a filing - due with each paper non-electronic filing or by the due date on the invoice: $5.

(2) Non-electronic application processing fee - assessed on a non-electronic application when the department has provided an electronic application process and stated the electronic process is the preferred process for receiving an application - due with each paper non-electronic application or by the due date on the invoice: $25.

(3) Non-electronic payment processing fee - assessed on a non-electronic payment when the department has provided an electronic payment process and stated the electronic process is the preferred process for receiving a payment - due with each non-electronic payment or by the due date on the invoice: $25.

R590-102-21. Dedicated Fees.

The following are fees dedicated to specific uses:

(1)(a) annual fraud assessment fee as calculated under Section 31A-31-108 and stated in the invoice - due by the due date on the invoice;

(b) late fee - due for any fraud assessment fee paid after the due date on the invoice: $50;

(2) annual title insurance regulation assessment fee as calculated under Section 31A-23a-415 and Rule R592-10 and stated in the invoice - due by the due date on the invoice;

(3) annual title assessment for the Title Recovery, Education, and Research Fund fee:

(a) individual title licensee applicant for initial license or renewal license - due with the initial application or the renewal application: $15;

(b) agency title licensee applicant - due with the initial application: $1,000;

(c) annual agency title licensee assessment based on annual written title insurance premium - due by the due date on the invoice:

(i) Band A: $0 to $1 million: $125;

(ii) Band B: more than $1 million to $10 million: $250;

(iii) Band C: more than $10 million to $20 million: $375;

(iv) Band D: more than $20 million: $500;

(4)(a) relative value study book fee - due when book purchased or by invoice due date: $10;

(b) annual health insurance actuarial review assessment fee as calculated under Section 31A-30-115 and stated in the invoice - due by the due date on the invoice;

(5)(a) code book - due when book purchased or by invoice due date: $57;

(b) mailing fee for books - due if book is to be mailed to purchaser: $3;

(6) fingerprint fee - due with application for individual license:

(a) Bureau of Criminal Investigation (BCI): $15; and

(b) Federal Bureau of Investigation (FBI): $13.25;

(7) annual health insurance actuarial review assessment fee as calculated under Section 31A-30-115 and stated in the invoice - due by the due date on the invoice.

R590-102-22. Electronic Commerce Dedicated Fees.

(1) Electronic commerce, e-commerce, and internet technology services fee:

(a) admitted insurer and surplus lines insurer - due with the initial, annual, renewal, or reinstatement application: $75;

(b) captive insurer - due with the initial, annual renewal, or reinstatement application: $250;

(c) other organization including professional employer organization, continuing care provider, and life settlement provider - due with the initial, annual renewal, or reinstatement application: $50;

(d) continuing education provider - due with the initial, annual renewal, or reinstatement application: $20;

(e) agency - due with the initial, biennial renewal, or reinstatement application: $10; and

(f) individual - due with the initial, biennial renewal, or reinstatement application: $5.

(2) Database access fees:

(a) information accessed through an electronic portal set up for that purpose - due when the department's database is accessed to input or acquire data: $3 per transaction;

(b) rate and form filing database access to an electronic public rate and form filing:

(i) a separate fee is assessed per line of insurance accessed (accident and health, life and annuity, or property-casualty);

(ii) each line of insurance accessed is charged the following fees:

(A) a base fee, which entitles the user up to 30 minutes of access, the assistance of staff during that time, and one DVD: $45;

(B) each additional 30 minutes of access time or fraction thereof, including the assistance of staff during that time: $45;

(iii) additional DVD: $2;

(iv) payment due at time of service or by the due date on the invoice.

R590-102-23. Other Fees.

(1) Photocopy fee - per page: $0.50.

(2) Complete annual statement copy fee - per statement: $40.

(3) Fee for accepting service of legal process: $10.

(4) Fees for production of information lists regarding licensees or other information that can be produced by list:

(a) printed list, if the information is already in list format and only needs to be printed or reprinted: $1 per page;

(b) electronic list compiled by accessing information stored in the Department's database:

(i) a separate fee is assessed for each list compiled;

(ii) each list is assessed one or more of the following fees:

(A) a base fee, which entitles the requestor up to 30 minutes of staff time to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor -- due with request for information: $50;

(B) each additional 30 minutes or fraction thereof to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor - due by the due date on the invoice: $50;

(iii) additional CD - due by the due date on the invoice: $1.

(5) Returned check fee: $20.

(6) Workers compensation loss cost multiplier schedule: $5.

(7) Address correction fee - assessed when department has to research and enter new address for a licensee - due by the due date on the invoice: $35.

(8) Independent Review Organization. Initial application fee - due with application: $250.

(9) Withdrawal from writing a line of insurance or reducing total annual premium volume by 75% or more - due with plan of orderly withdrawal submission: $50,000.

(10) Administrative disciplinary action removal from public access on Insurance Department controlled website - due with application: $185.

R590-102-24. Severability.

If any provision or clause of this rule or its application to any person or situation is held 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: insurance fees
March 26, 2019 **31A-3-103**
Notice of Continuation December 12, 2016

R590. Insurance, Administration.
R590-226. Submission of Life Insurance Filings.
R590-226-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-2-201.1, and 31A-2-202(2).

R590-226-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for submitting:

(a) life insurance filings required by Section 31A-21-201; and

(b) report filings as required.

(2) This rule applies to:

(a) all types of individual and group life insurance, and variable life insurance; and

(b) group life insurance contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-226-3. Definitions.

In addition to the definitions in Section 31A-1-301, 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) "Data page" means the page or pages in a policy or certificate that provide the specific data for the insured detailing the coverage provided and may be titled by the insurer as policy specifications, policy schedule, policy information, etc.

(3) "Discretionary group" means a group that has been specifically authorized by the commissioner under Section 31A-22-509.

(4) "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.

(5) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.

(6) "Endorsement" means a written agreement attached to a life insurance policy that alters a provision of the policy, for example, a war exclusion endorsement, a name change endorsement and a tax qualification endorsement.

(7) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(8) "Filer" means a person who submits a filing.

(9) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a policy;

(b) a form;

(c) a document;

(d) an application;

(e) a report;

(f) a certificate;

(g) an endorsement;

(h) a rider;

(i) a life insurance illustration;

(j) a statement of policy cost and benefit information; and

(k) an actuarial memorandum, demonstration, and certification.

(10) "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.

(11) "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.

(12) "Issue Ages" means the range of minimum and maximum ages for which a policy or certificate will be issued.

(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) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(16) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws or rules;

(b) returned to the licensee by the department with the reasons for rejection; and

(c) not considered filed with the department.

(17) "Rider" means a written agreement attached to a life insurance policy or certificate that adds a benefit, for example, a waiver of premium rider, an accidental death benefit rider and a term insurance rider.

(18) "Type of insurance" means a specific life insurance product including, but not limited to, term, universal, variable, or whole life.

(19) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department, that indicates a filing has been accepted.

R590-226-4. 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) 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 filer 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.

(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.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to Section R590-226-13 for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-226-5. 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: life settlement filers may choose to use email instead of SERFF to submit a filing.

(c) All filings must comply with the "NAIC Uniform Life, Accident and Health, Annuity, and Credit Coding Matrix," dated January 1, 2012, and incorporated by reference. This form is available on the department's website, www.insurance.utah.gov.

(2) A filings 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) SERFF Filings.

(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 ACCORANCE WITH UTAH ADMINISTRATIVE RULE R590-226 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

(C) The "Utah Life Insurance Filing Certification for Individual" or the "Utah Life Insurance Filing Certification for Group" must be properly completed, signed, and attached to the Supporting Documentation tab.

(D) A filing will be rejected if the certification is false, missing, or incomplete.

(E) A false certification 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) has been submitted to the Interstate Insurance Product Regulation Commission (IIPRC);

(C) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected or withdrawn, the reasons for rejection or withdrawal, and the previous Utah Filed Date or the IIPRC approval date;

(D) includes documents for informational purposes; if so, provide the Utah Filed Date; or

(E) 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, innovative, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(v) Explain any change in benefits or premiums that may occur while the contract is in force.

(vi) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(vii) List the minimum death benefit.

(viii) Identify the intended market for filing, such as senior citizens, nonprofit organizations, association members, corporate owned, bank owned, etc.

(b) 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; or

(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."

(c) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must attach to the Supporting Documentation tab either a:

(i) signed and fully completed "Utah Life and Annuity Group Questionnaire"; or

(ii) copy of the Utah Life and Annuity Discretionary Group Authorization letter.

(d) 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.

(e) Statement of Variability.

(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.

(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.

(f) Life Insurance Illustration Materials. If the life insurance form is identified as illustrated, the filing must include a sample:

(i) basic illustration complete with data in John Doe fashion;

(ii) current illustration actuary's certification;

(iii) company officer certification; and

(iv) sample annual report.

(g) Statement of Policy Cost and Benefit Information. If the life insurance form is not illustrated, the filing must include a sample of the Statement of Policy Cost and Benefit Information.

(h) 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.

(iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration of compliance, and a certification of compliance with Utah laws are required in individual and group life insurance filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:

(A) a description of the coverage in detail;

(B) a demonstration of compliance with applicable nonforfeiture and valuation laws; and

(C) a certification of compliance with Utah law.

(5) Refer to each applicable section of this rule for additional procedures on how to submit forms and reports.

(6) A filer submitting a life settlement filing, in addition to the requirements contained in R590-222-14, shall:

(a) attach a letter of authorization from the licensee if the filer is not the licensee;

(b) submit the documents in PDF format;

(c) identify any provisions that are unusual, controversial, innovative, or have been previously objected to, or prohibited, and explain why the provision is included in the filing; and

(d) shall certify that the filing has been properly completed and is in compliance with Utah laws and rules.

R590-226-6. Procedures for 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) Forms must contain a descriptive title on the cover page.

(d) Forms must be in final printed form. Drafts may not be submitted.

(e) Blank spaces within the form must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

(i) If the market intended is for the senior age group, the form must be completed with data representative of senior insureds.

(ii) All John Doe data in the forms including the data page must be accurate and consistent with the actuarial memorandum, the basic illustration, the Statement of Policy Cost and Benefit information, and the application, as applicable.

(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.

(3) Policy Filings.

(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, sample data page, rider, endorsement, and actuarial memorandum.

(c) A policy data page must be included with every policy filing.

(d) Only one policy form for a single type of insurance may be filed, in each filing a life insurance policy with different premium payment periods is considered one form.

(e) A policy data page that changes the basic feature of the policy may not be filed without including the entire policy form in the filing.

(4) Rider or Endorsement 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) A rider or endorsement that is based on morbidity risks, such as critical illness or long-term care, is considered accident and health insurance and must be filed in accordance with Rule R590-220, "Accident and Health Insurance Filings."

(d) The filing must include:

(i) a listing of all base policy form numbers, title and Utah Filed Dates;

(ii) a description of how each filed rider or endorsement affects the base policy; and

(iii) a sample data page with data for the submitted form.

(e) Unrelated riders or endorsement may not be filed together.

R590-226-7. Additional Procedures for Individual Life Insurance Forms and Group Life Insurance Certificates Marketed Individually.

(1) Insurers filing life insurance forms are advised to review the following code parts and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) R590-79, "Life Insurance Disclosure Rule;"

(d) R590-93, "Replacement of Life Insurance and Annuities;"

(e) R590-94, "Smoker/Nonsmoker Mortality Tables";

(f) R590-95, "Minimum Nonforfeiture Standards 1980 CSO and 1980 CET Mortality Tables;"

(g) R590-98, "Unfair Practice in Payment of Life Insurance and Annuity Policy Values;"

(h) R590-108, "Interest Rate During Grace Period or Upon Reinstatement of Policy;"

(i) R590-122, "Permissible Arbitration Provisions;"

(j) R590-177, "Life Insurance Illustrations;"

(k) R590-191, "Unfair Life Insurance Claims Settlement Practice;"

(l) R590-198, "Valuation of Life Insurance Policies;" and

(m) R590-223, "Rule to Recognize 2001 CSO Mortality Table."

(2) Every filing for an individual life insurance policy, rider or benefit endorsement, and a group life insurance policy that includes certificates that are marketed individually, shall include an actuarial memorandum, which includes a demonstration and certification of compliance with:

(a) Section 31A-22-408, "Standard Nonforfeiture Law for Life Insurance;" and

(b) Section 31A-17 Part V, "Standard Valuation Law."

R590-226-8. Additional Procedures for Group Market Filings.

(1) A filer submitting group life insurance filings are advised to review the following code parts and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) Section 31A-22 Part V, "Group Life Insurance;"

(d) R590-79, "Life Insurance Disclosure Rule;" and

(e) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) A policy must be included with each certificate filing along with a master application and enrollment form.

(3) Statement of Policy Cost and Benefit Information. A statement of policy cost and benefit information must be included in non-term group life insurance and preneed funeral policies or prearrangements. This disclosure requirement shall extend to the issuance or delivery of certificates as well as to the master policy in compliance with R590-79-3.

(4) Actuarial Memorandum. An actuarial memorandum must be included in all group life insurance filings describing the coverage in detail and certifying compliance with applicable laws and rules. For non-term group life filings, the memorandum must also demonstrate nonforfeiture compliance with Section 31A-22-515.

(5) Eligible Group. A filing for an eligible group must include a completed "Utah Life and Annuity Group Questionnaire."

(a) A questionnaire must be completed for each eligible group under Section 31A-22-502 through 508.

(b) When a filing applies to multiple employer-employee groups under Section 31A-22-502, only one questionnaire is required to be completed.

(6) Discretionary Group. If a group is not an eligible

group, then specific discretionary group authorization must be obtained prior to submitting the filing. If a form filing is submitted without discretionary group authorization, the filing will be rejected.

(a) To obtain discretionary group authorization a "Utah Life and Annuity Request For Discretionary Group Authorization" must be submitted and include all required information.

(b) Evidence or proof of the following items is considered in determining acceptability of a discretionary group:

(i) existence of a verifiable group;

(ii) that granting permission is not contrary to public policy;

(iii) the proposed group would be actuarially sound;

(iv) the group would result in economies of acquisition and administration which justify a group rate; and

(v) the group would not present hazards of adverse selection.

(c) Discretionary group filings that do not provide authorization documentation will be rejected.

(d) Any changes to an authorized discretionary group must be submitted to the department, such as change of name, trustee, domicile state, within 30 days of the change.

(e) The commissioner may periodically re-evaluate the group's authorization.

R590-226-9. Additional Procedures for Variable Life Filings.

(1) Insurers submitting variable life filings are advised to review the following code section and rule prior to submitting a filing:

(a) Section 31A-22-411, "Contracts Providing Variable Benefits;"

(b) R590-133, "Variable Contracts."

(2) A variable life insurance policy must have been previously approved or accepted by the licensee's state of domicile before it is submitted for filing in Utah.

(3) Information regarding the status of the filing of the variable life insurance policy with the Securities and Exchange Commission must be included in the filing.

(4) The description and the actuarial memorandum must:

(a) describe the types of accounts available in the policy; and

(b) identify those accounts that are separate accounts, including modified guaranteed accounts, and those that are general accounts.

(5) The actuarial memorandum must demonstrate nonforfeiture compliance:

(a) for separate accounts pursuant to Section 31A-22-411; and

(b) for fixed interest general accounts pursuant to Section 31A-22-408.

(c) In addition, for fixed accounts, the actuarial memorandum must:

(i) identify the guaranteed minimum interest rate; and

(ii) identify the maximum surrender charges.

(6) An actuarial certification of compliance with applicable Utah laws and rules must be included in the filing.

(7) A prospectus is not required to be filed.

R590-226-10. Additional Procedures for Combination Policies, Riders or Endorsements Providing Life and Accident and Health Benefits.

A filer submitting life and health combination policies, or health riders or endorsement to life policies, is advised to review Rule R590-220.

(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 a rider or endorsement or 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 the 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 a rider or endorsement, the filing must be submitted to the appropriate section based on benefits provided in the rider or endorsement.

(4) The Filing Description must identify the filing as having a combination of insurance types, such as:

(a) whole policy with a long-term care benefit rider; or

(b) major medical health policy that includes a life insurance benefit.

R590-226-11. Classification of Documents.

(1) 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.

(2) The person submitting the information under Subsection (1)(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.

(3) 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.

R590-226-12. Insurer Annual Reports.

All licensee annual reports must be properly identified and must be filed separately from other filings. Each annual report must be submitted when requested.

R590-226-13. 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) include a final version of revised documents that incorporates all changes; and

(d) for filing submitted in SERFF, attach the documents in Subsections R590-226-13(1)(b) and (c) to appropriate Form Schedule or Rate/Rule Schedule tab.

(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 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.

R590-226-14. Penalties.

Persons found, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-226-15. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 15 days from the effective date of this rule.

R590-226-16. 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: life insurance filings

March 23, 2016	**31A-2-201**
Notice of Continuation March 14, 2019	**31A-2-201.1**
	31A-2-202

R590. Insurance, Administration.
R590-227. Submission of Annuity Filings.
R590-227-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-2-201.1, and 31A-2-202(2).

R590-227-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for submitting annuity filings under Section 31A-21-201.

(2) This rule applies to:

(a) all types of individual and group annuities, and variable annuities; and

(b) group annuity contracts issued to nonresident contract holders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-227-3. Definitions.

In addition to the definitions of Section 31A-1-301, 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) "Contract" means the annuity policy including attached endorsements and riders;

(3) "Data page" means the page or pages in a contract or certificate that provide the specific data for the annuitant detailing the coverage provided and may be titled by the insurer as contract specifications, contract schedule, policy information, etc.

(4) "Discretionary group" means a group that has been specifically authorized by the commissioner under Section 31A-22-509.

(5) "Electronic Filing" means a filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF.

(6) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.

(7) "Endorsement" means a written agreement attached to an annuity contract that alters a provision of the contract, for example, a name change endorsement and a tax qualification endorsement.

(8) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(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 contract;

(b) a form;

(c) a document;

(d) an application;

(e) a report;

(f) a certificate;

(g) an endorsement;

(h) a rider; and

(i) an actuarial memorandum, demonstration, and certification.

(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 to 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) "Issue Ages" means the range of minimum and maximum ages for which a contract or certificate will be issued.

(14) "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.

(15) "Market type" means the type of contract that indicates the targeted market such as individual or group.

(16) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(17) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws or rules;

(b) returned to the licensee by the department with the reasons for rejection; and

(c) not considered filed with the department.

(18) "Rider" means a written agreement attached to an annuity contract or certificate that adds a benefit, for example, a waiver of surrender charge, a guaranteed minimum withdrawal benefit and a guaranteed minimum income benefit.

(19) "Type of insurance" means a specific type of annuity including, but not limited to, equity indexed annuity, single premium immediate annuity, modified guaranteed annuity, deferred annuity, or variable annuity.

(20) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department that indicates a filing has been accepted.

R590-227-4. 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 filings 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 filer 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.

(c) A new filing is required if a filing correction is made more than 15 days after the date original filing was submitted to department. The filer must reference the original filing in the filing description.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to R590-227-12 for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-227-5. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

(a) All filers must use SERFF to submit a filing.

(b) All filings must comply with The "NAIC Uniform Life, Accident and Health, Annuity, and Credit Coding Matrix," dated January 1, 2012, and incorporated by reference. This form is available on the department's website, www.insurance.utah.gov.

(2) A filings 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) SERFF Filings.

(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 ACCORANCE WITH UTAH ADMINISTRATIVE RULE R590-227 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

C. The "Utah Annuity Filing Certification" must be properly completed, signed, and attached to the Supporting Documentation tab.

D. A filing will be rejected if the certification is false, missing, or incomplete.

E. A false certification 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) has been submitted with the Interstate Insurance Product Regulation Commission (IIPRC);

(C) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected or withdrawn, the reasons for rejection or withdrawal, and the previous Utah Filed Date or the IIPRC Date;

(D) includes documents for informational purposes; if so, provide the Utah Filed Date; or

(E) 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.

(v) Explain any change in benefits or premiums that may occur while the contract is in force.

(vi) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(vii) List the minimum initial premium.

(viii) Identify the intended market for the filing, such as senior citizens, nonprofit organizations, association members, corporate owned, bank owned, etc.

(b) 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; or

(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."

(c) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must attach to the Supporting Documentation tab either a:

(i) signed and fully completed "Utah Life and Annuity Group Questionnaire"; or

(ii) copy of the Utah Life and Annuity Discretionary Group Authorization letter.

(d) 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.

(e) Statement of Variability.

(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.

(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.

(f) Annuity Report. All annuity filings must include a sample annuity annual report.

(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.

(iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration of compliance, and a certification of compliance with Utah law are required in individual and group life insurance filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:

(A) description of the coverage in detail;

(B) demonstration of compliance with applicable nonforfeiture and valuation laws; and

(C) a certification of compliance with Utah law.

(5) Refer to each applicable Section of this rule for additional procedures on how to submit forms and reports.

R590-227-6. Procedures for 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) Forms must contain a descriptive title on the cover page.

(d) Forms must be in final printed form or printer's proof format. Drafts may not be submitted.

(e) Blank spaces within the form must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

(i) If the market intended is for the senior age market, the form must be completed with data representative of senior annuitants.

(ii) All John Doe data in the forms including the data page

must be accurate and consistent with the actuarial memorandum, the application, and any marketing materials, as applicable.

(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.

(3) Contract Filing.

(a) Each type of annuity must be filed separately.

(b) A contract filing consists of one contract form, including its related forms, such as an application, data page, rider or endorsement, and actuarial memorandum.

(c) A contract data page must be included with every contract filing.

(d) Only one contract form for a single type of insurance may be filed.

(e) A contract data page that changes the basic feature of the contract may not be filed without including the entire contract form in the filing.

(4) Rider or Endorsement Filings.

(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) A rider or endorsement that is based on morbidity risks such as critical illness or long-term care, is considered accident and health insurance and must be filed in accordance with Rule R590-220, "Accident and Health Insurance Filings".

(d) The filing must include:

(i) a listing of all base contract form numbers, title and Utah Filed Dates; and

(ii) a description of how each filed rider or endorsement affects the base contract.

(iii) a sample data page with data for the submitted form.

(e) Unrelated endorsements may not be filed together.

R590-227-7. Additional Procedures for Fixed Annuity Filings.

(1) Insurers filing annuity forms are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) R590-93, "Replacement of Life Insurance and Annuities;"

(d) R590-96, "Annuity Mortality Tables;" and

(e) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) Every filing of an individual annuity contract, rider or endorsement providing benefits, and every group annuity filing including certificates that are marketed individually, shall include an actuarial memorandum, a demonstration, and a certification of compliance with nonforfeiture and valuation laws. Refer to the following:

(a) Section 31A-22-409, "Standard Nonforfeiture Law for Deferred Annuities;" and

(b) Section 31A-17 Part V, "Standard Valuation Law."

(3) When submitting annuity filings the General Information Tab must:

(a) identify the specific subsection of the Utah nonforfeiture law, which applies to the submitted annuity;

(b) describe the basic features of the form submitted;

(c) identify and describe the interest earning features; including the guaranteed interest rate, the guaranteed interest terms, and any market value adjustment feature;

(d) describe the guaranteed and nonguaranteed values including any bonuses;

(e) describe all charges, fees and loads;

(f) list and describe all accounts, options and strategies, if any;

(g) identify whether the accounts are fixed interest general accounts, registered separate accounts including modified guaranteed separate accounts; and

(h) describe any restrictions or limitations regarding withdrawals, surrenders, and the maturity date or settlement options.

(4) The contract must be complete with a sample specification page attached.

(5) The actuarial memorandum must:

(a) be currently dated and signed by the actuary;

(b) identify the specific subsections of the Utah nonforfeiture law which applies to the submitted annuity;

(c) describe all contract provisions in detail, including all guaranteed and non-guaranteed elements, that may affect the values;

(d) identify the guaranteed minimum interest crediting rates;

(e) describe in detail the particular methods of crediting interest, including:

(i) guaranteed fixed interest rates; and

(ii) guaranteed interest terms.

(f) specifically identify, describe and list all charges and fees, including loads, surrender charges, market value adjustments or any other adjustment feature;

(g) describe in detail all accounts and factors that are used to calculate guaranteed minimum nonforfeiture values and minimum cash surrender values in the contract and the elements used in the calculation of the minimum values required by the law; and

(h) include the formulas used to calculate the minimum guaranteed values provided by the contract and the formulas used to calculate the minimum guaranteed values required by the applicable subsections of the nonforfeiture law.

(6) The actuarial demonstration must:

(a) compare minimum contract values with minimum nonforfeiture values;

(b) be based on representative premium patterns, for flexible premium products use both a single premium and level premium payment, and for both age 35 and age 60 or the highest issue age if lower;

(c) numerically demonstrate that the values based on the guaranteed minimum interest rates, the maximum surrender charges, fees, loads, and any other factors affecting values, provide values that are in compliance with the Standard Nonforfeiture Law using both the retrospective and the prospective tests, each test must be clearly identified, and include the following:

(i) For the retrospective test, describe the net consideration and the interest rates used in the accumulation. Numerically compare the guaranteed contract values with the minimum values required by the nonforfeiture law.

(ii) For the prospective test, identify the maturity value and the interest rate used for each respective year to determine the present value. Numerically compare the guaranteed contract values with the minimum values required by the nonforfeiture law.

(7) The actuarial certification of compliance must be currently dated and signed by the actuary. The certification must state that the formulas used and values provided are in compliance with Utah laws and rules.

R590-227-8. Additional Procedures for Group Annuity Filings.

(1) A filer submitting group annuity filings are advised to review the following code sections and rules prior to submitting

a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) Section 31A-22 Part V, "Group Life Insurance;" and

(d) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) A group contract must be included with each certificate filing along with the master application and enrollment form.

(3) Actuarial Memorandum. An actuarial memorandum must be included in all group annuity filing describing the features of the contract and certifying compliance with applicable laws and rules.

(4) Eligible Groups. A filing for an eligible group must include a completed "Utah Life and Annuity Group Questionnaire."

(a) A questionnaire must be completed for each eligible group under Sections 31A-22-502 through 508.

(b) When a filing applies to multiple employer-employee groups under Section 31A-22-502, only one questionnaire is required to be completed.

(5) Discretionary Group. If a group is not an eligible group, then specific discretionary group authorization must be obtained prior to submitting the filing. If a filing is submitted without discretionary group authorization, the filing will be rejected.

(a) To obtain discretionary group authorization a "Utah Life and Annuity Request For Discretionary Group Authorization" must be submitted and include all required information.

(b) Evidence or proof of the following items is considered in determining acceptability of a discretionary group:

(i) existence of a verifiable group;

(ii) that granting permission is not contrary to public policy;

(iii) the proposed group would be actuarially sound;

(iv) the group would result in economies of acquisition and administration which justify a group rate; and

(v) the group would not present hazards of adverse selection.

(c) Discretionary group filings that do not provide authorization documentation will be rejected.

(d) Any changes to an authorized discretionary group must be submitted to the department, such as; change of name, trustee, domicile state, within 30 days of the change.

(e) The commissioner may periodically re-evaluate the group's authorization.

R590-227-9. Additional Procedures for Variable Annuity Filings Procedures.

(1) Insurers submitting variable annuity filings are advised to review the following code sections and rule prior to submitting a filing:

(a) Section 31A-22-411, "Contracts Providing Variable Benefits;" and

(b) R590-133, "Variable Contracts."

(2) A variable annuity contract must have been previously approved or accepted by the licensee's state of domicile before it is submitted for filing in Utah.

(3) Information regarding the status of the filing of the variable annuity with the Securities and Exchange Commission must be included in the filing.

(4) The description and the actuarial memorandum must:

(a) describe the type of accounts available in the contract; and

(b) identify those accounts that are separate accounts, including modified guaranteed annuities, and those accounts that are general accounts.

(5) The actuarial memorandum must describe all contract provisions in detail, including all guaranteed and non-guaranteed elements that may affect the values.

(6) The actuarial demonstration must numerically demonstrate compliance with the applicable nonforfeiture laws:

(a) for variable annuities, including modified guaranteed annuities, pursuant to Section 31A-22-411;

(b) for fixed interest general accounts pursuant to 31A-22-409, identify and describe all guaranteed factors that affect values, including:

(i) the guaranteed minimum interest rate; and

(ii) the maximum surrender charges and loads.

(7) An actuarial certification of compliance with applicable Utah laws and rules must be included in the filing.

(8) A filing for a rider that provides benefits, such as guaranteed minimum death benefit and guaranteed minimum withdrawal benefit, must include an actuarial memorandum.

(9) A prospectus is not required to be filed.

R590-227-10. Classification of Documents.

(1) 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.

(2) The person submitting the information under Subsection (1)(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.

(3) 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.

R590-227-11. 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 incorporate all changes; and

(d) for filing submitted in SERFF, attached the documents in Subsections R590-227-11(1)(b)(c) to appropriate Form Schedule or Rate/Rule Schedule tab.

(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 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.

R590-227-12. Penalties.

Persons found, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-227-13. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 15 days from the effective date of this rule.

R590-227-14. 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: annuity insurance filings

March 23, 2016	**31A-2-201**
Notice of Continuation March 14, 2019	**31A-2-201.1**
	31A-2-202

R590. Insurance, Administration.
R590-228. Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings.
R590-228-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsection 31A-2-201(3), 31A-2-201.1, 31A-2-202(2), 31A-22-807.

R590-228-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for submitting:

(a) Credit life and credit accident and health insurance filings required by Section 31A-21-201;

(b) Credit life and credit accident and health insurance rate filings required by Section 31A-22-807, R590-91; and

(c) report filings as required.

(2) This rule applies to all credit life insurance and credit accident and health insurance including group contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-228-3. Definitions.

In addition to the definitions of Section 31A-1-301, 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) "Data page" means the page or pages in a policy and certificate that provide the specific data for the insured detailing the coverage provided and may be titled by the insurer as schedule page, schedule of benefits and premiums, etc.

(3) "Electronic Filing" means a filing submitted via the Internet by using the System for Electronic Rate and Form Filing, SERFF.

(4) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.

(5) "Endorsement" means a written agreement attached to a life insurance policy that alters a provision of the policy. An example is a company change of name.

(6) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(7) "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.

(8) "Filer" means a person who submits a filing.

(9) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a policy;

(b) a rate, rate methodologies;

(c) a form;

(d) a document;

(e) an application;

(f) a report;

(g) a certificate;

(h) an endorsement;

(i) a rider; and

(j) an actuarial memorandum, demonstration, and certification.

(10) "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.

(11) "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

(12) "Issue Ages" means the range of minimum and maximum ages for which a policy or certificate will be issued.

(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) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(16) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws or rules;

(b) returned to the licensee by the department with the reasons for rejection; and

(c) not considered filed with the department.

(17) "Rider" means a written agreement attached to a life insurance policy or certificate that adds a benefit. An example is a credit accident and health insurance rider.

(18) "Type of insurance" means a specific credit life and credit accident and health insurance product, as defined in the NAIC Coding Matrix, including, but not limited to, gross decreasing term, net decreasing term, level term, or truncated coverage.

(19) "Utah Filing Date" means the date provided to a filer by the Utah Insurance Department that indicates a filing has been accepted.

R590-228-4. General Filing Information.

(1) Each filing submitted must be accurate, consistent, and 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) 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 filer 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.

(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.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to R590-228-11 for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-228-5. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

(a) All filers must use SERFF to submit a filing.

(b) All filings must comply with The "NAIC Uniform Life, Accident and Health, Annuity, and Credit Coding Matrix," dated January 1, 2009, and incorporated by reference. This form is available on the department's website, www.insurance.utah.gov.

(2) A filings 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) SERFF Filings.

(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 Utah Filed Date;

(C) includes documents 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.

(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 types of coverage to be provided, such as gross, net, full term, truncated and critical period.

(vi) Indicate whether the insurer has a Rating and Benefits Plan on file with the department.

(vii) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(viii) Identify the intended market

(ix) Identify the types and durations of loans to be insured.

(x) Describe the methods of premium charge.

(b) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The "Utah Credit Life and Credit Accident and Health 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; or

(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) 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.

(e) Statement of Variability.

(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.

(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.

(f) 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.

(iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum and demonstration with sample rate calculations and a certification of compliance with Utah law are required in each filing. The memorandum must be currently dated and signed by the actuary.

(5) Refer to each applicable Section of this rule for additional procedures on how to submit forms, rates, and reports.

R590-228-6. Procedures for 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) Forms must contain a descriptive title on the cover page.

(d) Forms must be in final printed form or printer's proof format. Drafts may not be submitted.

(e) Blank spaces within the forms must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

(f) All John Doe data in the forms, including the data page, premium rates and benefits, must be accurate and consistent with the actuarial memorandum and rate schedule.

(2) Policy Filings.

(a) Each type of insurance must be filed separately.

(b) A policy filing consists of one policy form, including its related forms, including the application, enrollment form, certificate, actuarial memorandum, certification, and rate schedule.

(c) Only one policy filing for a single type of insurance may be filed.

(3) Rider or Endorsement Filings.

(a) Related riders or endorsements may be filed together.

(b) A single rider or endorsement that affects multiple forms may be filed in the Filing Description and references all affected forms.

(c) The filing must include:

(i) a listing of the base policy form number, title and Utah Filed Dates;

(ii) a description of how each rider or endorsement affects the base policy; and

(iii) appropriate actuarial memorandum and rate schedule.

(4) Application Filings.

(a) Each application or enrollment form may be submitted as a separate filing or 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 a policy or certificate filing.

(5) Rates. Rates are considered "File for Approval".

R590-228-7. Additional Procedures for Credit Life and Credit Accident and Health Form and Rate Filings.

(1) A Licensee filing Credit Life and Credit Accident and Health are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life insurance and Annuities;"

(c) Section 31A-22 Part V, "Group Life Insurance;"

(d) Section 31A-22 Part VI, "Accident and Health Insurance;"

(e) Section 31A-22 Part VIII, "Credit Life and Accident and Health;"

(f) R590-91, "Credit Life and Disability;" and

(g) R590-191, "Unfair Life Insurance Claims Settlement Practice;"

(h) R590-192, "Unfair Health and Disability Claims Settlement Practices."

(2) A policy must be included with each certificate filing along with a master application and enrollment form.

(3) Actuarial Memorandum, Demonstration and Certification of Compliance. Each form and rate fling must include an actuarial memorandum, demonstration, and certification of compliance with Utah laws, signed and dated by the actuary representing the insurer.

(a) Actuarial memorandum must include a description of the following:

(i) types of coverage, such as gross or net decreasing, single or joint life, full term or truncated, critical period;

(ii) types of loans to be insured, such as open end, closed end,

(iii) types of premium charge: single premium, monthly outstanding balance, or other method explained in detail;

(iv) durations of loans and durations of coverage. Refer to 31A-22-801(2)(a);

(v) rates per unit, rating and premium methodologies including:

(A) formulas used for each type of coverage and premium method; and

(B) sample calculations for each type of coverage and premium method;

(vi) an explanation of whether the company has a Rating and Benefits Plan on file and if so, whether the submitted rates are consistent with the filed plan;

(vii) demonstration of compliance with applicable code and rules;

(viii) refund methods and calculation including formulas for each type of coverage; and

(ix) reserve bases including methods used.

(b) The actuarial certification must include certification of compliance that formulas and methods used produce rates that are in compliance with applicable Utah laws and rules for each type of coverage and duration in the filing.

(4) Rate Schedules.

(a) Rate schedules must be included for each type of coverage and for representative durations.

(b) Rates must be identified as prima facie rates, rates previously filed for compliance with the Rating and Benefits Plan required in R590-91-10, or deviated rates submitted pursuant to 31A-22-807, or rates on nonstandard coverage pursuant to R590-91-5.

(5) All benefits must be reasonable in relation to the premium charge. Insurers filing for approval of a rate higher than prima facie rates must comply with the requirements of 31A-22-807 and R590-91-10. Include a demonstration that the rates are reasonable in relation to the benefits.

R590-228-8. Insurer Annual Reports.

All licensee annual reports must be properly identified and must be filed separately from other filings. Each annual report must be submitted when requested.

R590-228-9. Classification of Documents.

(1) 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.

(2) The person submitting the information under Subsection (1)(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.

(3) 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.

R590-228-10. 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) include a final version of revised documents that incorporates all changes; and

(d) for filing submitted in SERFF, attach the documents in Subsections R590-228-10(1)(b)(c) to appropriate Form Schedule or Rate/Rule Schedule tab.

(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 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.

R590-228-11. Penalties.

Persons found, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-228-12. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule upon 15 days from the effective date of this rule.

R590-228-13. 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: credit insurance filings

March 23, 2016	**31A-2-201**
Notice of Continuation March 14, 2019	**31A-2-201.1**
	31A-2-202

R590. Insurance Administration.
R590-268. Small Employer Stop-Loss Insurance.
R590-268-1. Authority.

This rule is promulgated pursuant to Section 31A-43-304 wherein the commissioner may make rules to implement Title 31A, Chapter 43.

R590-268-2. Scope.

This rule applies to all small employer stop-loss contracts issued or renewed on or after July 1, 2013.

R590-268-3. Purpose.

The purpose of this rule is to provide the content of the stop-loss insurance disclosure, prohibit lasering, and establish the form and manner of form and rate filings and of the annual actuarial certification and report on stop-loss experience.

R590-268-4. Definitions.

For the purposes of this rule, the commissioner adopts the definitions of Sections 31A-1-301 and 31A-43-102.

R590-268-5. Stop-Loss Insurance Disclosure.

(1) Stop-loss insurers marketing to small employers shall use the Utah Small Employer Stop-loss Disclosure.

(2) The stop-loss insurer may display the insurer's name, identifying logo, and address on the disclosure.

(3) The Utah Small Employer Stop-loss Disclosure, published January 15, 2014, is hereby incorporated by reference and is available on the Department's website at https://insurance.utah.gov/legal-resources/rules/current-rules.php.

(4) The disclosure may be altered for reasons specifically approved by the commissioner.

R590-268-6. Lasering.

(1) Subsection 31A-43-301(2)(a) prohibits lasering. For the purpose of this rule lasering includes:

(a) assigning a different attachment point for an individuals based on their expected claims or a given diagnosis;

(b) assigning a deductible to an individual that must be met before stop loss coverage applies;

(c) denying stop loss coverage to an individual who is otherwise covered by the small employer's medical plan; and

(d) applying an actively at work exclusion to stop loss coverage.

R590-268-7. Form and Rate Filings.

(1) A contract filing consists of one contract form, the application, any related documents, disclosure, rate manual, and actuarial memorandum.

(2) A new or revised rate manual shall:

(a) include a summary of how the rate is calculated;

(b) contain specific area factors applicable in Utah;

(c) be filed 30 days prior to use;

(d) be applied in the same manner for all small employer stop-loss contracts;

(e) describe how the overall rate is reviewed for compliance; and

(f) include an actuarial certification signed by a qualified actuary.

(3) All filings shall be submitted using SERFF.

R590-268-8. Annual Actuarial Memorandum and Certification.

(1) The insurer shall submit annually on or before April 1 using SERFF:

(a) stop-loss experience for the previous year for Utah;

(b) certification of compliance with requirements of section 31A-43-301; and

(c) an actuarial memorandum describing the review done in preparation of the certification.

(2) The insurer's stop-loss experience shall be presented by small employer and shall include:

(a) employer size including both covered lives count and employee count as of the beginning of the contract;

(b) covered lives exposure years and employee exposure years for the experience time period;

(c) specific attachment point;

(d) expected claims in the absence of stop loss insurance;

(e) expected claims under the specific attachment point;

(f) aggregate attachment point;

(g) earned premium; and

(h) claims paid by the stop loss insurance broken out by specific losses and aggregate losses.

R590-268-9. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-268-10. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: small employer stop-loss
December 9, 2015 31A-43-304
Notice of Continuation March 7, 2019 Title 31A, Chapter 43

R597. Judicial Performance Evaluation Commission, Administration.
R597-4. Justice Courts.
R597-4-1. Classification of Justice Court Judges.

(a) As used in this section, a qualified attorney is an attorney with at least one trial appearance or three total appearances before the evaluated judge during the evaluation cycle.

(b) Classification Determination. Each judge's classification shall be made by the commission following the judge's retention election, except that newly-appointed judges shall be classified upon appointment.

(c) Basis of classification.

(1) Classification shall be based on weighted caseload data and attorney appearance data provided by the Administrative Office of the Courts for the 12 months preceding the judge's most recent election or appointment.

(2) Notwithstanding section R597-4-1 (b) and (c)(1), for judges standing for retention in 2018, classification shall be based on weighted caseload data and attorney appearance data provided by the Administrative Office of the Courts for the calendar year 2013.

(3) If the data specified in subsection R597-4-1(c)(1) is unavailable or inapplicable, classification shall be based on the best data available from the Administrative Office of the Courts.

(d) Once classified, the judge retains the classification for the judge's term of office.

(e) Judicial classification categories. Justice court judges shall be classified into one of three categories for purposes of judicial evaluation, based on the timeframes specified in section R597-4-1(c).

(1) Full Evaluation Judges must have a total of 50 or more qualified attorneys in the combined jurisdictions in which they serve.

(2) Mid-level Evaluation Judges must have fewer than 50 qualified attorneys in the combined jurisdictions in which they serve and a weighted caseload, as defined by the Administrative Office of the Courts, of .2 or more in at least one jurisdiction.

(3) Basic Evaluation Judges must not qualify for full evaluation and must have a weighted caseload of less than .2 in every jurisdiction in which they serve.

R597-4-2. Justice Court Judges Serving in Multiple Courts.

(a) For judges serving in multiple courts:

(1) Once a judge is classified, the judge may be evaluated in any court in which the judge serves, regardless of retention year.

(2) Evaluation data gathered from different courts served by a single judge shall be aggregated into a single midterm evaluation and a single retention report.

(b) For judges serving in multiple courts who stand for retention election in multiple years:

(1) Each judge shall be assigned to a single controlling evaluation cycle.

(2) The retention evaluation report compiled pursuant to the controlling evaluation cycle shall be used for all other subsequent retention elections for which that judge stands within the controlling cycle.

KEY: justice court evaluations, justice court multiple jurisdictions, justice court classifications, justice court multiple election years
June 12, 2014 78A-12-201 through 78A-12-206
Notice of Continuation March 22, 2019

R622. Lieutenant Governor, Administration.
R622-2. Use of the Great Seal of the State of Utah.
R622-2-1. Purpose.

(A) The Great Seal of the State of Utah is a symbol of the sovereignty of this state, and its use denotes authenticity of official state government functions and authority. The Great Seal is a single mounted engraved plate, comprising form and content as described in Section 67-1a-8, Utah Code. The purpose of this rule is to define how the state will:

(1) manage the use and application of the Great Seal (the seal); and

(2) define criteria for its authorized application.

R622-2-2. Primary Function of the Seal.

(A) Since its conception, the seal has been employed for specific governmental applications within the state's Executive, Legislative and Judicial Branches. The seal will be administered consistent with state law and policy, and its principal application shall be to authenticate or attest to:

(1) official documents which are authorized and/or required by statute; and

(2) other state documents having historic, civic, commemorative or educational value or import.

(B) The seal's impression on a legal document shall require the Lieutenant Governor's signature to appear on the same page as, and in proximity thereto.

R622-2-3. Custody and Use.

Pursuant to Section 67-1a-2(1)(d), (e), (f) of the Utah Code; the lieutenant governor shall ". . . keep custody of the Great Seal of the state of Utah; to keep a register of, and attest, the official acts of the governor; and to affix the Great Seal, with an attestation, to all official documents and instruments to which the official signature of the governor is required."

R622-2-4. General Permitted Uses of the Seal.

(A) The seal shall be permitted for use without the written authorization of the Lieutenant Governor, in the following circumstances:

(1) printings of replicas of the seal on official state letterhead, business cards, and stationery for agencies, entities, or officers of the state, and

(2) exhibition of permitted reproductions of the seal on state flags.

(B) The seal shall be permitted for use in the following circumstances upon describing and submitting a list of intended uses with the lieutenant governor's office to assure uniformity and continuity of use:

(1) application or display of replicas of the seal by state agencies and state political sub-divisions which delineate official state purposes, and by state elected officials in connection with their official state business;

(2) for educational and academic uses by schools, colleges and universities to convey information about official state functions;

(3) for use on a product or article offered to the public, for profit or without charge, through the Utah State Capitol gift shop.

(4) Such uses shall not attempt to endorse, authenticate, recognize or promote persons or roles, or be part of administrative or promotional functions.

R622-2-5. Prohibited Usage.

(A) The seal, or replica, shall not be committed for general use, including:

(1) for personal financial gain;

(2) for, or in connection with, any advertising or promotion of any product, business, organization, service, or article whether offered for sale, for profit or without charge, except as provided in R622-2-4(B)(3);

(3) in a political campaign, or in ways that may legitimize or assist to defeat another candidate for elective office; or

(4) to function as, or be construed to function in any way as an endorsement of any business, organization, product, service or article.

(B) No symbol shall be used that imitates or appears similar to the seal in a way that intends to deceive, or is displayed in a manner that conveys improper use of the official Great Seal itself.

(C) When the seal is used, no mark, insignia, letter, word, figure, design, picture, or drawing of any nature may be placed upon the seal, or any part of it.

(D) A state agency, or an elected official, other than the lieutenant governor, shall not have authority to permit an individual or entity associated with a state agency or state elected official, to use the seal or replica for a commercial purpose whereby items will be distributed for sale, even though such purpose may include the providing of goods or services to the state.

(E) The seal shall not be displayed in a manner which lessens or detracts from its dignity or impact.

R622-2-6. Application For Use.

(A) Persons or entities seeking permission to use the seal or replica, excepting uses outlined in R622-2-4, will complete and file a legible application with the Lt. Governor, on a form provided by that office, which shall include:

(1) a specific description of the intended usage involving the Great Seal of the State of Utah, or replica of the seal,

(2) the payment of an administrative filing fee in the amount of $ 5.00, (non-refundable) and

(3) a precise description and specification of the actual product or item to bear the seal, or replica, in the form of an architectural drawing, engineering draft-to-scale, brochure, or lucid photograph or computer-graphic. The application, and supporting documents shall become the property of the lieutenant governor's office.

(B) Upon approval of a complete application, the applicant shall be issued a certificate bearing an identification number, by the lieutenant governor, which shall be kept by the applicant on file for four years following use of the seal. State agencies and entities which use the state seal or replica for official state functions have no application or fee requirement.

(C) An application may be denied for (1) failure to comply with relevant statutes or this rule, (2) failure to include the required fee, or (3) if the intended use is found to be detrimental to the image of the state and not in its best interest.

R622-2-7. Revocation of Approved Applications.

The lieutenant governor may revoke any prior approved usage if it is determined that the seal is being used improperly, if the actual use differs from the intended use as described on the application, or if false or inaccurate information was used to gain approval.

R622-2-8. Enforcement.

(A) Pursuant to Section 67-1a-7, Utah Code, except as otherwise provided by law, only the lieutenant governor, or the lieutenant governor's designee, is authorized to use or affix the seal to a document in pursuance of law. If any person illegally uses the seal, or such seal when defaced, the state may refer such criminal violations to an appropriate prosecuting authority.

(B) Under the provisions of Section 76-6-501, Utah Code, the state may seek redress against a person, or persons, who impermissibly replicate the seal as a forgery. A person or entity employing the seal, or a replica, with the intent to defraud or imply that the presence of the seal or replica appeared by permission of the state, or whose presentation of the seal

denigrates it's ability to authenticate by proper state authority, may be referred to an appropriate prosecuting authority.

KEY: great seal, lt. governor, state flag
November 21, 2007 **67-1a-7**
Notice of Continuation March 19, 2019 **67-1a-8**
67-1a-2
76-6-501

R651. Natural Resources, Parks and Recreation.
R651-206. Carrying Passengers for Hire.
R651-206-1. Definitions.

(1) "Advanced first aid training" means a course that meets the current National Registry of Emergency Medical Technicians, Emergency Medical Responder Education Standards.

(2) "Agent" means a person(s) designated by an outfitting company to act in behalf of that company.

(3) "Basic First Aid training" means a course which shall include hands-on training and skills evaluation. Course examples include but are not limited to: the American Red Cross, the American Heart Association, the National Safety Council, or local hospitals.

(4) "Boating Advisory Council" As defined in R651-202-1.

(5) "Boating Program Coordinator" means a Division employee overseeing Utah's boating program that administers the United States Coast Guard's Recreational Boating Safety grant and Carrying Passengers for Hire program.

(6) "Cardiopulmonary Resuscitation (CPR)" means a hands on course that shall include training and evaluation that meets the standards of the American Heart Association Emergency Cardiovascular Care (ECC) course.

(7) "Certificate of Compliance" means a document produced by the Division and signed by a compliance inspector and an agent of the outfitting company certifying that the company has met all the requirements of a site inspection and the Maintenance and Inspection Program for Carrying Passengers for Hire.

(8) "Certifying experience" means vessel operation or river running experience obtained within ten years of the trip leader's or guide's date of authorization by an outfitting company.

(9) "CFR" means U.S. Code of Federal Regulations.

(10) "Compliance inspector" means a person who has been trained and authorized by the Division to perform dock side, dry dock and site visits for outfitting companies.

(11) "Consideration" as defined in Utah Code 73-18-2(6), means something of value given or done in exchange for something given or done by another. Consideration also includes, but is not limited to "commercial gain and commercial activity, as defined in Utah Admin. Code R651-601-12 and -13.

(12) "Deck rail" means a guard structure at the outer edge of a vessel deck consisting of vertical solid or tubular posts and horizontal courses made of metal tubing, wood, cable, rope or suitable material.

(13) "Division" means the Utah Division of Parks and Recreation.

(14) "Dockside inspection" means an annual examination of a vessel when the vessel is afloat in the water so that all of the exterior of the vessel above the waterline and the interior of the vessel may be examined. For river trip vessels, the annual dockside inspection may be performed at the company's place of business.

(15) "Dry dock inspection" means an examination of a vessel, conducted once every five years, when the vessel is out of the water and supported so all the exterior and interior of the vessel may be examined. For float trip vessels, the five-year dry dock inspection may be performed at the company's place of business.

(16) "Flatwater River Area" means all river sections defined in Utah Administrative Code R651-215-10.

(17) "Good marine practices and standards" means those methods and ways of maintaining, operating, equipping, repairing and restructuring a vessel according to commonly accepted standards, including 46 CFR, the American Boat and Yacht Council, the American Bureau of Shipping, the National Marine Manufacturers Association, and other appropriate generally accepted standards as sources of reference.

(18) "Guide" means an individual authorized by an outfitting company to carry passengers for hire.

(19) "License" means an annual certificate issued by the Division to an outfitting company that authorizes the company to Carry Passengers for Hire.

(20) "Low capacity vessel" means a manually propelled vessel designed or intended to carry no more than two occupants.

(21) "Outfitting Company" as defined in Utah Code 73-18-2(14), means any person who, for consideration:

(a) Provides equipment to transport persons on all waters of this state; and

(b) Supervises a person who:

(i) Operates a vessel to transport passengers; or

(ii) Leads a person on a vessel.

(22) "Person" means:

(a) An individual;

(b) An association;

(c) An institution;

(d) A corporation;

(e) A company;

(f) A trust;

(g) A limited liability company;

(h) A partnership;

(i) A political subdivision;

(j) A government office, department, division, bureau, or other body of government and;

(k) Any other organization or entity

(23) "Program Safety Committee" means 5 members representing their commercial boating industries to make substantive changes to the Maintenance and Inspection Program for vessels Carrying Passengers for Hire.

(24) "River trip vessel" means a vessel, or the components and equipment used to configure such a vessel that is designed to be operated on a whitewater river or section of river. A river trip vessel may be a raft with inflatable chambers or a configuration of metal and/or wood frames, straps or chains, and inflatable pontoon tubes that are integral in maintaining the flotation, structural integrity and general seaworthiness of the vessel.

(25) "Racing shell" means a long, narrow watercraft outfitted with long oars and sliding seats; and specifically designed for racing or exercise.

(26) "Site Visit" means a meeting with an outfitting company for the purpose of inspecting vessels, vessel components and trip leader and guide authorization documents.

(27) "Sole state waters," means all waters of this state, except for the waters of Bear Lake, Flaming Gorge and Lake Powell.

(28) "Towing for hire" means the activity of towing vessels or providing on-the-water assistance to vessels for consideration.

(29) "Trip Leader" is a guide assigned by the outfitting company to be in charge of a carrying passengers for hire trip.

(30) "Trip Log" means a document managed by an outfitting company that lists trip leaders and guides on the water experience.

(31) "Trip Manifest" means a document produced by the outfitting company authorizing a carrying passenger for hire trip

(32) "Whitewater river" means all rivers not designated as a flatwater river area or other Division recognized whitewater rivers in other states.

R651-206-2. Outfitting Company Responsibilities.

(1) Except where exempted by section R651-206-9, each outfitting company carrying passengers for hire on waters of this state shall make application with the Division annually, prior to commencement of operation.

(a) The outfitting company licensing process with the

Division requires the completion of the prescribed application form and providing the following:

(i) Evidence of a current and valid business license;

(ii) List of company agent(s);

(iii) Evidence of general liability insurance coverage;

(iv) Payment of the appropriate application fee.

(b) An outfitting company license expires annually on December 31.

(2) Upon successful application with the Division, the Division shall issue a license in the name of the outfitting company.

(a) An outfitting company shall display its license at its place of business in a prominent location, visible to persons and passengers who enter the place of business.

(b) Any outfitting company using a DBA ("doing business as") shall list any and all DBA's on the outfitting company license application. Should new DBA's be formed, the outfitting company shall notify the Division, in writing, within ten days of the action.

(c) Licenses are not transferable. If a business is sold or transferred, a new license application shall be submitted by the new owner(s).

(d) An outfitting company's license shall be issued electronically within a reasonable time period, not to exceed 10 days after the Division receives an eligible and complete application. Licenses will be sent by email to the email address provided by the outfitting company.

(3) An agent of an outfitting company shall certify that;

(a) All the elements of the Certificate of Compliance have been fulfilled,

(b) Each trip leader or guide authorized by the outfitting company has:

(i) Obtained the minimum levels of required vessel operation experience and,

(ii) Obtained the appropriate first aid and CPR certificates.

(c) Copies of the trip manifests are provided for each trip with:

(i) A copy retained by the trip leader and available during the trip,

(ii) A copy to remain on file with the outfitting company for six (6) years.

(5) An outfitting company shall have a written policy describing a program for a drug free workplace.

(6) An outfitting company shall maintain a trip log for each of its trip leaders and guides.

(7) An outfitting company shall maintain a trip manifest for each trip or excursion conducted by the company. The trip manifest shall contain the following information:

(a) Name and address and phone number of the outfitting company;

(b) Name, date of birth of each trip leader and guide assigned to the trip;

(c) Trip departure and arrival locations with dates and/or times; and

(d) A passenger list.

(8) An outfitting company shall maintain a daily or trip operations log for each of its vessels.

(9) A trip leader assigned by the outfitting company shall accompany every commercial trip.

(10) An outfitting company shall ensure that a trip leader or guide conducts a vessel safety check and a passenger orientation prior to embarking on a trip.

(a) The vessel safety check shall include:

(i) A check of the vessel's required carriage of safety equipment;

(ii) A check of the vessel's communication systems;

(iii) A check of the operation and control of the vessel's steering controls and propulsion system; and

(iv) A check of the vessel's navigation lights, if the vessel will be operating between sunset and sunrise.

(b) The passenger orientation shall include:

(i) A passenger count;

(ii) A discussion of safety protocols and emergency operations with passengers on board the vessel;

(iii) The conditions of weather, river, terrain, equipment, travel, housing and vessels that passengers may expect to encounter;

(iv) The personal equipment, clothing and gear that commercial passengers should have for the trip;

(v) The proper fit, wearing, and use of personal flotation devices (PFD);

(vi) Passenger riding and positioning in the vessel;

(vii) Safety procedures for swimming through river rapids and getting back in the vessel;

(viii) Instructions on what to do in the event of a vessel accident; and

(ix) Sanitation, litter prevention and human refuse disposal.

(11) An outfitting company shall ensure that each vessel in its fleet is equipped with the required safety equipment.

(12) An outfitting company shall maintain each vessel in its fleet according to good marine practices and standards.

(a) The outfitting company shall ensure that each vessel used in the service of carrying passengers for hire meets the maintenance and inspection requirements, if such inspections are required of a vessel.

(b) The outfitting company shall maintain a file of its maintenance and inspections for each vessel, or the components and equipment that configure a river trip vessel that is required to be inspected in its fleet. Maintenance and inspection files shall be retained for the duration in which the vessel is in the service of carrying passengers for hire, plus six additional years.

(13) The owner of a vessel carrying passengers for hire shall carry general liability insurance. The insurance coverage shall be determined by the permitting agency.

(14) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of the company's:

(a) Liability insurance policy;

(b) Drug free workplace policy;

(c) Trip manifests;

(d) Trip Authorization permits;

(e) A vessel's maintenance and inspection files; or

(f) Trip leader and guide trip logs.

(15) An outfitting company that is registered to carry passengers for hire in another state and possesses a state-issued certificate of outfitting company registration, or similar license, permit or registration accepted and recognized by the Division, where the state has similar outfitting company registration provisions, shall not be required to obtain and display a Utah License of outfitting company registration as required by this section when:

(a) Operating vessels on Bear Lake, Flaming Gorge, and Lake Powell where a trip embarks and disembarks from the out-of-state portion of the lake and less than 25 percent of a trip is conducted on the Utah portion of the lake.

(b) Operating vessels on rivers flowing into Utah where the river trip originates out-of-state and terminates at the first available launch ramp/take-out.

(i) For vessels operating on the Colorado River, the first available take-out is the Westwater Ranger Station launch ramp/take-out.

(ii) For vessels operating on the Dolores River, the first available take-out is the Dewey Bridge launch ramp/take-out on the Colorado River.

(iii) For vessels operating on the Green River, the first available take-out is the Split Mountain launch ramp/take-out.

(iv) For vessels operating on the San Juan River, the first

available take-out is the Montezuma Creek launch ramp/take-out.

R651-206-3. Utah Carrying Passengers for Hire (CPFH) Trip Leader and Guide Qualifications.

(1) Unless exempted in R651-206-9, no person shall operate a vessel engaged in carrying passengers for hire on sole state waters unless that person is a trip leader, guide or U.S. Coast Guard Master's License holder authorized by an outfitting company licensed by the Division.

(2) When carrying passengers for hire on the waters of Bear Lake, Flaming Gorge or Lake Powell,

(a) on motorized trips the trip leader authorized by an outfitting company shall have a valid and appropriately endorsed U.S. Coast Guard Master's License.

(b) on non-motorized trips, authorized trip leaders and guides are not required to have a U.S. Coast Guard Master's License.

(3) Every trip leader and guide engaged in carrying passengers for hire shall have in their possession a trip manifest issued by the outfitting company containing the information in R651-206-2(7).

(4) A person qualified as a trip leader on lakes and reservoirs shall meet the following qualifications:

(a) have a valid and appropriately endorsed U.S. Coast Guard Master's License for motorized trips.

(b) Be at least 18 years of age.

(c) Complete a minimum of at least 80 hours of actual vessel operation experience, including 40 hours operating the same or similar vessel on the same lake or reservoir upon which the person shall carry passengers for hire.

(d) Possess a current advanced first aid certification; and

(e) Possess a current CPR certification.

(f) A person qualified to lead as a trip leader on motorized and/or non-motorized trips shall meet the following criteria:

(i) Motorized trips: completion of National Association of State Boating Law Administrators (NASBLA) approved boating safety course.

(ii) Non-motorized trips: completion of a skills course from the American Canoe Association (ACA) or from the World Paddling Association (WPA).

(5) A person qualified as a trip leader operating on whitewater rivers shall meet the following qualifications:

(a) Be at least 18 years of age.

(b) Complete a minimum of nine river trips on whitewater river sections, including at least one trip shall operate the same or similar vessel on the same river section on which the operator will be carrying passengers for hire.

(c) Possess a current advanced first aid certification.

(d) Possess a current CPR certification.

(6) A person qualified as a trip leader operating on Flat water river areas shall meet the following qualifications:

(a) Be at least 18 years of age.

(b) Complete a minimum of six river trips on any river section, and at least one trip shall operate the same or similar vessel, on the same river section on which the trip leader will be carrying passengers for hire.

(c) Possess a current advanced first aid certification.

(d) Possess a current CPR certification.

(7) A person qualified as a guide operating on Lakes and Reservoirs, shall meet the following qualifications:

(a) Have a valid and appropriately endorsed U.S. Coast Guard Master's License for motorized trips or

(a) Be at least 18 years of age.

(b) Complete a minimum of at least 20 hours of actual vessel operation experience; Including 10 hours operating the same or similar vessel on the same lake or reservoir upon which the person shall carry passengers for hire.

(c) Possess a current basic first aid certification.

(d) Possess a current CPR certification.

(e) A person qualified as a guide operating on motorized and/or non-motorized trips shall meet the following criteria:

(i) Motorized trips: completion of a National Association of Boating Law Administrators (NASBLA) approved boating safety course.

(ii) Non-motorized trips: completion of a skills course from the American Canoe Association (ACA) or from the World Paddling Association (WPA).

(8) A person qualified as a guide operating on whitewater rivers, shall meet the following qualifications:

(a) Be at least 18 years of age.

(b) Complete a minimum of three river trips on "whitewater" rivers or river sections, and at least one trip shall operate the same or similar vessel, on the same river section on which the person will be carrying passengers for hire.

(c) Possess a current basic first aid certification.

(d) Possess a current CPR certification.

(9) A person qualified as a guide operating on flatwater rivers, shall meet the following qualifications;

(a) Be at least 18 years of age.

(b) Complete a minimum of three river trips on flatwater or whitewater river sections, and at least one trip shall operate the same or similar vessel on the same river section on which the person will be carrying passengers for hire.

(c) Possess a current basic first aid certification.

(d) Possess a current CPR certification.

(10) An outfitting company shall maintain a trip log for each person certified by the company as a trip leader or guide. The log shall include the person's:

(a) Full legal name and date of birth;

(b) Proof of a current certification in first-aid and CPR.

(c) A record of on water experience including dates of trips.

(11) An outfitting company shall maintain all trip leader and guide trip logs while they are authorized by the company and for a period of at least six years after his/her termination. These records shall be maintained at the outfitting company's designated place of business. The outfitting company, or any employee having access to such records, shall provide it to any peace officer enforcing the provisions of R651-602.

(13) A trip leader or guide shall not carry passengers for hire when unfamiliar with the vessel and the waterway provided there is a trip leader or guide on board who is familiar. An exception to this rule allows a trip leader to lead passengers on an unfamiliar lake, reservoir, or a flatwater river area, as long as there is a trip leader or guide who is familiar with the vessel, the waterway, and remains within sight of the rest of the group.

(14) There shall be at least one trip leader and one guide under the following conditions:

(a) On a vessel carrying more than 49 passengers for hire;

(b) On a vessel carrying more than 24 passengers for hire, and operating more than one mile from shore;

(c) For each passenger deck on a vessel.

(15) Requirements for leading low capacity vessels in a group.

(a) On lakes and reservoirs, there shall be at least one trip leader or guide for every eight low capacity vessels;

(b) On whitewater river sections, there shall be at least one trip leader or guide for every four low capacity vessels.

(c) On flatwater river areas, there shall be at least one trip leader or guide for every six low capacity vessels or racing shells.

(16) A trip leader or guide shall not operate a vessel for more than 12 hours in a 24 hour period.

R651-206-4. Additional Personal Floatation Device (PFD) Requirements for Vessels Carrying Passengers for Hire.

(1) Wearable PFDs are required. Each vessel shall have

an adequate number of wearable PFDs on board that meets or exceeds the number of persons on board the vessel. The wearable PFD shall be approved for the activity in which it is going to be used.

(2) In situations where infants, children and youth are in enclosed cabin areas of vessels over 19 feet in length and not wearing PFDs, a minimum of ten percent of the wearable PFDs on board the vessel shall be of an appropriate type and size for infants, children and youth passengers.

(3) Wearable PFDs shall be listed for commercial use on the label.

(4) If PFDs are not being worn by passengers, and the PFDs are being stored on the vessel, the PFDs shall be stored in readily accessible containers that legibly and visually indicate their contents.

(5) Each PFD shall be marked with the name of the outfitting company, in one-inch high letters that contrast with the color of the device.

(6) Vessels that are 26 feet or more in length shall carry a throwable PFD, and it shall be a ring life buoy.

(a) Vessels that are 40 feet or more in length shall carry a minimum of two throwable PFDs.

(b) Ring life buoys shall have a minimum of 60 feet of line attached.

(7) All passengers and crew members shall wear a PFD when a vessel is being operated in hazardous conditions.

(8) The trip leader or guide is responsible for the passengers on his vessel to be in compliance with this section and R651-215.

R651-206-5. Additional Fire Extinguisher Requirements for Vessels Carrying Passengers for Hire.

(1) Each motorboat shall carry a minimum of one type B-1 fire extinguisher. Vessels equipped solely with an electric motor, and not carrying flammable fuels on board, are exempt from this provision.

(2) Each motorboat that carries more than six passengers and is equipped with an inboard, inboard/outboard, inboard jet, or direct drive gasoline engine, shall have at least one fixed U.S. Coast Guard approved fire extinguishing system mounted in the engine compartment.

(3) Portable fire extinguishers shall be mounted in a readily accessible location, near the helm, away from the engine compartment. For motorized vessels operating on rivers, portable fire extinguishers may be stowed in a readily accessible location near the operator's position.

(4) For vessels carrying more than 12 passengers for hire or providing on board overnight passenger accommodations, smoke detectors shall be installed in each enclosed passenger area.

R651-206-6. Additional Equipment Requirements for Vessels Carrying Passengers for Hire.

(1) Emergency communications equipment.

(a) An outfitting company shall have appropriate communication equipment for contacting emergency services, or, have a policy and emergency communications protocols that describe the quickest and most efficient means of contacting emergency services, taking into consideration the remoteness of the area in which the vessel will be operated.

(b) For vessels traveling in a group, this requirement can be met by carrying one communication device in the group.

(2) Carbon monoxide detectors shall be provided in each enclosed passenger area.

(3) Vessels carrying more than six passengers for hire and operating at a distance greater than one mile from shore shall provide the following:

(a) An appropriate number of life rafts or other lifesaving apparatus(s);

(b) A minimum of three visual distress signals that are approved for day and night use.

(5) Navigation equipment.

(a) Each vessel shall carry a map or chart of the water body and a compass or GPS unit that is in good and serviceable condition.

(b) For vessels traveling in a group, this requirement can be met by carrying a map or chart and a compass or GPS unit in the group.

(c) River trip vessels are only required to carry a map of the water body or river or river sections.

(6) Lines, straps and anchorage.

(a) Each vessel shall be equipped with at least one suitable anchor and an appropriate anchorage system, respective of the body of water on which the vessel will be operating. Any line, when attached to an anchor, shall be attached by an eye splice, thimble and shackle. On lakes and/or reservoirs, low capacity vessels and racing shells are exempt from this requirement.

(b) Vessels operating on rivers are exempt from carrying an anchor, but shall have sufficient lines to secure the vessel to shore.

(c) Lines and straps utilized for anchorage, mooring and maintaining vessel structural integrity shall be in good and serviceable condition.

(7) At least one portable, battery-operated light per trip leader or guide shall be on board, in good and serviceable condition and readily accessible.

(8) First Aid Kit.

(a) Each vessel shall have on board, an adequate first aid kit, stocked with supplies respective to the number of passengers carried on board, and the nature of boating activity in which the vessel will be engaged.

(b) For vessels traveling in a group, this requirement can be met by carrying one first aid kit in the group.

(9) Identification of outfitting company.

(a) An outfitting company shall prominently display its name on the hull or superstructure of the vessel.

(b) The display of an outfitting company's name shall not interfere with any required numbering, registration or documentation display.

(c) If another governmental agency prohibits the display of an outfitting company's name on the exterior of a vessel, the name shall be displayed in a visible manner that does not violate the agency's requirements.

(10) Marine toilets and sanitary facilities.

(a) Each vessel carrying more than six passengers for hire shall be equipped with a minimum of one marine toilet and washbasin sanitary facilities, except for vessels where suitable privacy enclosures are not practical.

(b) The toilet and washbasin shall be connected to a permanently installed holding tank that allows for dockside pumpout at approved sanitary disposal facilities. Vessels that do not have access to dockside pumpout facilities may carry a portable marine toilet and washbasin to meet this requirement.

(c) For vessels traveling in a group, this requirement can be met by carrying one marine sanitation device in the group.

(d) Marine toilets and washbasins shall be maintained in a good and serviceable, sanitary condition.

(e) A vessel that carries more than 49 passengers shall have at least two marine toilets and washbasins, one each for men and women.

(f) A vessel operating on a trip or excursion with a duration of one hour or less, or operating on a river, is not required to be equipped with a marine toilet or washbasin.

R651-206-7. Towing Vessels for Hire Requirements.

(1) Any person or entity that provides the service of towing vessels for hire on waters of this state, shall make application with the Division as an outfitting company.

(2) A vessel engaged in the activity of towing vessels for hire shall comply with the dockside and dry dock vessel maintenance and inspection requirements, plus the additional equipment requirements described in this section.

(3) Any conditions of a contract, special use permit, or other agreement with a person or entity that is towing vessels for hire, shall not supersede the boating safety and assistance activities of a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any other person providing "Good Samaritan" service to vessels needing or requesting assistance.

(4) Any vessel receiving assistance from a state park ranger, other law enforcement officer, emergency and search and rescue personnel, a member of the U.S. Coast Guard Auxiliary, or any person providing "Good Samaritan" service need not be turned over to, or directed to a person or entity registered with the Division and authorized to tow vessels for hire, unless the operator or owner of the vessel receiving assistance specifically requests such action.

(5) A trip leader or guide towing vessels for hire shall immediately notify a law enforcement officer of any vessel they assist, if the person reasonably believes the vessel being assisted was involved in a reportable boating accident or the operator or occupants pose a threat to themselves or others.

(6) A trip leader or guide towing vessels for hire shall not perform an emergency rescue unless he reasonably believes immediate emergency assistance is required to save the lives of persons, prevent additional injuries to persons onboard a vessel, or reduce damage to a vessel, and a state park ranger, other law enforcement officer, emergency and search and rescue personnel, or a member of the U.S. Coast Guard Auxiliary is not immediately available, or a state park ranger, other law enforcement officer, or emergency and search and rescue personnel make such a request for emergency assistance.

(7) The owner of a vessel engaged in towing vessels for hire shall carry general liability insurance. The insurance coverage shall be determined by the permitting agency.

(8) A vessel engaged in towing vessels for hire, shall be a minimum of 21 feet in length and have a minimum total of a 150 hp gasoline engine(s) or a 90 hp diesel engine(s). The towing vessel should be as large as or larger than the average vessel it will be towing.

(9) An outfitting company shall provide appropriate types of training for each of its trip leaders or guides. Each trip leader or guide shall conduct a minimum of five training evolutions of towing a vessel each year, with at least one evolution being a side tow.

(10) The trip leader or guide and any passengers on board a vessel engaged in towing vessels for hire, shall wear a PFD at all times. The trip leader or guide is responsible for all occupants of a vessel being towed wear a properly fitted PFD for the duration of the tow.

(11) An outfitting company engaged in towing vessels for hire shall keep a log of each tow or vessel assist. The towing vessels for hire log of activities shall include:

(a) Assisted vessel's assigned bow number.

(b) Name of assisted vessel's owner or operator, including address and phone number.

(c) Number of persons on board the assisted vessel.

(d) Nature of assistance.

(e) Date and time assistance provided.

(f) Location of the assisted vessel.

(g) The trip leader or guide of the vessel towing for hire shall make appropriate radio or other communications of the above actions with a person on land preferable at the outfitting company's place of business.

(h) Upon request of an agent of the Division, an outfitting company shall provide the Division with a copy of a towing vessels for hire log.

(12) Additional equipment requirements for vessels towing for hire:

(a) PFDs.

(i) Shall carry a sufficient number of Wearable PFDs, approved for the activity engaged in, for all persons on board a towed vessel.

(ii) Shall carry a minimum of two throwable PFDs, one of which shall be a ring life buoy.

(b) Shall be equipped with a depth finder.

(c) Shall be equipped with a tow Line.

(i) Shall be a minimum of 100 feet of 5/8" line with a tow bridle.

(ii) Towing vessel shall be equipped with a towing post or reinforced cleats.

(d) Vessel shall carry a dewatering pump with a minimum capacity of 25 gallons per minute, to be used to dewater other vessels.

(e) If a vessel is towing for hire between sunset and sunrise, the vessel shall carry the following pieces of equipment.

(i) A white spot light with a minimum brightness of 500,000 candle power.

(ii) It is recommended that a vessel be equipped with electronic RADAR equipment.

(f) Vessel shall carry a loudhailer, speaker, or other means of communicating with another vessel from a distance.

(g) Vessel shall carry the following equipment, in addition to the equipment required for vessels carrying passengers for hire.

(i) A knife capable of cutting the vessel's towline;

(ii) A boat hook;

(iii) A minimum of four six-inch fenders;

(iv) Binoculars;

(v) A jump starting system;

(vi) A tool kit and spare items for repairs on assisting vessel; and

(vii) Damage control items for quick repairs to another vessel.

R651-206-8. Maintenance and Inspections Program of Vessels Carrying Passengers for Hire.

(1) Each outfitting company carrying passengers for hire shall have a current copy of the Maintenance and Inspection Program for Carrying Passengers for Hire. The outfitting company shall comply with all the necessary sections of the Program.

(2) The Division shall request the formation of a safety committee by the Boating Advisory Council as defined in R651-202-1 for the purpose of overseeing, maintaining, and recommending any substantive changes to the program.

(i) The members of this safety committee shall be selected and directly report to the Boating Advisory Council.

(ii) This committee shall consist of five members:

(a) two members representing the industry for non-float trip vessels in Utah;

(b) two members representing the industry for float trip vessels in Utah;

(c) and one member representing a state or federal agency responsible for managing or regulating the activity of carrying passengers for hire in Utah.

(iii) This committee shall convene when the Boating Advisory Council hears a proposal that requests substantive changes to the program or the Division's Boating Program Coordinator requests an evaluation of the program.

(iv) The Division's Boating Program Coordinator shall have authority to assign or delegate responsibilities among the safety committee members.

R651-206-9. Exemptions to R651-206.

(1) Owners and employees of a migratory bird production area created under Title 23, Chapter 28, Migratory Bird Production Area and operating within that Migratory Bird Production Area shall not be considered an outfitting company.

(2) The Director or his designee may exempt a charitable organization or volunteer, meaning a person donating service without pay or other compensation, from an outfitting company's licensing requirements, upon submission of a written application and request for hearing, pursuant to the procedures set forth in Utah Code Ann. 63G-4-201(1),Utah Admin. Code R651-101 et seq. and as further set forth in these rules. The determination shall be made after a hearing, and upon showing by a preponderance of the evidence.

R651-206-10. Enforcement.

(1) Outfitter Violations

(a) Suspension, Revocation or Denied License

(i) Pursuant to the procedures set forth in Utah Code Ann. 63G-4-201(1),Utah Admin. Code R651-101 et seq. and these rules an outfitting company's annual license with the Division may be suspended, denied, or revoked for a length of time determined by the Division director or designee, if one of the following occurs:

(ii) The outfitting company's, or agent's negligence caused personal injury or death as determined by due process of law;

(iii) The outfitting company or agent is convicted of three violations of Title 73, Chapter 18, or rules promulgated thereunder during a calendar year period;

(iv) False or fictitious statements were certified or false qualifications were used to qualify a person authorized by the outfitting company as a trip leader or guide;

(v) The Division determines that the outfitting company intentionally provided false or fictitious statements or qualifications when making application with the Division;

(vi) The Division determines that the outfitting company intentionally provided false statements or qualifications when certifying the condition of a vessel or equipment;

(vii) The outfitting company has utilized a private trip permit for carrying passengers for hire and has been prosecuted by the issuing agency and found guilty of the violation;

(viii) The outfitting company used a non-authorized trip leader or guide while engaging in carrying passengers for hire; or

(ix) The outfitting company is convicted of violating a resource protection regulation or public safety regulation in effect by the respective land managing and/or access permitting agency.

(2) Guide or Trip Leader violations.

(a) Pursuant to the procedures set forth in Utah Code Ann. 63G-4-201(1),Utah Admin. Code R651-101 et seq. and these rules, an outfitting company's annual license with the Division may be suspended, denied, or revoked for a length of time. The privilege to guide or carry passengers for hire may be suspended, revoked, or denied by the Division or the outfitting company if a trip leader or guide is convicted of the following offence(s):

(i) Three violations of the Utah Boating Act, Title 73, Chapter 18, or rules promulgated thereunder driving under the influence or reckless driving while carrying passenger for hire, as set forth in the Traffic Code, Utah Code Ann. 41-6a-501 and 53-3-231;

(ii) The Division determines that the trip leader or guide intentionally provided false or fictitious statements or qualifications to obtain authorization to carry passengers for hire by an outfitting company.

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R652. Natural Resources; Forestry, Fire and State Lands.
R652-70. Sovereign Lands.
R652-70-100. Authority.

This rule provides for the management and classification of the surface of sovereign lands in Utah, which include but are not limited to, the beds of Bear Lake, the Great Salt Lake, Utah Lake, the Jordan River, the Bear River from the Amalga Bridge to the Great Salt lake, the summer channel of the Bear River from the Utah-Idaho border to the Amalga Bridge, and portions of the beds of the Green and Colorado Rivers. Should any other lakes or streams, or portions thereof, be declared navigable by the courts, the beds of such lakes or streams would fall under the authority of these rules. It also provides for the issuance of special use leases, general permits and easements on sovereign lands and the procedures and fees necessary to obtain these rights of use. This rule implements Article XX of the Utah Constitution, and Section 65A-10-1.

R652-70-200. Classification of Sovereign Lands.

Sovereign lands may be classified based upon their current and planned uses. A synopsis of some possible classes and an example of each class follows. For more detailed information, consult the management plan for the area in question.

1. Class 1: Manage to protect existing resource development uses. The Utah State Park Marinas on Bear Lake and on Great Salt Lake are areas where the current use emphasizes development.

2. Class 2: Manage to protect potential resource development options. For example, areas adjacent to Class 1 areas which have the potential to be developed.

3. Class 3: Manage as open for consideration of any use. This might include areas which do not currently show development potential but which are not now, or in the foreseeable future, needed to protect or preserve the resources.

4. Class 4: Manage for resource inventory and analysis. This is a temporary classification which allows the division to gather the necessary resource information to make a responsible classification decision.

5. Class 5: Manage to protect potential resource preservation options. Sensitive areas of wildlife habitat may fall into this class.

6. Class 6: Manage to protect existing resource preservation uses. Cisco Beach on Bear Lake is an example of an area where the resource is currently being protected.

R652-70-300. Categories of Leases, Permits, and Easements.

The division may issue Special Use Leases for terms of one to 51 years, and General Permits for terms of one to 30 years for surface uses, excluding grazing uses on sovereign lands. Grazing permits and mineral leases are considered separately under the range resource management rules and the mineral lease rules. Easement terms and conditions shall be prescribed in the particular easement document. Any lease, permit, or easement, issued by the division on sovereign lands, is subject to a public trust; and any lease, permit, or easement may be revoked at any time if necessary to fulfill public trust responsibilities.

1. Special Use Leases: Uses may include the following:

(a) Commercial: Income producing uses such as marinas, recreation piers or facilities, docks, moorings, restaurants, or gas service facilities.

(b) Industrial: Uses such as oil terminals, piers, wharves, mooring.

(c) Agricultural/Aquacultural: Any use which utilizes the bed of a navigable lake or stream to grow or harvest any plant or animal.

(d) Private Uses: Non-income producing uses such as piers, buoys, boathouses, docks, water-ski facilities, houseboats, moorings, not qualifying for a general permit under R652-70-300(2)(c).

2. General Permit: Uses may include the following:

(a) Public agency uses such as public roads, bridges, recreation areas, or wildlife refuges having a statewide public benefit.

(b) Public agency protective structures such as dikes, breakwaters and flood control workings.

(c) Private recreational uses such as any facility for the launching, docking or mooring of boats which is constructed for the use of the adjacent upland owner.

(d) Irrigation pumps or irrigation pump structures installed for the use of the adjacent upland owner, or with written permission from the adjacent upland owner.

3. Easements: Applications for easements not meeting the criteria of R652-70-300(2) shall follow the rules and procedures outlined in the division's rules governing the issuance of easements.

R652-70-400. Lease and General Permit Provisions.

The provisions for special use leases and general permits on sovereign lands shall be the same as those found in R652-30 Special Use Leases.

R652-70-500. Lease and General Permit Payments, and Audits.

The rules for lease and general permit payments and audits on sovereign lands are the same as those found in R652-30 Special Use Leases.

R652-70-600. Lease Rates.

1. Procedures for determining fair market value for surface leases are found in R652-30-400. Where these general procedures can not readily be applied, fair market value for sovereign lands may also be determined by multiplying the market value, as determined by the county assessor or, if none, then as determined by the State Tax Commission, of the adjacent upland by 30%.

2. Procedures for determining lease rates are described in R652-30 Special Use Leases. Lease rates for sovereign lands may also be determined by multiplying the fair market value, as determined by R652-70-600(1), by the current division - determined interest rate and then prorating that amount by a season of use adjustment as determined by the division.

3. Regardless of lease rate determined by R652-70-600(2), no Special Use Lease shall be issued for an amount less than the minimum lease rate determined by the division.

R652-70-700. Permit Rates.

1. An application fee may be waived if it is for a public agency's use of sovereign lands and if the director determines that the agency use enhances public use and enjoyment of sovereign land.

2. A rental fee may be waived if it is for a public agency's use of sovereign lands and if the director determines that a commensurate public benefit accrues from the use.

3. The division shall establish rental rates for any private recreational use of sovereign land as outlined under R652-70-300(2)(c). The adjacent upland owner shall also pay to the division, in accordance with its current fee schedule, the division's expenses in issuing a general permit.

4. The director may negotiate a filing fee for general permits with impacted governmental agencies. This would be a one-time package fee for currently existing uses of sovereign lands. Future application for use will be treated under the existing fee schedule or may be authorized by the amendment of an existing permit, after payment of an amendment fee pursuant to R652-4.

5. The director may enter into agreements with state agencies having regulatory authority on navigable lakes and

rivers to allow these agencies to authorize public agency use of sovereign land provided that:

(a) the use is consistent with division policies and coordinated with other activities of the division;

(b) the applicant has an existing general permit in good standing under which the proposed use can be placed pursuant to R652-70-700(3);

(c) a commensurate public benefit accrues from the use, as indicated by criteria provided in the agreement;

(d) the proposed use meets the criteria required by the state agency; and

(e) the proposed use is consistent with the principles of multiple use and sustained yield as defined in Section 65A-1-1.

R652-70-800. Applicant Qualifications.

Any person who is qualified to do business in the state of Utah, and is not in default under the laws of the state of Utah relative to qualifications to do business within the state, and not in default on any previous agreements with the division, shall be a qualified applicant for a lease, permit, or easement on sovereign land.

R652-70-900. Applications.

Application for a Special Use Lease or General Permit shall be on forms provided by the division or exact copies thereof. Applications must be accompanied by plans which include references to the relationship of the proposed use to the various water surface elevations of the lake or stream as well as the relationship of the proposed use to the lake or stream boundary and vicinity at the site of the proposed use. The application must also include a description of the proposal's relationship to the classification system found in the appropriate master plan and outlined in R652-70-200. Where applicable, applications must be accompanied by a copy of local building permits, a copy of the Army Corps of Engineer permit, and a copy of any additional permits required by the Division of Parks and Recreation.

R652-70-1000. Deficient Applications.

Incomplete applications, and applications not accompanied by filing fees when required, shall not be accepted for filing. The division will notify the applicant of any deficiency.

R652-70-1100. Additional Approvals.

Nothing in these rules shall excuse a person making an application for a general permit, lease, or easement from obtaining any additional approvals lawfully required by any local, state, or federal agency, including, local zoning boards, or any other local regulatory entity, the Division of Parks and Recreation, the State Engineer, the Division of Oil, Gas and Mining, the United States Army Corps of Engineers, the United States Coast Guard, or any other local, state, or federal agency.

R652-70-1200. Dredging and Filling Requires Approval.

The placing of dredged or fill material, refuse or waste material, intended as or becoming fill material, on the beds of any navigable water in the state of Utah shall require written approval by the division.

R652-70-1300. Excavated or Dredged Channels, and Basins.

Excavated or dredged channels or basins will only be authorized by the director on a showing of reasonable necessity. Material removed during excavation or dredging shall be carried and deposited at a point above normal flood water levels, unless the applicant can satisfy the director that an alternative plan for disposition of the material is feasible and will not have an unreasonably adverse effect upon other values, including water quality. Additional conditions may be stipulated in the permit.

R652-70-1400. Approval Not Required to Repair Existing Facilities.

Approval is not required by the division to clean, maintain, or to make repairs to existing facilities authorized by a permit or lease in good standing. Approval is required to replace, enlarge, or extend the facilities, or for any activity which would disturb the surface of the bed of any navigable water, or which would cause any rock or sediment to enter a navigable body of water.

R652-70-1500. Docks, Piers, and Similar Structures.

All docks, piers, or similar structures shall be constructed to protrude as nearly as possible at right angles to the general shoreline and to not interfere with docks, piers, or similar structures presently existing or likely to be installed to serve adjacent facilities. The structures may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water during the normal low water period.

R652-70-1600. Retaining Walls and Bulkheads.

Retaining walls and bulkheads will not be authorized below the ordinary high water mark without a showing of extraordinary need.

R652-70-1700. Breakwaters and Jetties.

1. Breakwaters and jetties will not be authorized below the normal low water mark without a showing of extraordinary need. This shall not apply to floating breakwaters secured by piling or other approved anchoring devices and used to protect private property from recurring wind, wave, or ice damage.

2. The director may approve streambank stabilization practices concurrently with the issuance of streambed alteration permits issued by the Division of Water Rights if the director determines that the proposed practice is consistent with public trust management.

R652-70-1800. Overhead Clearance.

Overhead clearance between the ordinary high water mark and any structure, pipeline, or transmission line must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the easement.

R652-70-1900. Camping and Motor Vehicles.

1. The division may restrict camping on the beds of navigable lakes and rivers. Except as provided elsewhere in this rule, motor vehicles are prohibited from driving or parking on these lands at all times, except that those areas supervised by the Division of Parks and Recreation or other enforcement entity, and posted as open to vehicle use, will be open to vehicle use.

2. Persons found in violation of 65A-3-1(1)(g-h) are subject to the criminal penalties set forth in 76-3-204 and 76-3-301 as determined by the court.

R652-70-2000. Existing Uses.

Every person using sovereign lands without a current permit or lease shall, within 60 days of notification by the division, submit an application as provided under R652-70-900.

R652-70-2100. Authorization of Existing Uses.

Authorization of the following uses may be recognized following compliance with Section R652-70-2000:

1. Uses existing on December 31, 1968, whether they were such as to be entitled to issuance of a permit or not.

2. Rights previously granted an applicant by the Division of Forestry, Fire and State Lands.

R652-70-2200. Violations.

The following acts or omissions shall subject a person to

a civil penalty as provided in Section 65A-3-1(3):

1. A violation of the provisions of Section 65A-3-1(1-2);

2. A violation of any special order of the director applicable to the bed of a navigable water; or

3. Refusal to cease and desist from any violation in regards to the bed of a navigable water after having been notified to do so, in writing, by the director by personal service or certified mail, within the time provided in the notice, or within 30 days of service of the notice if no time is provided.

R652-70-2300. Management of Bear Lake Sovereign Lands.

(1) Lands lying below the ordinary high water mark of Bear Lake as of the date of statehood are owned by the state of Utah and shall be administered by the division as sovereign lands.

(2) Upon application for a specific use of state lands near the boundary of Bear Lake, or in the event of a dispute as to the ownership of the sovereign character of the lands near the boundary of Bear Lake, the division may evaluate all relevant historical evidence of the lake elevation, the water erosion along the shoreline, the topography of the land, and other relevant information to determine the relationship of the land in question to the ordinary high water mark.

(3) In the absence of evidence establishing the ordinary high water mark as of the date of statehood, the division shall administer all the lands within the bed of Bear Lake and lying below the level of 5,923.65 feet above mean sea level, Utah Power and Light datum, as being sovereign lands.

(4) The division, after notice to affected state agencies and any person with an ownership in the land, may enter into agreements to establish boundaries with owners of land adjoining the bed of Bear Lake; provided that the agreements shall not set a boundary for sovereign lands below the level of 5,923.65 feet above mean sea level.

(5) The established speed limit is 10 miles per hour.

(6) Camping and use of motorized vehicles are prohibited between the hours of 10 p.m. and 7 a.m.

(7) No campfires or fireworks are allowed.

(8) The use and operation of motor vehicles on sovereign land at Bear Lake shall be governed by Utah Code 65A-3-1 and division plans.

(9) Pursuant to 65A-2-6(2), to obtain a permit to launch or retrieve a motorboat on states lands surrounding Bear Lake, a person shall:

(a) Complete the online Mussel-Aware Boater Program and receive a multiple use Decontamination Certification Form valid through the end of the calendar year as required and provided by the Utah Division of Wildlife Resources as part of the Aquatic Invasive Species Program.

(10) A person may only purchase one (1) beach launching permit annually.

(a) The permit is valid for the calendar year within which the permit is issued.

(b) The permit does not authorize launching or retrieving a motorboat or parking or operating a motor vehicle in an area designated as closed to motorized use.

(c) Lost or stolen permits may be replaced at the established fee.

(11) The division may enter into an agreement with a local governmental entity or state agency to issue the beach launching permits in compliance with the requirements listed above.

(a) The agreement will allow the entity or agency to establish a minimal administrative fee not to exceed $25 for issuing the beach launching permit.

(12) The division or the entity or agency with an agreement to issue the beach launching permit may revoke a permit or deny an applicant a permit to launch under the following circumstances:

(a) The applicant fails to comply with the beach launching permit requirements and stipulations listed above (R652-70-2300(9)(a-b) and R652-70-2300(10)(a-c))

(b) the applicant fails to acquire a lease or permit for structures placed on sovereign lands that may include but is not limited to buoys, piers, docks (with the associated anchors/weights) or boat ramps as required in R652-70-300.

(13) Persons found in violation of 65A-3-1(1-3) are subject to the criminal penalties set forth in 76-3-204 and 76-3-301 as determined by the court as well as civil damages set forth in 65A-3-1(3).

R652-70-2400. Recreational Use of Navigable Rivers.

1. Navigable rivers include the Bear River, Jordan River, and portions of the Green and Colorado rivers. On the Green River the navigable portions presently recognized as being owned by the state are generally described as from Dinosaur National Monument to the mouth of Sand Wash, and from the mouth of Desolation Canyon at Swazey's Rapid, also known as Twelve Mile Rapid, to the north boundary of Canyonlands National Park. On the Colorado River the navigable portions presently recognized as being owned by the state are generally described as from the mouth of Castle Creek to the east boundary of Canyonlands National Park and from the mouth of Cataract Canyon to the Arizona state line. Except as specified, this Section applies to recreational navigation on these waters.

2. Each group conducting an overnight float trip is required to possess and utilize a washable, reusable toilet system that allows for disposal of solid human body waste through an authorized sewage system.

3. All garbage, trash, human waste and pet waste must be carried off the river and disposed of properly.

4. For a float trip that takes place on the Colorado River between the mouth of Castle Creek and Potash, where toilet facilities and sewage and trash receptacles are available, these provided facilities may be used in lieu of reusable toilets and carrying out garbage, trash, and waste products.

5. The maximum group size for overnight river trips is limited to 25 persons. Two or more groups may not camp together if the resulting group size exceeds 25 persons at a campsite.

6. Each group on an overnight float trip is required to possess a durable metal fire pan at least 12 inches wide, with a lip of at least 1.5 inches around its outer edge, and to utilize this fire pan to contain campfires.

7. Only driftwood may be used as firewood. No cutting of firewood is allowed except in designated areas. Ashes and charcoal accumulated during a trip must be carried out and disposed of properly.

8. A right of entry permit from the division and a special recreation permit from the federal agency managing the land through which the river flows are required for commercial float trips.

9. For the Green River from Green River State Park to Canyonlands National Park, each noncommercial group floating the river shall have in the group's possession a valid interagency noncommercial river trip permit and shall abide by its terms. This permit will be issued free of charge by the Division, the Division of Parks and Recreation, the Bureau of Land Management, authorized outfitters and authorized private landowners. Subsection R652-70-2400(8) applies to commercial trips.

KEY: sovereign lands, permits, administrative procedures
March 25, 2019 65A-10-1
Notice of Continuation March 29, 2017

R657. Natural Resources, Wildlife Resources.
R657-22. Commercial Hunting Areas.
R657-22-1. Purpose and Authority.

Under authority of Section 23-17-6, this rule provides the procedures and requirements for establishing, maintaining, and operating a CHA.

R657-22-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "CHA" means Commercial Hunting Area.

(b) "Commercial hunting area" means a parcel of land where pen-raised or propagated game birds are released for the purpose of allowing hunters to take them for a fee.

(c) "Game bird" means, for the purpose of this rule only, all species or sub-species of partridge, pheasant, and quail authorized for release on a CHA.

(d) "Operator" means a person, group, or business entity, including their agents, employees and contractors, that manages, owns, administers, or oversees the activities and operations of a CHA. Operator further includes any person, group or business entity that employs or contracts another to serve or act as an operator.

R657-22-3. Application for a Certificate of Registration.

(1)(a) A certificate of registration is required before any person may operate a CHA.

(b) An application for a CHA certificate of registration must be completed and returned to the regional office where the proposed CHA is located.

(2)(a) Any application that does not clearly and legibly verify ownership or lease by the applicant as required in Subsection (3), of all property for which the application applies shall be returned to the applicant.

(b) Discovery of property after issuance of the CHA certificate of registration, which is not approved by its owner or lessee to be included in the CHA, shall immediately void the CHA certificate of registration.

(3)(a) The application must be accompanied by:

(i) Detailed maps depicting boundaries, game bird holding facilities and ownership of all parcels within the CHA; and

(ii) Large scale maps depicting the location of the CHA relative to the nearest city or town;

(iii) evidence of ownership of the property, such as a copy of a title, deed, or tax notice that provides evidence the applicant is the owner of the property described; or

(iv) a lease agreement for the period of the CHA certificate of registration, listing the name, address and telephone number of the lessor, that provides evidence the applicant is the lessee of the hunting or shooting rights of the property described;

(v) the address of any propagation or game bird holding facility not located on the CHA property; and

(vi) the annual CHA certificate of registration fee for the first year of operation.

(4) The division may return any application that is incomplete, completed incorrectly, or that is not accompanied by the information required in Subsection (3).

(5)(a) Review and processing of the application may require up to 60 days.

(b) More time may be required to process an application if the applicant requests authorization from the Wildlife Board for a variance to this rule.

(6) Applications are not accepted for a CHA that is within 1/4 mile of any existing state wildlife or waterfowl management area without requesting a variance from the Wildlife Board.

(7) The division may deny any application or impose provisions on the CHA certificate of registration that are more restrictive than this rule in the interest of wildlife or wildlife habitat.

(8) Commercial Hunting Area certificates of registration are effective from the date issued through June 30 of the third consecutive year.

(9) The annual CHA certificate of registration fee for the second and third years of operation must be submitted when invoiced.

(10) Rights granted by a CHA certificate of registration are not transferable or assignable.

R657-22-4. Renewal of Certificate of Registration.

(1) A certificate of registration may be renewed by completing a renewal application and paying a CHA certificate of registration renewal fee.

(2)(a) Renewal applications must be completed and submitted to the division regional office in which the CHA is located by May 1 immediately prior to the June 30 expiration date identified on the current CHA certificate of registration.

(b) Any application that does not clearly and legibly verify ownership or lease by the applicant as required in Subsection (3), of all property for which the application applies shall be returned to the applicant.

(c) Discovery of property during the CHA certificate of registration period, which is not approved by its owner or lessee to be included in the CHA, shall immediately void the CHA certificate of registration.

(3)(a) The renewal application must be accompanied by:

(i) a lease agreement extending through the period of the CHA certificate of registration being applied for listing the name, address and telephone number of the lessor, that provides evidence the applicant is the lessee of the hunting or shooting rights of the property described;

(ii) an annual report as provided in Subsection R657-22-6(2); and

(iii) Detailed maps depicting boundaries, game bird holding facilities and ownership of all parcels within the CHA; and

(iv) Large scale maps depicting the location of the CHA relative to the nearest city or town;

R657-22-5. Conditions for Approval Initial and Renewal Applications.

(1) Initial and renewal applications may be denied by the division if the applicant or operator, or any of its agents or employees:

(a) violated any provision of this rule , the Wildlife Resources Code, a CHA certificate of registration, or the CHA application;

(b) obtained or attempted to obtain a CHA certificate of registration by fraud, deceit, falsification, or misrepresentation;

(c) is employed, contracted through writing or verbal agreement, assigned, or requested to apply and act as the operator by a person, group, or business entity that will directly or indirectly benefit from the CHA, but would otherwise be ineligible under this rule or by virtue of suspension under Section 23-19-9 to operate a CHA if they applied directly as the operator; or

(d) engaged in conduct that results in the conviction of, a plea of no contest to, a plea held in abeyance, or a diversion agreement to a crime of moral turpitude, or any other crime that when considered with the functions and responsibilities of a CHA operator bears a reasonable relationship to the operator's or applicant's ability to safely and responsibly operate a CHA.

(2) Initial and renewal applications may be denied by the division if CHA operations may present unacceptable risk to wildlife populations.

(3) If an application is denied, the division shall state the reasons in writing within 30 days of denial.

R657-22-6. Records and Reports.

(1) The operator of a CHA shall maintain complete and accurate records of:

(a) the number, species, and source of any game birds purchased or propagated;

(b) health certificates for all game birds purchased from outside the state of Utah;

(c) the number, species and season the game birds are released; and

(d) the number, species and season of game birds taken within the CHA boundary, including wild game birds

(e) the number, species and date of unusual mortality events due to sickness, disease, diet or unknown cause; and

(f) copies of the bill of sale issued to hunters and any other person who purchases game birds.

(2) Each operator must submit an annual report on a form provided by the division within 30 days of the close of the season or at the time of renewal, including:

(a) the number of game birds by species that were released and the total number of game birds taken by hunters or sold;

(b) the date, source, and number of the game birds purchased; and

(c) the number of game birds by species held in possession for carryover breeding stock at the close of the season.

(3) All records must be maintained on the hunting premises or the principal place of business for three years and must be available for inspection by the division.

(4) Falsifying or fabricating any record or report is prohibited and may result in forfeiture of CHA opportunities.

(5) The operator of a CHA shall notify the Division of any large mortality events due to sickness, disease, diet or unknown cause within 72 hours of the event.

R657-22-7. Boundary Marking.

(1) The CHA area must be posted:

(a) at least every 300 yards along the outer boundary of all hunted areas; and

(b) on all corners, streams, rivers, drainage divides, roads, gates, trails, rights-of-way, dikes, canals, and ditches crossing the boundary lines.

(2) Each sign used to post the property must be at least 8-1/2 by 11 inches and must clearly state:

(a) the name of the CHA as designated on the CHA certificate of registration;

(b) the words "No Trespassing"; and

(c) wording indicating the sign is located on the CHA boundary.

(3)(a) If the CHA operator fails to renew a CHA certificate of registration or a renewal application is denied, all signs shall be immediately removed.

(b) The division may remove and dispose of any signs that are not removed within 30 days after the termination of the CHA certificate of registration.

(4) Commercial hunting area activities may only be conducted on property properly posted and specifically authorized in the CHA certificate of registration.

(5) Commercial hunting area operators may not post or otherwise restrict public access on public roads, right-of-ways, or easements within the CHA.

R657-22-8. Acreage Requirements.

(1)(a) The minimum acreage accepted for a CHA is 160 acres in a single contiguous tract.

(b) Disjunct areas may be included under a single CHA COR if each area is 160 acres or larger and all areas can be contained within an circular area 10 miles in diameter.

(b) The maximum acreage accepted for a CHA is 5,760 acres.

(2) A CHA may not be established closer than 1/4 mile of a wildlife management area, waterfowl management area, or migratory bird refuge unless otherwise allowed by a variance of the Wildlife Board.

R657-22-9. Bill of Sale Required.

(1) The operator of a CHA shall issue a bill of sale to each person who has taken a game bird from the CHA.

(2) The bill of sale shall be issued prior to the transportation of any bird from the CHA.

(3) The bill of sale must include:

(a) the person's name;

(b) the date the game birds were taken or purchased;

(c) the species, number of game birds, and sex of the game birds; and

(d) the name of the CHA where the game birds were taken or purchased.

R657-22-10. Importation.

(1) A CHA certificate of registration allows the importation of live game birds provided the operator first obtains a valid certificate of veterinary inspection covering each imported game bird, and further receives an import permit from the Utah Department of Agriculture and Food consistent with the requirements of Rule R58-1.

(2) The health certificate must contain an entry permit number from the Department of Agriculture as provided in Section R58-1-4.

R657-22-11. Disease Protocol.

(1) The division may:

(a) investigate any reported disease and take any necessary action to control a contagious or infectious disease affecting domestic animals, wildlife, or public health; or

(b) order a veterinarian or certified pathologist's report of a suspected disease at the operator's expense, and may order quarantine, immunization, testing, or other sanitary measures.

(2)(a) The division may order the destruction and disposal of any game bird found to have an untreatable disease which poses a potential threat or health risk to domestic poultry, humans, or wildlife, as determined by the division, the Department of Agriculture, or the Department of Health.

(b) Actions taken pursuant to Subsection (a) shall be:

(i) at the operator's expense; and

(ii) accomplished by following procedures acceptable to the division that ensure the disease is not transmitted to wildlife, domestic animals, or humans.

(3)(a) Commercial hunting area operators must take reasonable precautions to prevent and control the spread of infectious diseases among pen-raised game birds under their control including the requirements as provided in Subsection (b) and Section R657-22-10.

(b) Commercial hunting area operators must obtain a statement from a veterinarian before release that the birds have tested negative for Mycoplasma gallisepticum, Mycoplasma synoviae, Avian Influenza virus and Salmonella pullorum or come from a source flock that participates in the National Poultry Improvement Plan (NPIP).

(c) Commercial hunting area operators who have a current CHA certificate of registration must comply with the requirement in Subsection (b) within six months from the effective date of this rule.

R657-22-12. Authorized Species.

The only game birds that may be released or propagated under the authority of a CHA certificate of registration are species or subspecies of partridge, pheasant, or quail specifically authorized on a certificate of registration.

R657-22-13. Inspection of Game Birds, Premises, and Records.

(1)(a) Certificates of registration are issued upon the express condition that the operator agrees to permit the division and public health and safety officials to enter and inspect the premises, facilities, and all required records and health certificates to ensure the CHA is in compliance with this rule and other applicable laws.

(b) Commercial hunting area operators must allow the division and public health and safety officials reasonable access to conduct the inspections authorized in Subsection (1)(a).

(2) Inspections shall be made during reasonable hours.

R657-22-14. Restrictions on Release and Harvest.

(1)(a) Except as provided in Subsection R657-22-16(2)(e), game birds raised or held in possession under this rule may be released only on the CHA property.

(b) Each game bird released must be healthy, capable of flight, free of disease and suitable for human consumption.

(c) A person may not retard or restrict a game bird's ability to fly or run during hunting activities in any manner other than dizzying or tucking heads under wings before release.

(2) A minimum of 100 game birds of each authorized species, shall be released on the CHA during the current operating year.

(3)(a) Operators may not allow the harvest of more than 85% of each species released, except as provided in Subsection (b).

(b) There is no limit to the percentage of game birds that may be harvested that are not, in the opinion of the division, established as a wild population in the vicinity of the CHA. Any variance to Subsection (a) shall be indicated on the CHA certificate of registration.

(4) Only those game birds obtained from the following sources may be released or held in possession on a CHA:

(a) an aviculturist, certified as provided in Rule R657-4;

(b) a CHA, certified under this rule; or

(c) a source located outside of Utah provided the game birds are imported as provided in Rule R58-1.

(5) Protected wildlife not authorized for release on the CHA may be hunted only during their respective seasons as provided in the rules and proclamations of the Wildlife Board.

R657-22-15. Recapture.

(1)(a) Trapping game birds alive or retrapping game birds that have been released is permitted only:

(i) within the CHA area boundaries;

(ii) from September 1 through April 2; and

(iii) for wild species listed on the CHA certificate of registration as not established in the area.

(b) Any game bird that escapes from the CHA becomes the property of the state of Utah and may not be recaptured.

(2) Any game bird trapped alive may not be recounted or added to the total number of birds released when computing the number which may be taken as provided in Subsection R657-22-14(3).

R657-22-16. Propagation.

(1) The CHA certificate of registration allows the propagation of those species of game birds held in possession as indicated on the CHA certificate of registration.

(2) Any game birds held in possession under this rule must be released on the CHA or may be sold:

(a) to a private wildlife farm, certified as provided in Rule R657-4;

(b) a CHA, certified under this rule;

(c) to a person located outside of Utah;

(d) to a person for consumption; or

(e) for use in training dogs or the sport of falconry as provided in Rule R657-46.

(3) Authorization for the possession of live game birds for any primary purpose other than being released to allow hunters to take them for a fee may be obtained under the provisions of Rule R657-4 or Rule R657-46.

R657-22-17. Season Dates.

(1) Hunting on CHA areas is permitted from September 1 through March 31.

(2) If September 1 falls on a Sunday, the season will open on August 31.

R657-22-18. Hunting Hours and Hunter Requirements.

(1) Game birds may be taken on a CHA only one-half hour before sunrise through one-half hour after sunset.

(2) Any person hunting within the state on any CHA must meet requirements as provided in Section 23-17-6.

R657-22-19. Suspension.

The division may suspend a CHA certificate of registration for a CHA as authorized under Section 23-19-9 and Rule R657-26.

KEY: game birds, wildlife, wildlife law
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Notice of Continuation May 3, 2017 23-17-6

R657. Natural Resources, Wildlife Resources.
R657-33. Taking Bear.
R657-33-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, of the Utah Code, the Wildlife Board has established this rule for taking and pursuing bear.

(2) Specific dates, areas, number of permits, limits and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking and pursuing bear.

R657-33-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Accompany" means at a distance within which visual contact and verbal communication are maintained without the assistance of any electronic device.

(b) "Bait" means any lure containing animal, mineral or plant materials.

(c) "Baiting" means the placing, exposing, depositing, distributing or scattering of bait to lure, attract or entice bear on or over any area.

(d) "Bear" means Ursus americanus, commonly known as black bear.

(e) "Canned hunt" means that a bear is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the bear.

(f) "Compensation" means anything of economic value in excess of $100 that is paid, loaned, granted, given, donated, or transferred to a dog handler for or in consideration of pursuing bear for any purpose.

(g) "Control permit" means a permit issued in response to bear depredation to commercial crops pursuant to R657-33-23(4).

(h) "Cub" means a bear less than one year of age.

(i) "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 attached to the device.

(j) "Dog handler" means the person in the field that is responsible for transporting, releasing, tracking, controlling, managing, training, commanding and retrieving the dogs involved in the pursuit. The owner of the dogs is presumed the dog handler when the owner is in the field during pursuit.

(k) "Evidence of sex" means the teats, and sex organs of a bear, including a penis, scrotum or vulva.

(l) "Green pelt" means the untanned hide or skin of a bear.

(m) "Harvest-objective hunt" means any hunt that is identified as harvest-objective in the hunt table of the guidebook for taking bear.

(n) "Harvest-objective permit" means any permit valid on harvest-objective units.

(o) "Harvest-objective unit" means any unit designated as harvest-objective in the hunt table of the guidebook for taking bear.

(p) "Immediate family member" means a landowner's or lessee's spouse, child, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchild, and grandchild.

(q)(i) "Limited entry hunt" means any hunt listed in the hunt table, published in the guidebook of the Wildlife Board for taking bear, which is identified as a limited entry hunt for bear.

(ii) The Wildlife Board may authorize certain limited entry hunts that span multiple seasons, identified in the guidebook for taking bear as multi-season limited entry hunts.

(iii) "Limited entry hunt" does not include harvest objective hunts or pursuit only.

(r) "Limited entry permit" means any permit obtained for a limited entry hunt, including conservation permits, expo permits, and sportsman permits.

(s) "Private lands" means any lands that are not public lands, excluding Indian trust lands.

(t) "Public lands" means any lands owned by the state, a political subdivision or independent entity of the state, or the United States, excluding Indian trust lands, that are open to the public for purposes of engaging in pursuit.

(u) "Pursue" means to chase, tree, corner or hold a bear at bay with dogs.

(v) "Restricted pursuit unit" means a bear pursuit unit where pursuit is allowed only by a dog handler who:

(i) possesses a pursuit permit issued for that particular pursuit unit;

(ii) possesses or is accompanied by a person who possesses a limited entry bear permit for the unit, and the pursuit occurs within the area and during the season established for the limited entry bear permit; or

(iii) is engaged in pursuit for compensation as provided in R657-33-26(2).

(w)(i) "Valid application" means:

(A) it is for a species for which the applicant is eligible to possess a permit;

(B) there is a hunt for that species regardless of estimated permit numbers; and

(C) there is sufficient information on the application to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (i) may still be considered valid if the application is corrected before the deadline through the application correction process.

(x) "Waiting period" means a specified period of time that a person who has obtained a bear permit must wait before applying for any other bear permit.

(y) "Written permission" means written authorization from the owner or person in charge to enter upon private lands and must include:

(i) the name and signature of the owner or person in charge;

(ii) the address and phone number of the owner or person in charge;

(iii) the name of the dog handler given permission to enter the private lands;

(iv) a brief description of the pursuit activity authorized;

(v) the appropriate dates; and

(vi) a general description of the property.

R657-33-3. Permits for Taking Bear.

(1)(a) To harvest a bear, a person must first obtain a valid limited entry bear permit, a harvest objective bear permit, or a bear control permit for a specified hunt unit as provided in the guidebook of the Wildlife Board for taking bear.

(b) Any person who obtains a limited entry bear permit or a harvest objective bear permit which allows the use of dogs may pursue bear without a pursuit permit while hunting during the season and on the unit for which the take permit is valid, provided the person is the dog handler.

(2)(i) A person may not apply for or obtain more than one bear permit per year, except:

(ii) if the person is unsuccessful in the drawing administered by the division under R657-62, the person may purchase a permit available outside of the drawing; and

(iii) a person may acquire more than one bear control permit as described in R657-33-23(4).

(3) Any bear permit purchased after the season opens is not valid until three days after the date of purchase.

(4) Residents and nonresidents may apply for and receive limited entry bear permits, and may purchase harvest objective bear permits and bear pursuit permits.

(5)(a) A person must complete a mandatory orientation course prior to applying for or obtaining a limited entry, harvest objective, or bear pursuit permit.

(b) The orientation course is not required to receive a bear control permit under R657-33-23(4).

(6) To obtain a limited entry, harvest objective, or bear pursuit permit, a person must possess a valid Utah hunting or combination license.

R657-33-4. Permits for Pursuing Bear.

(1)(a) To pursue bear without a limited entry or harvest objective bear permit, the dog handler must:

(i) obtain a valid bear pursuit permit from a division office or through the drawing administered pursuant to R657-62; or

(ii) possess the documentation and certifications required in R657-33-26(2) to pursue bear for compensation.

(b) A bear pursuit permit or exemption therefrom does not allow a person to kill a bear.

(2) Residents and nonresidents may purchase bear pursuit permits consistent with the requirements of this rule and the guidebooks of the Wildlife Board.

(3) To obtain a bear pursuit permit, a person must possess a valid Utah hunting or combination license.

R657-33-5. Hunting Hours.

Bear may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

R657-33-6. Firearms, Archery Equipment, Crossbows, and Airguns.

(1) For limited entry and harvest objective hunts identified as an "any legal weapon hunt" in the Wildlife Board's guidebook for taking bear, a person may use the following to take bear:

(a) any firearm not capable of being fired fully automatic, except a firearm using a rimfire cartridge;

(b) archery equipment meeting the following requirements:

(i) the minimum bow pull is 30 pounds at the draw or the peak, whichever comes first;

(ii) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(iii) expanding arrowheads cannot pass through a 7/8 inch ring when expanded; and

(iv) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock;

(c) a crossbow meeting the following requirements:

(i) a minimum draw weight of 125 pounds;

(ii) a positive mechanical safety mechanism; and

(iii) an arrow or bolt that is at least 16 inches long with:

(A) a fixed broadhead that is at least 7/8 inch wide at the widest point; or

(B) an expandable, mechanical broadhead that is at least 7/8 inch wide at the widest point when the broadhead is in the open position; and

(d) an airgun used to hunt bear must:

(i) be pneumatically powered;

(ii) be pressurized solely through a separate charging device; and

(iii) may only fire a bolt or arrow:

(A) no less than 16 inches long;

(B) with a fixed or expandable broadhead at least 7/8 inch wide at its widest position; and

(C) traveling no less than 400 feet per second at the muzzle.

(2) Arrows and bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(3)(a) A person who has obtained a limited entry bear archery permit may not use, possess, or be in control of a firearm, crossbow, draw-lock, or airgun while in the field during an archery bear hunt.

(b) "Field" for purposes of this subsection, 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 bear 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.

R657-33-7. Traps and Trapping Devices.

(1) Bear may not be taken with a trap, snare or any other trapping device, except as authorized by the division.

(2) Bear accidentally caught in any trapping device must be released unharmed.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a bear from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

R657-33-8. State Parks.

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all area park facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns, crossbows, archery tackle, and airguns is prohibited within one quarter mile of the above stated areas.

R657-33-9. Prohibited Methods.

(1) Bear may be taken or pursued only during open seasons and using methods prescribed in this rule and the guidebook of the Wildlife Board for taking and pursuing bear. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare, or in any way harm or transport bear.

(2) After a bear has been pursued, chased, treed, cornered, legally baited or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

R657-33-10. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is probable cause of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code,

provided the person is not utilizing the concealed weapon to hunt or take wildlife.

R657-33-11. Party Hunting.

A person may not take a bear for another person.

R657-33-12. Use of Dogs.

(1) Dogs may be used to take or pursue bear only during authorized hunts as provided in the guidebook of the Wildlife Board for taking bear.

(2) A dog handler may pursue bear in a unit and during a season permitting the use of dogs, provided he or she possesses:

(a) a valid limited entry or harvest objective bear permit issued to the dog handler;

(b) a valid bear pursuit permit; or

(c) the documentation and certifications required in R657-33-26(2) to pursue bear for compensation.

(3) When dogs are used to pursue a bear, the licensed hunter intending to take the bear must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take a bear during a restricted pursuit season or when there is not an open pursuit season, the dog handler must have:

(a) a limited entry or harvest objective bear permit authorizing the use of dogs issued to the dog handler for the unit being hunted;

(b)(i) a valid bear pursuit permit; and

(ii) be accompanied, as provided in Subsection (3), by a hunter possessing a limited entry or harvest objective bear permit authorizing the use of dogs for the unit being hunted; or

(c)(i) the documentation and certifications required in R657-33-26(2) to pursue bear for compensation; and

(ii) be accompanied, as provided in Subsection (3), by a paying client possessing a limited entry or harvest objective bear permit authorizing the use of dogs for the unit being hunted.

(5) A dog handler may pursue bear under:

(a) a bear pursuit permit only during the season and in the areas designated by the Wildlife Board in guidebook open to pursuit;

(b) a limited entry or harvest objective bear permit authorizing the use of dogs only during the season and in the area designated by the Wildlife Board in guidebook for that permit; or

(c) the pursuit for compensation provisions in this rule only during the seasons and in the areas designated by the Wildlife Board in guidebook open to pursuit.

(6) When dogs are used to pursue or take a bear, no more than eight dogs may be used in the field at one time while pursuing during the summer pursuit or restricted pursuit seasons as established by the Wildlife Board in guidebook.

(7) A dog handler pursuing bear may retrieve dogs that separate from the pack, provided the dog handler:

(A) takes reasonable steps to keep the pack together before and during pursuit;

(B) separates from the permit holder exclusively to retrieve stray dogs and does not attempt to actively pursue bear during the retrieval process; and

(C) immediately releases any bear incidentally treed or held at bay by the stray dogs.

R657-33-13. Certificate of Registration Required for Bear Baiting.

(1) A certificate of registration for baiting must be obtained before establishing a bait station.

(2) Certificates of registration for bear baiting are issued only to holders of limited entry permits authorizing the use of bait, as provided in the guidebook of the Wildlife Board for taking bear.

(3) A certificate of registration may be obtained from the division office within the region where the bait station will be established.

(4) A new certificate of registration must be obtained prior to moving a bait station. All materials used as bait must be removed from the old site prior to the issuing of a new certificate of registration.

(5) The following information must be provided to obtain a certificate of registration for baiting: a 1:24000 USGS quad map with the bait location marked, or the Universal Transverse Mercator (UTM) or latitude and longitude coordinates of the bait station, including the datum, type of bait used and written permission from the appropriate landowner for private lands.

(6)(a) Any person interested in baiting on lands administered by the Bureau of Land Management must verify that the lands are open to baiting before applying for and receiving a certificate of registration for bear baiting.

(b) Information on areas that are open to baiting on National Forests must be obtained from district offices.

(c) Areas generally closed to baiting stations by these federal agencies include:

(i) designated Wilderness Areas;

(ii) heavily used drainages or recreation areas; and

(iii) critical watersheds.

(d) The division shall send a copy of the certificate of registration to the private landowner or appropriate district office of the land management agency that manages the land where the bait station will be placed, as identified by the hunter on the application for a certificate of registration.

(e) Issuance of a certificate of registration for baiting does not authorize an individual to bait if it is otherwise unlawful to bait under the regulations of the applicable land management agency.

(7) A handling fee must accompany the application.

(8) Only hunters listed on the certificate of registration may hunt over the bait station and the certificate of registration must be in possession while hunting over the bait station.

(9) Any person tending a bait station must be listed on the certificate of registration.

R657-33-14. Use of Bait.

(1)(a) A person who has obtained a limited entry bear archery permit may use archery tackle only, even when hunting bear away from the bait station.

(b) A person who has obtained a limited entry bear permit for a season and hunt unit that allows baiting may use firearms and archery equipment as provided in R657-33-6.

(c) Bear lured to a bait station may only be taken using firearms and archery equipment approved by the Wildlife Board and described in the guidebook for taking bear.

(d) A person may establish or use no more than two bait stations. The bait stations may only be used during periods designated in the guidebook for taking bear.

(e) Bear lured to a bait station may not be taken with dogs.

(f) Bait may not be contained in or include any metal, glass, porcelain, plastic, cardboard, or paper.

(g) The bait station must be marked with a sign provided by the division and posted within 10 feet of the bait.

(h) A dog handler may not intentionally run dogs off of a bait station while pursuing bear.

(2)(a) Bait may be placed only in areas open to hunting and only during the open seasons.

(b) All materials used as bait must be removed within 72 hours after the close of the season or within 72 hours after the person or persons, who are registered for that bait station harvest a bear.

(3) A person may use nongame fish as bait, except those listed as prohibited in Rule R657-13 and the guidebook of the Wildlife Board for Taking Fish and Crayfish. No other species

of protected wildlife may be used as bait.

(4)(a) Domestic livestock or its parts, including processed meat scraps, may be used as bait.

(b) A person using domestic livestock or their parts for bait must have in possession:

(i) a certificate of brand inspection, bill of sale, or other proof of ownership or legal possession.

(5) Bait may not be placed within:

(a) 100 yards of water or a public road or designated trail; or

(b) 1/2 mile of any permanent dwelling or campground.

R657-33-15. Tagging Requirements.

(1) The carcass of a bear must be tagged in accordance with Section 23-20-30.

(2) The carcass of a bear must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill.

(3) A person may not hunt or pursue bear after the notches have been removed from the tag or the tag has been detached from the permit.

(4) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(5) A person may not possess a bear pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

R657-33-16. Evidence of Sex and Age.

(1) Evidence of sex must remain attached to the carcass or pelt of each bear until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) The division may seize any pelt not accompanied by its skull.

R657-33-17. Permanent Tag.

(1) Each bear taken by the permit holder must be checked by a division representative within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass.

(2) A person may not possess a green pelt after the 48-hour check-in period, ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

(3) The location of harvest and a tooth sample must be provided to the division during the check-in process.

R657-33-18. Transporting Bear.

Bear that have been legally taken may be transported by the permit holder provided the bear is properly tagged and the permittee possesses a valid permit.

R657-33-19. Exporting Bear from Utah.

(1) A person may export a legally taken bear or its parts if that person has a valid permit and the bear is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a bear pelt without first obtaining a shipping permit issued by an authorized division representative.

R657-33-20. Donating.

(1) A person may donate protected wildlife or their parts to another person in accordance with Section 23-20-9.

(2) A written statement of donation must be kept with the protected wildlife or parts showing:

(a) the number and species of protected wildlife or parts donated;

(b) the date of donation;

(c) the permit number of the donor and the permanent possession tag number; and

(d) the signature of the donor.

(3) A green pelt of any bear donated to another person must have a permanent possession tag affixed.

(4) The written statement of donation must be retained with the pelt.

R657-33-21. Purchasing or Selling.

(1) Legally obtained tanned bear hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale or barter a green pelt, gall bladder, tooth, claw, paw or skull of any bear.

R657-33-22. Waste of Wildlife.

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts in accordance with Section 23-20-8.

(2) The skinned carcass of a bear may be left in the field and does not constitute waste of wildlife, however, the division recommends that hunters remove the carcass from the field.

R657-33-23. Livestock and Commercial Crop Depredation.

(1) If a bear is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take bear, may kill the bear;

(b) a landowner or livestock owner may notify the division of the depredating bear and the division may:

(i) authorize a local hunter to take a bear using a valid permit; or

(ii) request that the offending bear be removed by Wildlife Services specialist, supervised by the USDA Wildlife Program; or

(c) the livestock owner may notify a Wildlife Services specialist of the depredation, and that specialist or another agency employee may take the depredating bear.

(2) Depredating bear may be taken at any time by a Wildlife Services specialist while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating bear may be taken by those persons authorized in Subsection (1)(a) with:

(a) any weapon authorized for taking bear; or

(b) snares only with written authorization from the director of the division and subject to all the conditions and restrictions set out in the written authorization.

(i) The option in Subsection (3)(b) may only be authorized in the case of chronic depredation verified by Wildlife Services or division personnel where numerous livestock have been killed by a depredating bear.

(4)(a) The division may issue one or more control permits to an owner or lessee of private land to remove a bear causing damage to cultivated crops on cleared and planted land provided the following conditions are satisfied:

(i) the landowner or lessee contacts the appropriate division office within 72 hours of the damage occurring or provides documentation of previous chronic damage incidents;

(ii) the damaged cultivated crop is raised and utilized by the landowner or lessee for commercial gain and with a reasonable expectation of generating a profit;

(iii) at least 5 acres of the private land is placed in agricultural use pursuant to Section 59-2-502 and eligible for agricultural use valuation as provided in Sections 59-2-503 and 59-2-504;

(iv) the division confirms that the private land where the cultivated crop occurs has experienced chronic recurring damage from bears, or that there will likely be chronic recurring damage if offending bears are not immediately removed;

(v) the landowner, an immediate family member, or an employee of the owner on a regular payroll, and not hired specifically to take bear, receives the control permit from the division to remove the bear prior to initiating such action; and

(vi) the bear removal is otherwise in accordance with Utah law.

(b) The division may issue control permits described in Subsection (4)(v) to identify restrictions necessary and to balance the threat to commercial crops on cleared and planted land and the wildlife resource, such as:

(i) locations on the landowner or lessee's private property where offending bears may be taken;

(ii) the total number of control permits that may be issued; and

(iii) reporting requirements to the division.

(c) Nothing herein mandates the division to issue control permits for a landowner or lessee to remove bears from their private property in lieu of:

(i) the landowner or lessee taking nonlethal preventative measures in protecting their private property; and

(ii) the division undertaking wildlife management techniques as they deem appropriate.

(5)(a) Any bear taken pursuant to Subsections (1)(a) and (4) shall:

(i) be delivered to a division office or employee within 48 hours; and

(ii) remain the property of the state, except the division may sell a bear damage permit to a person who has killed a depredating bear if that person wishes to maintain possession of the bear.

(b) A person may only retain one bear carcass annually under this Section.

(6)(a) Hunters interested in taking depredating bear as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating bear as needed.

R657-33-24. Questionnaire.

Each permittee who receives a questionnaire should return the questionnaire to the division regardless of success. Returning the questionnaire helps the division evaluate population trends, determine harvest success and other valuable information.

R657-33-25. Taking Bear.

(1)(a) A person who has obtained a bear permit, excluding limited entry archery bear permit, may use any legal weapon to take one bear during the season and within the hunt unit(s) specified on the permit.

(b) A person who has obtained a limited entry bear archery permit may use only archery tackle to take on bear during the season and within the hunt units(s) specified on the permit.

(c) Harvest objective permits may be purchased on a first-come, first-served basis as provided in the guidebook of the Wildlife Board for taking bear.

(2)(a) A person may not take or pursue a cub, or a sow accompanied by cubs.

(b) Any bear, except a cub or a sow accompanied by cubs, may be taken during the prescribed seasons.

(3) Limited entry permits may be obtained by following the application procedures provided in this rule and the guidebook of the Wildlife Board for taking and pursuing bear.

(4) Season dates, closed areas, harvest objective permit areas and limited entry permit areas are published in the guidebook of the Wildlife Board for taking and pursuing bear.

R657-33-26. Bear Pursuit.

(1)(a) Except as provided in rule R657-33-3(1)(b) and Subsection (2), bear may be pursued only by persons who have obtained a bear pursuit permit.

(b) The bear pursuit permit does not allow a person to:

(i) kill a bear; or

(ii) pursue bear for compensation.

(c) A person may pursue bear for compensation only as provided in Subsection (2).

(d) To obtain a bear pursuit permit, a person must possess a Utah hunting or combination license.

(2)(a) A person may pursue bear on public lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue bear;

(ii) is a licensed hunting guide or outfitter under Title 58, Chapter 79 of the Utah Code and authorized to pursue bear;

(iii) possesses on his or her person the Utah hunting guide or outfitter license;

(iv) possesses on his or her person all permits and authorizations required by the applicable public lands managing authority to pursue bear for compensation; and

(v) is accompanied by the client or customer at all times during pursuit.

(b) A person may pursue bear on private lands for compensation, provided the dog handler:

(i) receives compensation from a client or customer to pursue bear;

(ii) is accompanied by the client or customer at all times during pursuit; and

(iii) possesses on his or her person written permission from all private landowners on whose property pursuit takes place.

(c) A person who is an employee or agent of the Division of Wildlife Services may pursue bear on public lands and private lands while acting within the scope of their employment.

(3) A pursuit permit is not required to pursue bear under Subsection (2).

(4)(a) A person pursuing bear for compensation under subsections (2)(a) and (2)(b) shall comply with all other requirements and restrictions in statute, rule and the guidebooks of the Wildlife Board regulating the pursuit and take of bear.

(b) Any violation of, or failure to comply with the provisions of Title 23 of the Utah Code, this rule, or the guidebooks of the Wildlife Board may be grounds for suspension of the privilege to pursue bear for compensation under this subsection, as determined by a division hearing officer.

(5) Except as provided in Subsection (6), a bear pursuit permit authorizes the holder to pursue bear with dogs on any unit open to pursuing bear during the seasons and under the conditions prescribed by the Wildlife Board in guidebook.

(6) The Wildlife Board may establish or designate in guidebook restricted pursuit units as determined necessary or convenient to better manage wildlife resources, including to protect wildlife, curtail over-utilization of resources, reduce conflict with other recreational activities, reduce conflict with private and public land activities, and protect wildlife habitat.

(a) Bear may not be pursued on a restricted pursuit unit unless the dog handler:

(i) possesses a pursuit permit issued for the particular restricted pursuit unit;

(ii) possesses or is accompanied by a person who possesses a limited entry or harvest objective bear permit

allowing the use of dogs, and the pursuit occurs within the area and during the season established by the respective permit; or

(iii) is engaged in pursuit for compensation as provided in Subsection (2), and pursuit occurs within the area and during the season established for the:

(A) paying client's limited entry or harvest objective bear permit allowing the use of dogs; or

(B) restricted pursuit unit.

(b) A pursuit permit issued for a restricted pursuit unit authorizes the holder to pursue bear on:

(i) the particular restricted pursuit unit for which the permit is issued; and

(ii) any other bear pursuit unit not designated as a restricted pursuit unit.

(c) Notwithstanding Subsection (6)(a)(i), when two or more dog owners are in the field pursuing bear together with a single pack of eight dogs or less on a restricted pursuit unit, only one must possess a restricted pursuit unit permit, provided the dog owners accompany the person possessing the restricted pursuit unit permit at all times.

(i) A dog handler pursuing bear on a restricted pursuit unit may leave the pursuit permit holder to retrieve dogs that separate from the pack, provided the dog handler;

(A) takes reasonable steps to keep the pack together before and during pursuit;

(B) separates from the pursuit permit holder exclusively to retrieve stray dogs and does not attempt to actively pursue bear during the retrieval process; and

(C) immediately releases any bear incidentally treed or held at bay by the stray dogs.

(7) Pursuit permits may be obtained at division offices, through the Internet and at license agents.

(a) The division may distribute pursuit permits for restricted pursuit units:

(i) through its offices, license agents, or online resources on a first-come, first-served basis; or

(ii) through a random drawing.

(8) A person may not:

(a) take or pursue a female bear with cubs;

(b) repeatedly pursue, chase, tree, corner or hold at bay the same bear during the same day;

(c) individually or in combination with another person, use more than eight dogs in the field to pursue a bear during the summer pursuit season as established by the Wildlife Board in guidebook; or

(d) possess a firearm or any device that could be used to kill a bear while pursuing bear.

(i) The weapon restrictions set forth in Subsection (d) do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill bear.

(9) If eligible, a person who has obtained a bear pursuit permit may also obtain a limited entry or harvest objective bear permit.

(10) Season dates, closed areas and bear pursuit permit areas are published in the guidebook of the Wildlife Board for taking and pursuing bear.

R657-33-27. Limited Entry Bear Permit Application Information.

(1) Limited entry bear permits are issued pursuant to R657-62-19.

R657-33-28. Waiting Period.

(1) Any person who obtains a limited entry permit may not apply for a permit in a division drawing for a period of two years.

(2) Individuals who obtain a conservation permit, sportsman permit, control permit, or harvest objective permit for bear are not subject to a waiting period.

R657-33-29. Harvest Objective General Information.

(1) Harvest objective permits are valid only for the open harvest objective management units and for the specified seasons published in the guidebook of the Wildlife Board for taking bear.

(2) Harvest objective permits are not valid in a specified unit after the harvest objective has been met for that harvest objective unit.

R657-33-30. Harvest Objective Permit Sales.

(1) Harvest objective permits are available on a first-come, first-served basis beginning on the date published in the guidebook of the Wildlife Board for taking bear.

(2) Any bear permit purchased after the season opens is not valid until three days after the date of purchase.

(3) A person must possess a valid hunting or combination license to obtain a harvest objective permit.

R657-33-31. Harvest Objective Unit Closures.

(1) Prior to hunting in a harvest objective unit, a hunter must call 1-888-668-5466 or visit the division's website to verify that the bear hunting unit is still open. The phone line and website will be updated each day by 12 noon. Updates become effective the following day thirty minutes before official sunrise.

(2) Harvest objective units are open to hunting until:

(a) the bear harvest objective for that harvest objective unit is met and the division closes the area; or

(b) the end of the hunting season as provided in the guidebook of the Wildlife Board for taking bear.

(3) Upon closure of a harvest objective unit, a hunter may not take or pursue bear except as provided in Section R657-33-26.

R657-33-32. Harvest Objective Unit Reporting.

(1) Any person taking a bear with a harvest objective permit must report to the division, within 48 hours, where the bear was taken and have a permanent tag affixed pursuant to Section R657-33-17.

(2) Failure to accurately report the correct harvest objective unit where the bear was killed is unlawful.

(3) Any conviction for failure to accurately report, or aiding or assisting in the failure to accurately report as required in Subsection (1) shall be considered probable cause evidence of a knowing, intentional or reckless violation for purposes of permit suspension.

R657-33-33. Fees.

The permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

R657-33-34. Drawings and Remaining Permits.

Remaining limited entry bear permits are issued pursuant to R657-62.

R657-33-35. Bonus Points.

Bonus points are accrued and used pursuant to R657-62-8 and R657-62-19.

R657-33-36. Refunds.

(1) Unsuccessful applicants will not be charged for a permit.

(2) The handling fees and hunting or combination license fees are nonrefundable.

R657-33-37. Duplicate License and Permit.

Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate in accordance with R657-42.

KEY: wildlife, bear, game laws
March 25, 2019 **23-14-18**
Notice of Continuation November 28, 2017 **23-14-19**
23-13-2

R708. Public Safety, Driver License.
R708-10. Driver License Restrictions.
R708-10-1. Authority.

This rule is authorized by Sections 53-3-104(1)(a) and 53-3-208.

R708-10-2. Purpose.

The purpose of this rule is to identify and define restriction codes that apply to a Utah driving privilege.

R708-10-3. Definitions.

(1) "Restriction Code" means a designation on a person's Utah driving certificate or Utah driving record that indicates a specific driving restriction identified by the Utah Driver License Division required for a person to safely operate a motor vehicle.

R708-10-4. Restriction Code.

(1) "A" indicates no restrictions are required for the driver while they are operating a motor vehicle.

(2) "B" indicates the driver is restricted to wearing corrective lenses while operating a motor vehicle.

(3) "C" indicates a mechanical aid or compensatory device must be installed in the motor vehicle the driver is operating.

(4) "D" indicates the driver must use a prosthetic aid while operating a vehicle.

(5) "F" indicates the driver is restricted to driving a motor vehicle with outside rearview mirrors.

(6) "G" indicates the driver is restricted to driving during daylight hours only.

(7) "J" is used as a free text field to identify additional restrictions for the driver.

(8) "K" indicates the driver is restricted to intrastate only while driving commercially.

(9) "U" indicates the driver is restricted to operating only three-wheel motorcycles.

(10) "1" indicates the driver is required to have an ignition interlock device installed in the motor vehicle they are operating.

(11) "2" indicates the driver is restricted to operating a motorcycle with 249cc or less.

(12) "3" indicates the driver is restricted to operating a motorcycle with 649cc or less.

(13) "4" indicates the driver is restricted to operating a street legal ATV.

(14) "5" indicates the driver is restricted to operating a motorcycle with 90cc or less.

(15) "6" indicates the driver is restricted to operating a motor vehicle on a road with a posted speed limit of 40 mph or less.

(16) "7" indicates the driver is restricted to operating a motor vehicle with an automatic transmission.

KEY: driver license restrictions, licensing
October 22, 2013 53-3-104(1)(a) et seq.
Notice of Continuation March 15, 2019 53-3-208

R708. Public Safety, Driver License.
R708-22. Commercial Driver License Administrative Proceedings.
R708-22-1. Authority.

This rule is authorized by Subsection 53-3-104.

R708-22-2. Commercial Driver License Administrative Proceedings.

All adjudicative proceedings for commercial driver license (CDL) holders, including but not limited to, the application for and denial, disqualification, suspension or revocation of authorization to operate any particular class or classes of vehicles, shall be conducted according to applicable rules for administrative proceedings as specified in section R708-14, and R708-35.

KEY: administrative proceedings
1989 53-3-104
Notice of Continuation March 28, 2019 63G-4-102

R708. Public Safety, Driver License.
R708-24. Renewal of a Commercial Driver License (CDL).
R708-24-1. Authority.

This rule is promulgated pursuant to Section 53-3-104.

R708-24-2. Procedure for Renewal of a CDL.

(1) When applying for a CDL renewal, or limited-term CDL, applicants shall use the same procedure used to obtain an original CDL. The applicant shall comply with Sections 53-3-105, 53-3-407, and 49 CFR 383 and 391.

(2) All knowledge tests and/or skills tests will be waived by the Driver License Division except:

(a) the hazardous materials knowledge test which is required by 49 CFR 383.73;

(b) when changes in an applicant's medical condition may require further testing/evaluation;

(c) if there are factors, including lack of knowledge, which indicate the applicant may have an inability to operate commercial vehicles in a reasonable, prudent and safe manner.

(3) Applicants whose CDL has expired for a period of more than six months, or whose driving privileges are disqualified, suspended, or revoked, are required to complete appropriate knowledge and skills tests.

(4) Applicants shall comply with Federal Highway Administration requirements contained in 49 CFR 383.71, 383.73 and 391.

KEY: licensing
July 17, 1995 **53-3-104**
Notice of Continuation March 28, 2019

R708. Public Safety, Driver License.
R708-26. Learner Permit Rule.
R708-26-1. Purpose.

The purpose of the rule is to set forth the restrictions to be imposed on a person driving a motor vehicle with a learner's permit.

R708-26-2. Authority.

This rule is authorized by Subsection 53-3-104(1)(c).

R708-26-3. Definitions.

"Learner permit" means a temporary restricted driving permit issued by the Driver License Division to a qualified person who has not completed all the requirements to obtain a full driving privilege.

R708-26-4. Restrictions.

The restrictions set forth in Section 53-3-210.5 for a driver holding a learner permit shall be printed on the permit along with any other restrictions deemed necessary by the Driver License Division.

KEY: learner permit
December 9, 2008 53-3-210
Notice of Continuation March 15, 2019

R708. Public Safety, Driver License.
R708-31. Ignition Interlock Systems.
R708-31-1. Authority.

(1) This rule establishes standards for the certification of ignition interlock systems as required by Section 41-6a-518.

R708-31-2. Purpose.

(1) The purpose of this rule is to provide standards and requirements for certifying ignition interlock systems.

R708-31-3. Standards.

(1) All vendors who want to certify and provide ignition interlock systems shall:

(a) apply to the Driver License Division of the Department of Public Safety;

(b) provide an independent laboratory report showing evidence that their ignition interlock system meets the requirements of NHTSA (Federal Register Vol. 57. No. 67) which is incorporated by reference, and the standards as specified in Section 41-6a-518; and

(c) meet the requirements of Section 4 of this rule in order to be placed on an approved vendor's list.

R708-31-4. Requirements.

(1) To be included on an approved vendor's list, each vendor must:

(a) be certified by the Department of Public Safety to operate in Utah;

(b) show evidence that there is adequate product liability insurance; and

(c) pay all applicable fees.

KEY: ignition interlock systems
February 21, 2014 41-6a-518
Notice of Continuation March 15, 2019

R765. Regents (Board of), Administration.
R765-615. Talent Development Incentive Loan Program.
R765-615-1. Purpose.

To establish the criteria and process for awarding incentive loans from the Talent Development Incentive Loan Program under Title 53B, Chapter 10, Part 2, Talent Ready Incentive Loan Program.

R765-615-2. References.

2.1. Title 53B, Chapter 10, Part 2, Talent Ready Incentive Loan Program.

R765-615-3. Definitions.

3.1. "Full-time student" means a student who is enrolled in a minimum of 12 credit hours.

3.2 "GOED" means the Governor's Office of Economic Development created in Section 63N-1-201.

3.3. "Incentive loan" means an incentive loan awarded by an institution to a full-time student who has met the eligibility criteria as established by the Board of Regents.

3.4. "Qualifying degree" means an associate's or a bachelor's degree that qualifies an individual to work in a qualifying job.

3.5. "Qualifying job" means a job described in Section 6.2 for which an individual may receive an incentive loan.

R765-615-4. Appropriations.

The program is funded by appropriations from the Legislature made in accordance with Section 53B-10-201.

R765-615-5. Application Procedures.

5.1. The institutions shall develop an application that, at minimum, collects the following information:

5.1.1. The applicant's status as a full-time or part-time student.

5.1.2. The applicant's current enrollment or registered enrollment for and the upcoming semester if available.

5.1.3. A transcript demonstrating the applicant's completed course work.

5.1.4. A section for the applicant to formally declare his or her intent to pursue a qualifying degree and to work in a qualifying job, with a signature.

5.2. Institutions shall set application deadlines by which applicants must submit all required materials.

5.3. Institutions shall determine the most efficient method for issuing incentive loan funds and collect the necessary information for that purpose.

R765-615-6. Qualifying Criteria.

6.1. Applicants must meet the following criteria to qualify for an incentive loan:

6.1.1. The applicant must have completed at least two semesters of full-time equivalent course work if he or she is pursuing a bachelor's degree, or at least one semester of full-time equivalent course work if he or she is pursuing an associate degree.

6.1.2. The applicant is enrolled full-time.

6.1.3. The applicant signs a declaration stating he or she is pursuing or will pursue a qualifying degree.

6.1.4. The applicant signs a declaration stating his or her intent to work in a qualifying job in Utah following graduation.

6.1.5. The applicant must provide the institution verification of registration for classes within the qualifying degree program before the institution may release the funds.

6.2. Every other academic year, the Governor's Office of Economic Development (GOED) shall select five jobs that have the highest demand for new employees and offer high wages. Beginning the August of that year, those five positions are designated as qualifying jobs for the purposes of this incentive loan program. When selecting the qualifying jobs, GOED shall ensure the jobs meet the following criteria:

6.2.1. Rank in the top 40 percent of jobs based on an employment index that considers job growth rates and total openings.

6.2.2. Rank in the top 40 percent for wages.

6.2.3. Requires an associate degree or a bachelor's degree.

6.3. In conjunction with selecting the qualifying jobs, GOED will identify and designate the bachelor's or associate degrees required to qualify for the five qualifying jobs.

R765-615-7. Loan Amounts.

7.1. Institutions may loan an amount up to the cost of resident tuition, books, and fees for their respective institutions.

7.2. Institutions may loan amounts up to the expected time for the recipient to complete the qualifying degree, as determined by the institution.

R765-615-8. Funding Distribution.

8.1. The Board will disburse appropriated funds to the institutions by calculating the three-year average of the qualifying degrees each institution awarded using the following assumptions:

8.1.1. Tuition and fees (not including books, differential, course, or program fees).

8.1.2. Full tuition and fee cost of associate degree students by institution for three semesters (requires 1 semester before applying).

8.1.3. Full tuition and fee cost of bachelor's degree students by institution for six semesters (requires 2 semesters before applying).

8.1.4. After year one, tuition and fees adjusted for inflation (five-year average of 3.5 percent).

R765-615-9. Loan Cancellation, Repayment, and Waiver.

9.1. For each year that a recipient works in a qualifying job in Utah following completion of a qualifying degree, the institution that awarded the incentive loan shall waive repayment of the amount of one year of the recipient's incentive loan.

9.2. An institution shall require a recipient to repay to the institution the full amount of an incentive loan if the recipient fails to:

9.2.1. Graduate with a qualifying degree within six years of initially receiving the incentive loan,

9.2.2. Work in a qualifying job in Utah within one year of completing a qualifying degree, or

9.2.3. Work in a qualifying job for fewer years than the number of years required to waive repayment of the full incentive loan.

9.3. Institutions may cancel an incentive loan if the recipient changes the degree he or she selected in the declaration at any time prior to graduation.

9.4. Institutions may waive repayment if a recipient has graduated with a qualifying degree within six years of receiving the loan, works in a non-qualifying job that the institution determines is reasonably related to the degree, and resides in Utah.

9.5. Institutions may delay repayment for reasonable, unforeseen circumstances that inhibits the recipient's ability to meet the requirements for loan payment waivers as described above.

9.6. Institutions may waive repayment for circumstances of prolonged financial hardship.

R765-615-10. General Administration.

10.1. Institutions may establish policies for administering this program that align with their existing practices and financial aid programs.

KEY: higher education, loans, talent ready, incentives
March 14, 2019 53B-10-201

R784. Regents (Board of), Salt Lake Community College.
R784-1. Government Records Access and Management Act Rules.
R784-1-1. Purpose.

The purpose of the following rules is to provide procedures for access to government records at Salt Lake Community College.

R784-1-2. Authority.

The authority for the following rule is Section 63G-2-204 and Section 63A-12-104 of the Government Access and Management Act (GRAMA), effective July 1, 1992.

R784-1-3. Allocation of Responsibility Within Entity.

Salt Lake Community College (including all campuses, centers, satellites and locations) shall be considered a single governmental entity and the President of Salt Lake Community College shall be considered the head.

R784-1-4. Requests for Access.

(a) Requests for access to government records of Salt Lake Community College should be written and made to the Office of Risk Management in the Administration Building Room 150. Response to a request submitted to other persons within Salt Lake Community College may be delayed.

(b) Students requesting their own records and employees requesting their own official personnel file are exempted from using the written request outlined in this document.

(c) Any appeals of denied requests will be reviewed by an Appeals Officer. Requests for appeal should be written and made to the Institutional Advancement Vice President in the Administration Building Room 011A. See Subsections 63G-2-204(2) and 63G-2-204(6).

R784-1-5. Fees.

A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from Salt Lake Community College by contacting the Office of Risk Management in the Administration Building Room 150. Salt Lake Community College may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50.00, or if the requester has not paid fees from previous requests.

R784-1-6. Waiver of Fees.

Fees for duplication and compilation of a record may be waived under certain circumstances described in Subsection 63G-2-203(3). Requests for this waiver of fees may be made to the Office of Risk Management in the Administration Building Room 150.

R784-1-7. Request for Access for Research Purposes.

Access to private or controlled records for research purposes is allowed by Subsection 63G-2-202(8). Requests for access to such records for research purposes may be made to the Office of Risk Management in the Administration Building Room 150.

R784-1-8. Requests for Intellectual Property Records.

Materials, to which Salt Lake Community College owns the intellectual property rights, may be duplicated and distributed in accordance with Subsection 63G-2-201(10). Decisions with regard to these rights will be made by the Office of Risk Management in the Administration Building Room 150. Any questions regarding the duplication and distribution of such materials should be addressed to that office.

R784-1-9. Requests to Amend a Record.

An individual may contest the accuracy or completeness of a document pertaining to him/her pursuant to Section 63G-2-603. Such request should be made to the Office of Risk Management in the Administration Building Room 150.

R784-1-10. Appeals of Request to Amend a Record.

Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act.

R784-1-11. Time Period Under GRAMA.

All written requests made to the Office of Risk Management will be responded to according to the time periods specified under GRAMA 63G-2-204. Response to a request submitted to other persons within Salt Lake Community College may be delayed.

R784-1-12. Forms.

(a) The forms described as follows shall be completed by requester in connection with records requests.

(1) SLCC GRAMA Request for Records form is for use by all entities requesting records from SLCC. This form is intended to assist entities, who request records, to comply with the requirements of Section 63G-2-204(1) regarding the contents of a request.

KEY: GRAMA, SLCC
March 18, 1999 63G-2-204
Notice of Continuation March 17, 2019 63G-12-104

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(4)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;
b) transportation costs;
c) installation charges and construction costs; and
d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;
(b) actual sales of like mineral by other taxpayers; or
(c) posted prices of like mineral; or
(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

(1) Definitions.

(a) "Person" is as defined in Section 68-3-12.

(b) "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

(c) "Unit operator" means a person who operates all producing wells in a unit.

(d) "Independent operator" means a person operating an oil or gas producing property not in a unit.

(e) One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

(f) "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

(g) "Product price" means:

(i) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

(ii) Gas:

(A) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(B) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

(h) "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

(i) "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

(j) "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

(i) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

(ii) Interest, depreciation, or any expense not directly related to the unit may not be included as allowable costs.

(k) "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

(2) The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

(a) The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

(b) The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

(c) The discount rate shall contain the same elements as the expected income stream.

(3) Assessment Procedures.

(a) Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

(b) The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

(c) The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in Subsection (3)(b) or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

(d) The value of the production assets shall be considered in the value of the oil and gas reserves as determined in Subsection (3)(b). Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

(e) The minimum value of the property shall be the value of the production assets.

(4) Collection by Operator.

(a) The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of the ad valorem tax on each fractional interest according to the estimate made.

(i) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

(ii) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

(iii) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

(b) The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

(c) Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

(d) Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

(1) The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

(2) After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor a notice of the preservation easement containing the following information:

(a) the property owner's name;
(b) the address of the property; and
(c) the serial number of the property.
(3) The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

(1) Definitions:
(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.
(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.
(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.
(d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.
(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.
(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.
(g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.
(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.
(i) All definitions contained in Section 11-13-103 apply to this rule.
(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.
(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.
(b) The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.
(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:
(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.
(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.
(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.
(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.
(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.
(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.
(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," "state licensed appraiser," and trainee are as defined in Section 61-2b-2.
(2) The ad valorem training and designation program consists of several courses and practica.
(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).

(b) The courses comprising the basic designation program are:

(i) Course 101 - Basic Appraisal Principles;

(ii) Course 103 - Uniform Standards of Professional Appraisal Practice (AQB);

(iii) Course 501 - Assessment Practice in Utah;

(iv) Course 502 - Mass Appraisal of Land;

(v) Course 503 - Development and Use of Personal Property Schedules;

(vi) Course 504 - Appraisal of Public Utilities and Railroads (WSATA); and

(vii) Course 505 - Income Approach Application.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals employed in a county assessor office or the Property Tax Division, working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete courses 501 and 502;

(ii) successfully complete a comprehensive residential field practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

(i) successfully complete courses 501, 502, and 505;

(ii) successfully complete a comprehensive field practicum including residential and commercial properties; and

(iii) attain and maintain state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) For an individual commencing employment as an ad valorum personal property auditor/appraiser before April 15, 2019 to qualify for this designation, an individual must, by April 15, 2021:

(i) successfully complete courses 101, 103, 501, and 503; and

(ii) successfully complete a comprehensive auditing practicum.

(b) For an individual commencing employment as an ad valorum personal property auditor/appraiser on or after April 15, 2019 to qualify for this designation, an individual must within 24 months of commencing that employment:

(i) successfully complete courses 101, 103, 501, and 503; and

(ii) successfully complete a comprehensive auditing practicum.

(c) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

(i) successfully complete courses 501 and 504;

(ii) successfully complete a comprehensive valuation practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, two re-examinations are allowed. If the re-examinations are not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all education and practicum requirements for designation under Subsections (5), (6), or (8); and

(b) has not completed the non-education requirements for licensure or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements under Subsections (5), (6), (7), or (8).

(13)(a) Maintaining designated status for individuals designated under Subsection (7) requires completion of 6 hours of Tax Commission approved classroom work every two years.

(b) Maintaining designated status for individuals designated under Subsections (5), (6), and (8) requires maintaining their appraisal license or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers performing the contracted work must hold the state certified residential appraiser or state

certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the

expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918.5 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the cost of public notice required under Section 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(6) Calculation of the amount and percentage increase in property tax revenues required by Section 59-2-919 shall be computed by comparing property taxes levied for the current year with property taxes budgeted the prior year, without adjusting for revenues attributable to new growth.

(7) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(8) The value of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(9) The value and taxes of property subject to the uniform fee under Sections 59-2-405 through 59-2-405.3 are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-924.

(10) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(11) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(12) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

(1) Definitions.

(a) "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

(b) "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

(c) "Division" means the Property Tax Division of the commission.

(d) "Nonparametric" means data samples that are not

normally distributed.

(e) "Parametric" means data samples that are normally distributed.

(f) "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

(2) The commission adopts the following standards of assessment performance.

(a) For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures;

(i) For a county of the first, second, third or fourth class, the measure of central tendency shall be within:

(A) 5 percent of the legal level of assessment for county-wide residential property; or

(B) 10 percent of the legal level of assessment for all other classes of property.

(ii) For a county of the fifth or sixth class, the measure of central tendency shall be within 10 percent of the legal level of assessment for all property.

(iii) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

(b) For uniformity of the property assessments in each class of property for which a detailed review is conducted during the current year, the measure of dispersion shall be within the following limits.

(i) In urban counties:

(A) a COD of 15 percent or less for primary residential property, and 20 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 19 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property.

(ii) In rural counties:

(A) a COD of 20 percent or less for primary residential property, and 25 percent or less for commercial property, vacant land, and secondary residential property; and

(B) a COV of 25 percent or less for primary residential property, and 31 percent or less for commercial property, vacant land, and secondary residential property.

(iii) For a rural or small jurisdiction with limited development, or for a jurisdiction with a depressed market, the county assessor may petition the division for a five percentage point increase in the COD or COV for one year only. After sufficient examination, the division may determine that a one-year expansion of the COD or COV is appropriate.

(c) Statistical measures.

(i) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

(ii) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

(iii) To achieve statistical accuracy in determining assessment level under Subsection (2)(a) and uniformity under Subsection (2)(b) for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

(3) Each year the division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in Subsection (2).

(a) To meet the minimum sample size, the study period may be extended.

(b) A smaller sample size may be used if:

(i) that sample size is at least 10 percent of the class or subclass population; or

(ii) both the division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

(c) If the division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

(i) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

(ii) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

(iii) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

(iv) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

(d) All input to the sample used to measure performance shall be completed by March 31 of each study year.

(e) The division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

(f) The division shall complete the final study immediately following the closing of the tax roll on May 22.

(4) The division shall order corrective action if the results of the final study do not meet the standards set forth in Subsection (2).

(a) Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

(i) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in Subsection (2)(b); or

(ii) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in Subsection (2)(b).

(b) Uniformity adjustments or other corrective action shall be ordered if the property fails to meet the standards outlined in Subsections (2)(b) and (c). A corrective action order may contain language requiring a county to create, modify, or follow its five-year plan for a detailed review of property characteristics.

(d) All corrective action orders shall be issued by June 10 of the study year, or within five working days after the completion of the final study, whichever is later.

(5) The commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

(a) Prior to the filing of an appeal, the division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without commission approval. Any stipulation by the division subsequent to an appeal is subject to commission approval.

(b) A county receiving a corrective action order resulting from this rule may file and appeal with the commission pursuant to rule R861-1A-11.

(c) A corrective action order will become the final commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

(d) The division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

(i) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

(ii) Other corrective action shall be implemented prior to May 22 of the year following the study year.

(e) The division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in Subsection (5)(d) as practical. The division shall review the results of the compliance audit with the

county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the commission for any necessary action.

(f) The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property Pursuant to Utah Code Ann. Section 59-2-306.

(1) The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

(2) The owner of leased or rented heavy equipment shall file annual reports with the commission, either on forms provided by the commission or electronically, for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

(a) a description of the leased or rented equipment;

(b) the year of manufacture and acquisition cost;

(c) a listing, by month, of the counties where the equipment has situs; and

(d) any other information required.

(3) For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

(4)(a) The completed report shall be submitted to the Property Tax Division of the commission within thirty days after each reporting period.

(b) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

(1) Except as provided in Section 59-2-1115, household furnishings, furniture, and equipment are subject to property taxation if:

(a) the owner of the dwelling unit commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

(b) the dwelling unit is held out as available for the rent, lease, or use by others.

(2) Household furnishings, furniture, and equipment that meet the definition of qualifying exempt primary residential rental personal property in Section 59-2-102:

(a) qualify for the primary residential exemption under Section 59-2-103; and

(b) are valued for tax under this chapter by:

(i) calculating the value of the personal property using the tables in Tax Commission rule R884-24P-33; and

(ii) multiplying the value calculated under Subsection (2)(b)(i) by 0.55.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2019 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a)(i) "Acquisition cost" does not include indirect costs such as debugging, licensing fees and permits, insurance, or security.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) class 6 heavy and medium duty trucks;

(B) class 13 heavy equipment;

(C) class 14 motor homes;

(D) class 17 vessels equal to or greater than 31 feet in length; and

(E) class 21 commercial trailers.

(d) For purposes of Sections 59-2-108 and 59-2-1115, "item of taxable tangible personal property" means a piece of equipment, machinery, furniture, or other piece of tangible personal property that is functioning at its highest and best use for the purpose it was designed and constructed and is generally capable of performing that function without being combined with other items of personal property. An item of taxable tangible personal property is not an individual component part of a piece of machinery or equipment, but the piece of machinery or equipment. For example, a fully functioning computer is an item of taxable tangible personal property, but the motherboard, hard drive, tower, or sound card are not.

(e) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Penton Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission.

Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

(i) an all-terrain vehicle;

(ii) a camper;

(iii) an other motorcycle;

(iv) an other trailer;

(v) a personal watercraft;

(vi) a small motor vehicle;

(vii) a snowmobile;

(viii) a street motorcycle;

(ix) a tent trailer;

(x) a travel trailer; and

(xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length;

(c) a motorhome subject to the uniform statewide fee under Section 59-2-405.3; and

(d) an aircraft subject to the uniform statewide fee under Section 72-10-110.5.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, or a uniform statewide fee under Section 59-2-404, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

(A) barricades/warning signs;

(B) library materials;

(C) patterns, jigs and dies;

(D) pots, pans, and utensils;

(E) canned computer software;

(F) hotel linen;

(G) wood and pallets;

(H) video tapes, compact discs, and DVDs; and

(I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

(A) retail price of the canned computer software;

(B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or

(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at $15.00 per tape or disc for the first year and $3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
18	72%
17	42%
16 and prior	11%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:

(A) CNC mills;

(B) CNC lathes;

(C) high-tech medical and dental equipment such as MRI equipment, CAT scanners, and mammography units.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
18	91%
17	81%
16	70%
15	59%
14	48%
13	38%
12	25%
11 and prior	13%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:

(A) office machines;

(B) alarm systems;

(C) shopping carts;

(D) ATM machines;

(E) small equipment rentals;

(F) rent-to-own merchandise;

(G) telephone equipment and systems;

(H) music systems;

(I) vending machines;

(J) video game machines; and

(K) cash registers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
18	86%
17	70%
16	53%
15	35%
14 and prior	18%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

(A) furniture;

(B) bars and sinks:

(C) booths, tables and chairs;

(D) beauty and barber shop fixtures;

(E) cabinets and shelves;

(F) displays, cases and racks;

(G) office furniture;

(H) theater seats;

(I) water slides;

(J) signs, mechanical and electrical; and

(K) LED component of a billboard.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
18	92%
17	84%
16	74%
15	64%
14	55%
13	45%
12	34%
11	23%
10 and prior	12%

(e) Class 6 - Heavy and Medium Duty Trucks.

(i) Examples of property in this class include:

(A) heavy duty trucks;

(B) medium duty trucks;

(C) crane trucks;

(D) concrete pump trucks; and

(E) trucks with well-boring rigs.

(ii) Taxable value is calculated by applying the percent good factor against the cost new.

(iii) Cost new of vehicles in this class is defined as follows:

(A) the documented actual cost of the vehicle for new vehicles; or

(B) 75 percent of the manufacturer's suggested retail price.

(iv) For state assessed vehicles, cost new shall include the value of attached equipment.

(v) The 2019 percent good applies to 2019 models purchased in 2018.

(vi) Trucks weighing two tons or more have a residual taxable value of $1,750.

TABLE 6

Model Year	Percent Good of Cost New
19	90%
18	71%
17	66%
16	61%
15	56%
14	51%
13	45%
12	40%
11	35%
10	30%
09	20%
08	15%
07	10%
06 and prior	4%

(f) Class 7 - Medical and Dental Equipment. Class 7 has been merged into Class 8.

(g) Class 8 - Machinery and Equipment and Medical and Dental Equipment.

(i) Machinery and equipment is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

Examples of machinery and equipment include:

(A) manufacturing machinery;

(B) amusement rides;

(C) bakery equipment;

(D) distillery equipment;

(E) refrigeration equipment;

(F) laundry and dry cleaning equipment;

(G) machine shop equipment;

(H) processing equipment;

(I) auto service and repair equipment;

(J) mining equipment;

(K) ski lift machinery;

(L) printing equipment;

(M) bottling or cannery equipment;

(N) packaging equipment; and

(O) pollution control equipment.

(ii) Medical and dental equipment is subject to a high degree of technological development by the health industry. Examples of medical and dental equipment include:

(A) medical and dental equipment and instruments;

(B) exam tables and chairs;

(C) microscopes; and

(D) optical equipment.

(iii) Except as provided in Subsection (6)(g)(iv), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iv)(A) Notwithstanding Subsection (6)(g)(iii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iv)(B):

(I) VGO (Vacuum Gas Oil) reactor;

(II) HDS (Diesel Hydrotreater) reactor;

(III) VGO compressor;

(IV) VGO furnace;

(V) VGO and HDS high pressure exchangers;

(VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;

(VII) VGO, amine, SWS, and HDS separators and drums;

(VIII) VGO and tank pumps;

(IX) TGU modules; and

(X) VGO tank and VGO tank air coolers.

(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iv)(A) shall be calculated by:

(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and

(II) multiplying the product described in Subsection (6)(g)(iv)(B)(I) by 50%.

TABLE 8

Year of	Percent Good

Acquisition	of Acquisition Cost
18	94%
17	87%
16	79%
15	71%
14	64%
13	56%
12	47%
11	38%
10	30%
09	21%
08 and prior	11%

(h) Class 9 - Off-Highway Vehicles.

(i) Because Section 59-2-405.2 subjects off-highway vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
18	96%
17	91%
16	84%
15	78%
14	73%
13	68%
12	60%
11	54%
10	48%
09	42%
08	35%
07	28%
06	20%
05 and prior	9%

(j) Class 11 - Street Motorcycles.

(i) Because Section 59-2-405.2 subjects street motorcycles to an age-based uniform fee, a percent good schedule is not necessary.

(k) Class 12 - Computer Hardware.

(i) Examples of property in this class include:

(A) data processing equipment;

(B) personal computers;

(C) main frame computers;

(D) computer equipment peripherals;

(E) cad/cam systems; and

(F) copiers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
18	62%
17	46%
16	21%
15	9%
14 and prior	7%

(l) Class 13 - Heavy Equipment.

(i) Examples of property in this class include:

(A) construction equipment;

(B) excavation equipment;

(C) loaders;

(D) batch plants;

(E) snow cats; and

(F) pavement sweepers.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) 2019 model equipment purchased in 2018 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
18	49%
17	47%
16	44%
15	42%
14	39%
13	37%
12	35%
11	32%
10	30%
09	28%
08	25%
07	23%
06	20%
05 and prior	13%

(m) Class 14 - Motor Homes.

(i) Because Section 59-2-405.3 subjects motor homes to an age-based uniform fee, a percent good schedule is not necessary.

(n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.

(i) Examples of property in this class include:

(A) crystal growing equipment;

(B) die assembly equipment;

(C) wire bonding equipment;

(D) encapsulation equipment;

(E) semiconductor test equipment;

(F) clean room equipment;

(G) chemical and gas systems related to semiconductor manufacturing;

(H) deionized water systems;

(I) electrical systems; and

(J) photo mask and wafer manufacturing dedicated to semiconductor production.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
18	47%
17	34%
16	24%
15	15%
14 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

(i) Examples of property in this class include:

(A) billboard (excluding LED component);

(B) sign towers;

(C) radio towers;

(D) ski lift and tram towers;

(E) non-farm grain elevators;

(F) bulk storage tanks;

(G) underground fiber optic cable;

(H) solar panels and supporting equipment; and

(I) pipe laid in or affixed to land.

(ii) Taxable value is calculated by applying the percent

good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
18	96%
17	94%
16	89%
15	85%
14	82%
13	79%
12	73%
11	69%
10	64%
09	63%
08	59%
07	57%
06	51%
05	45%
04	38%
03	30%
02	23%
01	15%
00 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.

(i) Examples of property in this class include:

(A) houseboats equal to or greater than 31 feet in length;

(B) sailboats equal to or greater than 31 feet in length; and

(C) yachts equal to or greater than 31 feet in length.

(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:

(A) is not included in Class 17;

(B) may not be valued using Table 17; and

(C) is subject to an age-based uniform fee under Section 59-2-405.2.

(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.

(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

(A) the following publications or valuation methods:

(I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;

(II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or

(III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

(aa) the manufacturer's suggested retail price for comparable property; or

(bb) the cost new established for that property by a documented valuation source; or

(B) the documented actual cost of new or used property in this class.

(v) The 2019 percent good applies to 2019 models purchased in 2018.

(vi) Property in this class has a residual taxable value of $1,000.

TABLE 17

Model Year	Percent Good of Cost New
19	90%
18	67%
17	64%
16	62%
15	60%
14	57%
13	55%
12	53%
11	50%
10	48%
09	46%
08	43%
07	41%
06	39%
05	36%
04	34%
03	32%
02	29%
01	27%
00	25%
99	21%
98 and prior	17%

(q) Class 17a - Vessels Less Than 31 Feet in Length

(i) Because Section 59-2-405.2 subjects vessels less than 31 feet in length to an age-based uniform fee, a percent good schedule is not necessary.

(r) Class 18 - Travel Trailers and Class 18a - Tent Trailers/Truck Campers.

(i) Because Section 59-2-405.2 subjects travel trailers and tent trailers/truck campers to an age-based uniform fee, a percent good schedule is not necessary.

(s) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

(i) Examples of property in this class include:

(A) oil and gas exploration equipment;

(B) distillation equipment;

(C) wellhead assemblies;

(D) holding and storage facilities;

(E) drill rigs;

(F) reinjection equipment;

(G) metering devices;

(H) cracking equipment;

(I) well-site generators, transformers, and power lines;

(J) equipment sheds;

(K) pumps;

(L) radio telemetry units; and

(M) support and control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
18	95%
17	87%
16	81%
15	74%
14	67%
13	61%
12	55%
11	46%
10	40%
09	34%
08	27%
07	19%
06 and prior	10%

(t) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:

(A) dry freight van trailers;

(B) refrigerated van trailers;

(C) flat bed trailers;

(D) dump trailers;

(E) livestock trailers; and

(F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The 2019 percent good applies to 2019 models purchased in 2018.

(iv) Commercial trailers have a residual taxable value of $1,000.

TABLE 21

Model Year	Percent Good of Cost New
19	95%
18	85%
17	82%
16	78%
15	74%
14	69%
13	65%
12	61%
11	57%
10	53%
09	50%
08	46%
07	41%
06	36%
05	30%
04	25%
03 and prior	17%

(u) Class 21a - Other Trailers (Non-Commercial).

(i) Because Section 59-2-405.2 subjects this class of trailers to an age-based uniform fee, a percent good schedule is not necessary.

(v) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

(i) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

(ii) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary.

(w) Class 22a - Small Motor Vehicles.

(i) Because Section 59-2-405.2 subjects small motor vehicles to an age-based uniform fee, a percent good schedule is not necessary.

(x) Class 23 - Aircraft Required to be Registered With the State.

(i) Because Section 59-2-404 subjects aircraft required to be registered with the state to a statewide uniform fee, a percent good schedule is not necessary.

(y) Class 24 - Leasehold Improvements on Exempt Real Property.

(i) The Class 24 schedule is to be used only for those leasehold improvements where the underlying real property is owned by an entity exempt from property tax under Section 59-2-1101. See Tax Commission rule R884-24P-32. Leasehold improvements include:

(A) walls and partitions;
(B) plumbing and roughed-in fixtures;
(C) floor coverings other than carpet;
(D) store fronts;
(E) decoration;
(F) wiring;
(G) suspended or acoustical ceilings;
(H) heating and cooling systems; and
(I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
18	94%
17	88%
16	82%
15	77%
14	71%
13	65%
12	59%
11	54%
10	48%
09	42%
08	36%
07 and prior	30%

(z) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Examples of property in this class include:

(A) aircraft parts manufacturing jigs and dies;
(B) aircraft parts manufacturing molds;
(C) aircraft parts manufacturing patterns;
(D) aircraft parts manufacturing taps and gauges; and
(E) aircraft parts manufacturing test equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
18	86%
17	70%
16	53%
15	36%
14	19%
13 and prior	4%

(aa) Class 26 - Personal Watercraft.

(i) Because Section 59-2-405.2 subjects personal watercraft to an age-based uniform fee, a percent good schedule is not necessary.

(bb) Class 27 - Electrical Power Generating Equipment and Fixtures

(i) Examples of property in this class include:

(A) electrical power generators; and
(B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
18	97%
17	95%
16	92%
15	90%
14	87%
13	84%
12	82%
11	79%
10	77%
09	74%
08	71%
07	69%
06	66%
05	64%
04	61%
03	58%
02	56%
01	53%
00	51%
99	48%
98	45%
97	43%
96	40%
95	38%
94	35%
93	32%
92	30%

91	27%
90	25%
89	22%
88	19%
87	17%
86	14%
85	12%
84 and prior	9%

(cc) Class 28 - Noncapitalized Personal Property. Property shall be classified as noncapitalized personal property if the following conditions are met:

(i) the property is an item of taxable tangible personal property with an acquisition cost of $1,000 or less; and

(ii) the property is eligible as a deductible expense under Section 162 or Section 179, Internal Revenue Code, in the year of acquisition, regardless of whether the deduction is actually claimed.

TABLE 28

Year of Acquisition	Percent Good of Acquisition Cost
18	75%
17	50%
16	25%
15 and prior	0%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2019.

R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.

(1) The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Subsection 59-2-1101(3)(a)(iv) or (v).

(2) The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:

(a) the owner of record of the property;

(b) the property parcel, account, or serial number;

(c) the location of the property;

(d) the tax year in which the exemption was originally granted;

(e) a description of any change in the use of the real or personal property since January 1 of the prior year;

(f) the name and address of any person or organization conducting a business for profit on the property;

(g) the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;

(h) a description of any personal property leased by the owner of record for which an exemption is claimed;

(i) the name and address of the lessor of property described in Subsection (2)(h);

(j) the signature of the owner of record or the owner's authorized representative; and

(k) any other information the county may require.

(3) The annual statement shall be filed:

(a) with the county legislative body in the county in which the property is located;

(b) on or before March 1; and

(c) using:

(i) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or

(ii) a form that contains the information required under Subsection (2).

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;

2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;

3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;

2. property identification number;

3. description and location of the property; and

4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1)(a) "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

(b) RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

(c) RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

(2) Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method that has been determined to be nonoperating, and that is not necessary to the conduct of the business, shall be assessed separately by the local county assessor.

(3) Assessment procedures.

(a) Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

(b) RR-ROW is considered operating and necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered railroad operating revenues.

(c) Real property outside of the RR-ROW that is necessary to the conduct of the railroad operation is considered part of the unitary value. Some examples are:

(i) company homes occupied by superintendents and other employees on 24-hour call;

(ii) storage facilities for railroad operations;

(iii) communication facilities; and

(iv) spur tracks outside of RR-ROW.

(d) Abandoned RR-ROW is considered nonoperating and shall be reported as such by the railroad companies.

(e) Real property outside of the RR-ROW that is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are:

(i) land leased to service station operations;
(ii) grocery stores;
(iii) apartments;
(iv) residences; and
(v) agricultural uses.

(f) RR-ROW obtained by government grant or act of Congress is deemed operating property.

(4) Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so that the property may be placed on the roll for local assessment.

(5) Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Title 63G, Chapter 4.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508, and Section 59-2-705.

(1) Upon completion of commission audits of personal property accounts or land subject to the Farmland Assessment Act, the following procedures shall be implemented:

(a) If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

(b) A revised Notice of Property Valuation and Tax Changes or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

(c) The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

(2) Assessors shall not alter results of an audit without first submitting the changes to the commission for review and approval.

(3) The commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;

(2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.

(2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of- service rail cars.

4. a) "Out-of-service rail cars" means rail cars:

(1) out-of-service for a period of more than ten consecutive hours; or

(2) in storage.

b) Rail cars cease to be out-of-service once repaired or removed from storage.

c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.

5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.

6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.

7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.

2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.

(1) "Household" is as defined in Section 59-2-102.

(2) "Primary residence" means the location where domicile has been established.

(3) Except as provided in Subsections (4) and (6)(c) and (f), the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.

(4) An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

(5) Factors or objective evidence determinative of domicile include:

(a) whether or not the individual voted in the place he claims to be domiciled;

(b) the length of any continuous residency in the location claimed as domicile;

(c) the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

(d) the presence of family members in a given location;

(e) the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

(f) the physical location of the individual's place of business or sources of income;

(g) the use of local bank facilities or foreign bank institutions;

(h) the location of registration of vehicles, boats, and RVs;

(i) membership in clubs, churches, and other social organizations;

(j) the addresses used by the individual on such things as:

(i) telephone listings;

(ii) mail;

(iii) state and federal tax returns;

(iv) listings in official government publications or other correspondence;

(v) driver's license;

(vi) voter registration; and

(vii) tax rolls;

(k) location of public schools attended by the individual or the individual's dependents;

(l) the nature and payment of taxes in other states;

(m) declarations of the individual:

(i) communicated to third parties;

(ii) contained in deeds;

(iii) contained in insurance policies;

(iv) contained in wills;

(v) contained in letters;

(vi) contained in registers;

(vii) contained in mortgages; and

(viii) contained in leases.

(n) the exercise of civil or political rights in a given location;

(o) any failure to obtain permits and licenses normally required of a resident;

(p) the purchase of a burial plot in a particular location;

(q) the acquisition of a new residence in a different location.

(6) Administration of the Residential Exemption.

(a) Except as provided in Subsections (6)(b), (d), and (e), the first one acre of land per residential unit shall receive the residential exemption.

(b) If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

(c) If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

(d) A property assessed under the Farmland Assessment

Act shall receive the residential exemption only for the homesite.

(e) A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

(f) If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

(g)(i) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

(A) the owner of record of the property;

(B) the property parcel number;

(C) the location of the property;

(D) the basis of the owner's knowledge of the use of the property;

(E) a description of the use of the property;

(F) evidence of the domicile of the inhabitants of the property; and

(G) the signature of all owners of the property certifying that the property is residential property.

(ii) The application under Subsection (6)(g)(i) shall be:

(A) on a form provided by the county; or

(B) in a writing that contains all of the information listed in Subsection (6)(g)(i).

R884-24P-53. 2019 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

(1) Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

(a) The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

(b) Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

(c) County assessors may not deviate from the schedules.

(d) Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

(2) All property qualifying for agricultural use assessment pursuant to Section 59-2-503 shall be assessed on a per acre basis as follows:

(a) Irrigated farmland shall be assessed under the following classifications.

(i) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1)	Box Elder	677
2)	Cache	582
3)	Carbon	451
4)	Davis	719
5)	Emery	427
6)	Iron	683
7)	Kane	357
8)	Millard	674
9)	Salt Lake	616
10)	Utah	641
11)	Washington	557
12)	Weber	694

(ii) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1)	Box Elder	595
2)	Cache	497
3)	Carbon	359
4)	Davis	633
5)	Duchesne	417
6)	Emery	344
7)	Grand	332
8)	Iron	599
9)	Juab	380
10)	Kane	275
11)	Millard	592
12)	Salt Lake	529
13)	Sanpete	460
14)	Sevier	484
15)	Summit	393
16)	Tooele	381
17)	Utah	554
18)	Wasatch	416
19)	Washington	475
20)	Weber	608

(iii) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1)	Beaver	514
2)	Box Elder	468
3)	Cache	376
4)	Carbon	239
5)	Davis	509
6)	Duchesne	292
7)	Emery	216
8)	Garfield	181
9)	Grand	210
10)	Iron	475
11)	Juab	256
12)	Kane	152
13)	Millard	468
14)	Morgan	328
15)	Piute	285
16)	Rich	152
17)	Salt Lake	403
18)	San Juan	146
19)	Sanpete	338
20)	Sevier	360
21)	Summit	269
22)	Tooele	255
23)	Uintah	316
24)	Utah	425
25)	Wasatch	289
26)	Washington	349
27)	Wayne	281
28)	Weber	483

(iv) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1)	Beaver	424
2)	Box Elder	387
3)	Cache	292
4)	Carbon	153
5)	Daggett	162
6)	Davis	425
7)	Duchesne	205
8)	Emery	134
9)	Garfield	97
10)	Grand	127
11)	Iron	389
12)	Juab	170
13)	Kane	68
14)	Millard	380
15)	Morgan	243
16)	Piute	199
17)	Rich	70
18)	Salt Lake	312
19)	San Juan	66
20)	Sanpete	254
21)	Sevier	276

22)	Summit	185
23)	Tooele	174
24)	Uintah	234
25)	Utah	341
26)	Wasatch	206
27)	Washington	263
28)	Wayne	198
29)	Weber	395

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1)	Beaver	586
2)	Box Elder	634
3)	Cache	586
4)	Carbon	586
5)	Davis	639
6)	Duchesne	586
7)	Emery	586
8)	Garfield	586
9)	Grand	586
10)	Iron	586
11)	Juab	586
12)	Kane	586
13)	Millard	586
14)	Morgan	586
15)	Piute	586
16)	Salt Lake	586
17)	San Juan	586
18)	Sanpete	586
19)	Sevier	586
20)	Summit	586
21)	Tooele	586
22)	Uintah	586
23)	Utah	644
24)	Wasatch	586
25)	Washington	693
26)	Wayne	586
27)	Weber	639

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	218
2)	Box Elder	216
3)	Cache	223
4)	Carbon	113
5)	Daggett	134
6)	Davis	226
7)	Duchesne	143
8)	Emery	118
9)	Garfield	89
10)	Grand	115
11)	Iron	225
12)	Juab	130
13)	Kane	93
14)	Millard	166
15)	Morgan	168
16)	Piute	163
17)	Rich	90
18)	Salt Lake	198
19)	Sanpete	167
20)	Sevier	172
21)	Summit	173
22)	Tooele	158
23)	Uintah	177
24)	Utah	214
25)	Wasatch	179
26)	Washington	195
27)	Wayne	147
28)	Weber	259

(d) Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

(i) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1)	Beaver	47
2)	Box Elder	79
3)	Cache	100
4)	Carbon	42
5)	Davis	44
6)	Duchesne	47
7)	Garfield	41
8)	Grand	42
9)	Iron	42
10)	Juab	44
11)	Kane	41
12)	Millard	40
13)	Morgan	55
14)	Rich	41
15)	Salt Lake	47
16)	San Juan	45
17)	Sanpete	47
18)	Summit	41
19)	Tooele	45
20)	Uintah	47
21)	Utah	43
22)	Wasatch	41
23)	Washington	41
24)	Weber	68

(ii) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1)	Beaver	14
2)	Box Elder	50
3)	Cache	70
4)	Carbon	13
5)	Davis	13
6)	Duchesne	16
7)	Garfield	13
8)	Grand	13
9)	Iron	13
10)	Juab	13
11)	Kane	13
12)	Millard	12
13)	Morgan	23
14)	Rich	13
15)	Salt Lake	15
16)	San Juan	17
17)	Sanpete	16
18)	Summit	13
19)	Tooele	13
20)	Uintah	16
21)	Utah	13
22)	Wasatch	13
23)	Washington	12
24)	Weber	38

(e) Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

(i) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1)	Beaver	65
2)	Box Elder	63
3)	Cache	60
4)	Carbon	45
5)	Daggett	45
6)	Davis	52
7)	Duchesne	59
8)	Emery	61
9)	Garfield	66
10)	Grand	67
11)	Iron	64
12)	Juab	56
13)	Kane	65
14)	Millard	65
15)	Morgan	57
16)	Piute	77
17)	Rich	56
18)	Salt Lake	61
19)	San Juan	63
20)	Sanpete	54
21)	Sevier	56
22)	Summit	62

23)	Tooele	61
24)	Uintah	69
25)	Utah	56
26)	Wasatch	45
27)	Washington	56
28)	Wayne	75
29)	Weber	60

(ii) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10
GR II

1)	Beaver	20
2)	Box Elder	20
3)	Cache	19
4)	Carbon	13
5)	Daggett	12
6)	Davis	16
7)	Duchesne	16
8)	Emery	18
9)	Garfield	20
10)	Grand	19
11)	Iron	19
12)	Juab	16
13)	Kane	21
14)	Millard	21
15)	Morgan	18
16)	Piute	22
17)	Rich	17
18)	Salt Lake	18
19)	San Juan	21
20)	Sanpete	15
21)	Sevier	15
22)	Summit	17
23)	Tooele	17
24)	Uintah	24
25)	Utah	20
26)	Wasatch	14
27)	Washington	18
28)	Wayne	24
29)	Weber	17

(iii) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1)	Beaver	15
2)	Box Elder	14
3)	Cache	12
4)	Carbon	11
5)	Daggett	10
6)	Davis	11
7)	Duchesne	12
8)	Emery	12
9)	Garfield	13
10)	Grand	13
11)	Iron	13
12)	Juab	12
13)	Kane	13
14)	Millard	13
15)	Morgan	11
16)	Piute	15
17)	Rich	11
18)	Salt Lake	13
19)	San Juan	14
20)	Sanpete	12
21)	Sevier	12
22)	Summit	12
23)	Tooele	12
24)	Uintah	16
25)	Utah	12
26)	Wasatch	11
27)	Washington	11
28)	Wayne	15
29)	Weber	12

(iv) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1)	Beaver	5
2)	Box Elder	5
3)	Cache	5
4)	Carbon	5
5)	Daggett	5
6)	Davis	5
7)	Duchesne	5
8)	Emery	5
9)	Garfield	5
10)	Grand	5
11)	Iron	5
12)	Juab	5
13)	Kane	5
14)	Millard	5
15)	Morgan	5
16)	Piute	5
17)	Rich	5
18)	Salt Lake	5
19)	San Juan	5
20)	Sanpete	5
21)	Sevier	5
22)	Summit	5
23)	Tooele	5
24)	Uintah	5
25)	Utah	5
26)	Wasatch	5
27)	Washington	5
28)	Wayne	5
29)	Weber	5

(f) Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

Nonproductive Land		
1)	All Counties	5

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

(1) Definitions.

(a) "Issued" means the date on which the judgment is signed.

(b) "2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

(2) A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

(3) The judgment levy public hearing required by Section 59-2-918.5 shall be held as follows:

(a) For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(b) For taxing entities operating under a January 1 through December 31 fiscal year:

(i) for judgments issued from the prior March 1 through September 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

(ii) for judgments issued from the prior September 16 through the last day of February, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

(c) If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by Subsections (3)(a) and (3)(b)(ii) shall be held at the same time as the hearing required under Section 59-2-919.

(4) If the Section 59-2-918.5 advertisement is combined with the Section 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

(5) In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

(6) All taxing entities imposing a judgment levy shall file with the commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

(a) The signed statement shall contain the following information for each judgment included in the judgment levy:

(i) the name of the taxpayer awarded the judgment;

(ii) the appeal number of the judgment; and

(iii) the taxing entity's pro rata share of the judgment.

(b) Along with the signed statement, the taxing entity must provide the commission the following:

(i) a copy of all judgment levy newspaper advertisements required;

(ii) the dates all required judgment levy advertisements were published in the newspaper;

(iii) a copy of the final resolution imposing the judgment levy;

(iv) a copy of the Notice of Property Valuation and Tax Changes, if required; and

(v) any other information required by the commission.

(7) The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2- 405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual

registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2- 217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2- 104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

(1) Purpose. The purpose of this rule is to:

(a) specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

(b) identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

(2) Definitions:

(a) "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

(b) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

(c) "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

(d) "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

(i) Unitary properties include:

(A) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(B) all property of public utilities as defined in Section 59-2-102.

(ii) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(A) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(B) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(C) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

(3) All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

(4) General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

(a) The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See Beaver County v. WilTel, Inc., 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

(b) The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in Subsection (5).

(i) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

(ii) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in

Subsection (5)(d).

(iii) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

(c) Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

(5) Appraisal Methodologies.

(a) Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

(i) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(A) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(B) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(I) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(II) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(III) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

(ii) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

(iii) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

(iv) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

(v) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

(b) Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

(i) Yield Capitalization. The yield capitalization formula is CF/(k-g), where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(A) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(I) NOI is defined as net income plus interest.

(II) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(III) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

(Aa) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

(Bb) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(B) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(I) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(II) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

(Aa) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

(Bb) The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

(Cc) The risk free rate shall be the current market rate on 20-year Treasury bonds.

(Dd) The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

(Ee) The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(C) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and

any future replacement assets.

(I) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

(ii) A discounted cash flow (DCF) method may be impractical to implement in a mass appraisal environment, but may be used when reliable cash flow estimates can be established.

(A) A DCF model should incorporate for the terminal year, and to the extent possible for the holding period, growth and discount rate assumptions that would be used in the yield capitalization method defined under Subsection (5)(b)(i).

(B) Forecasted growth may be used where unusual income patterns are attributed to

(I) unused capacity;

(II) economic conditions; or

(III) similar circumstances.

(C) Growth may not be attributed to assets not in place as of the lien date.

(iii) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

(c) Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

(I) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

(II) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

(d) Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

(6) Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

(a) Cost Regulated Utilities.

(i) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(A) subtracting intangible property;

(B) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(C) adding any taxable items not included in the utility's net plant account or rate base.

(ii) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

(iii) Items excluded from rate base under Subsections (6)(a)(i)(A) or (B) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

(b)(i) Railroads.

(ii) The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

(c) Airlines, air charter services, and air contract services.

(i) For purposes of this Subsection (6)(c):

(A) "aircraft pricing guide" means a nationally recognized publication that assigns value estimates for individual commercial aircraft that are in average condition typical for their type and vintage, and identified by year, make and model;

(B) "airline" means an:

(I) airline under Section 59-2-102;

(II) air charter service under Section 59-2-102; and

(III) air contract service under Section 59-2-102;

(C) "airline market indicator" means an estimate of value based on an aircraft pricing guide; and

(D) "non-mobile flight equipment" means all operating property of an airline, air charter service, or air contract service that is not within the definition of mobile flight equipment under Section 59-2-102.

(ii) In situations where the use of preferred methods for determining fair market value under Subsection (5) does not produce a reasonable estimate of the fair market value of the property of an airline operating as a unit, an airline market indicator published in an aircraft pricing guide, and adjusted as provided in Subsections (6)(c)(ii)(A) and (6)(c)(ii)(B), may be used to estimate the fair market value of the airline property.

(A)(I) In order to reflect the value of a fleet of aircraft as part of an operating unit, an aircraft market indicator shall include a fleet adjustment or equivalent valuation for a fleet.

(II) If a fleet adjustment is provided in an aircraft pricing guide, the adjustment under Subsection (6)(c)(ii)(A)(I) shall follow the directions in that guide. If no fleet adjustment is provided in an aircraft pricing guide, the standard adjustment under Subsection (6)(c)(ii)(A)(I) shall be 20 percent from a wholesale value or equivalent level of value as published in the guide.

(B) Non-mobile flight equipment shall be valued using the cost approach under Subsection (5)(a) or the market or sales comparison approach under Subsection (5)(c), and added to the value of the fleet.

(iii) An income capitalization approach under Subsection (5)(b) shall incorporate the information available to make an estimate of future cash flows.

(iv)(A) When an aircraft market indicator under Subsection (6)(c)(ii) is used to estimate the fair market value of an airline, the Division shall:

(I) calculate the fair market value of the airline using the preferred methods under Subsection (5);

(II) retain the calculations under Subsection (6)(c)(iv)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(iv)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) When an aircraft market indicator under Subsection (6)(c)(ii) is used, the Division shall justify in any appraisal report issued with an assessment why the preferred methods under Subsection (5) were not used.

(v)(A) When the preferred methods under Subsection (5) are used to estimate the fair market value of an airline, the Division shall:

(I) calculate an aircraft market indicator under Subsection (6)(c)(ii);

(II) retain the calculations under Subsection (6)(c)(v)(A)(I) in the work files maintained by the Division; and

(III) include the amounts calculated under Subsection (6)(c)(v)(A)(I) in any appraisal report that is produced in association with an assessment issued by the Division.

(B) Value estimates from an aircraft pricing guide under Subsection (6)(c)(i)(A) along with the valuation of non-mobile flight equipment under Subsection (6)(c)(ii)(B) shall, when possible, also be included in an assessment or appraisal report for purposes of comparison.

(C) Reasons for not including a value estimate required under Subsection (6)(c)(v)(B) include:

(I) failure to file a return; or

(II) failure to identify specific aircraft.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Veterans With a Disability and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property"means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Sections 59-2-1001 and 59-2-1004.

(1)(a) "Factual error" means an error that is:

(i) objectively verifiable without the exercise of discretion, opinion, or judgment;

(ii) demonstrated by clear and convincing evidence; and

(iii) agreed upon by the taxpayer and the assessor.

(b) Factual error includes:

(i) a mistake in the description of the size, use, or ownership of a property;

(ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

(iii) an error in the classification of a property that is eligible for a property tax exemption under:

(A) Section 59-2-103; or

(B) Title 59, Chapter 2, Part 11;

(iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;

(v) valuation of a property that is not in existence on the lien date; and

(vi) a valuation of a property assessed more than once, or by the wrong assessing authority.

(c) Factual error does not include:

(i) an alternative approach to value;

(ii) a change in a factor or variable used in an approach to value; or

(iii) any other adjustment to a valuation methodology.

(2) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

(a) the name and address of the property owner;

(b) the identification number, location, and description of the property;

(c) the value placed on the property by the assessor;
(d) the taxpayer's estimate of the fair market value of the property;
(e) evidence or documentation that supports the taxpayer's claim for relief; and
(f) the taxpayer's signature.
(3) If the evidence or documentation required under Subsection (2)(e) is not attached, the county will notify the taxpayer in writing of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.
(4) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (2)(e) and the county has notified the taxpayer under Subsection (3), the county may dismiss the matter for lack of evidence to support a claim for relief.
(5) If the information required under Subsection (2) is supplied, the county board of equalization shall render a decision on the merits of the case.
(6) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.
(7) The county board of equalization shall prepare and maintain a record of the appeal.
(a) For appeals concerning property value, the record shall include:
(i) the name and address of the property owner;
(ii) the identification number, location, and description of the property;
(iii) the value placed on the property by the assessor;
(iv) the basis for appeal stated in the taxpayer's appeal;
(v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and
(vi) the decision of the county board of equalization and the reasons for the decision.
(b) The record may be included in the minutes of the hearing before the county board of equalization.
(8)(a) The county board of equalization shall notify the taxpayer in writing of its decision.
(b) The notice required under Subsection (8)(a) shall include:
(i) the name and address of the property owner;
(ii) the identification number of the property;
(iii) the date the notice was sent;
(iv) a notice of appeal rights to the commission; and
(v) a statement of the decision of the county board of equalization; or
(vi) a copy of the decision of the county board of equalization.
(9) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (8).
(10) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.
(11) Decisions by the county board of equalization are final orders on the merits.
(12) Except as provided in Subsection (14), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:
(a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.
(b) During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.
(c) The county did not comply with the notification requirements of Section 59-2-919.1.
(d) A factual error is discovered in the county records pertaining to the subject property.
(e) The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.
(13) Appeals accepted under Subsection (12)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.
(14) The provisions of Subsection (12) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.
(15) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

(1) The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.
(2) The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:
(a) for each low-income housing project in the state that is eligible for a low-income housing tax credit:
(i) the Utah Housing Corporation project identification number;
(ii) the project name;
(iii) the project address;
(iv) the city in which the project is located;
(v) the county in which the project is located;
(vi) the building identification number assigned by the Internal Revenue Service for each building included in the project;
(vii) the building address for each building included in the project;
(viii) the total apartment units included in the project;
(ix) the total apartment units in the project that are eligible for low-income housing tax credits;
(x) the period of time for which the project is subject to rent restrictions under an agreement described in Subsection (2)(b);
(xi) whether the project is:
(A) the rehabilitation of an existing building; or
(B) new construction;
(xii) the date on which the project was placed in service;
(xiii) the total square feet of the buildings included in the project;
(xiv) the maximum annual federal low-income housing tax credits for which the project is eligible;
(xv) the maximum annual state low-income housing tax credits for which the project is eligible; and
(xvi) for each apartment unit included in the project:
(A) the number of bedrooms in the apartment unit;
(B) the size of the apartment unit in square feet; and
(C) any rent limitation to which the apartment unit is subject; and
(b) a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-

income housing project; and

(c) construction cost certifications for the project received from the low-income housing project owner.

(3) The Utah Housing Corporation shall provide the commission the information under Subsection (2) by January 31 of the year following the year in which a project is placed into service.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value That is At or Below the Statutorily Prescribed Amount Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount.

(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value that is at or below the statutorily prescribed amount shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has taxable tangible personal property in the county that is at or below the statutorily prescribed amount.

R884-24P-70. Real Property Appraisal Requirements for County Assessors Pursuant to Utah Code Ann. Sections 59-2-303.1 and 59-2-919.1.

(1) Definitions.

(a) "Accepted valuation methodologies" means those methodologies approved or endorsed in the Standard on Mass Appraisal of Real Property and the Standard on Automated Valuation Models published by the International Association of Assessing Officers (IAAO).

(b) "Database," as referenced in Section 59-2-303.1(6), means an electronic storage of data using computer hardware and software that is relational, secure and archival, and adheres to generally accepted information technology standards of practice.

(2) County mass appraisal systems, as defined in Section 59-2-303.1, shall use accepted valuation methodologies to perform the annual update of all residential parcels.

(3)(a) A detailed review of property characteristics shall include a sufficient inspection to determine any changes to real property due to:

(i) new construction, additions, remodels, demolitions, land segregations, changes in use, or other changes of a similar nature; and

(ii) a change in condition or effective age.

(b)(i) A detailed review of property characteristics shall be made in accordance with the IAAO Standard on Mass Appraisal of Real Property.

(ii) When using aerial photography, including oblique aerial photography, the date of the photographic flight is the property review date for purposes of Section 59-2-303.1.

(4) The last property review date to be included in the county's computer system shall include the actual day, month, and year that the last detailed review of a property's characteristics was conducted.

(5) The last property review date to be included on the notice shall include at least the actual year or tax year that the last detailed review of a property's characteristics was conducted. The month and day of the review may also be included on the notice at the discretion of the county assessor and auditor.

(6)(a) The five-year plan shall detail the current year plus four subsequent years into the future. The plan shall define the properties being reviewed for each of the five years by one or more of the following:

(i) class;

(ii) property type;

(iii) geographic location; and

(iv) age.

(b) The five-year plan shall also include parcel counts for each defined property group.

R884-24P-71. Agreements with Commercial or Industrial Taxpayers for Equal Property Tax Payments Pursuant to Utah Code Ann. Section 59-2-1308.5.

(1) An agreement with a commercial or industrial taxpayer for equal property tax payments under Section 59-2-1308.5 is effective:

(a) the current calendar year, if the agreement is agreed to by all parties on or before May 31; or

(b) the subsequent calendar year, if the agreement is agreed to by all parties after May 31.

(2) An agreement under Subsection (1) affects only those taxing entities that are a party to the agreement.

(3) The commission shall ensure that an agreement under Subsection (1) does not affect the calculation of the certified tax rate by adjusting the formula under Section 59-2-924 so that the collection ratio for each taxpayer that is a party to the agreement is based on the amount that would have been collected according to the same valuation and assessment methodologies that would have been applied in the absence of the agreement.

R884-24P-72. State Farmland Evaluation Advisory Committee Procedures Pursuant to Utah Code Ann. Section 59-2-514.

(1) "Committee" means the State Farmland Evaluation Advisory Committee established in Section 59-2-514.

(2) The committee is subject to Title 52, Chapter 4, Open and Public Meetings Act.

(3) A committee member may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) the agenda posted for the meeting establishes one or more anchor locations for the meeting where the public may attend;

(b) at least one committee member is at an anchor location; and

(c) all of the committee members may be heard by any person attending an anchor location.

R884-24P-74. Changes to Jurisdiction of Mining Claims Pursuant to Utah Code Ann. Section 59-2-201.

(1) A mining claim shall be assessed by the county in which the mining claim is located if the commission determines that the mining claim is used for other than mining purposes.

(2) The owner of a mining claim may request that the mining claim be assessed by the county in which the mining claim is located by providing the following to the commission:

(a) a copy of the title to the mining claim;

(b) certification that all owners of the mining claim seek assessment by the county in which the mining claim is located;

(c) a valid metes and bounds legal description of the mining claim approved by the county recorder where the mining

claim is located; and

(d) evidence that the mining claim is used for other than mining purposes.

(3) A county may request that a mining claim be assessed by the county in which the mining claim is located by providing the following to the commission:

(a) a valid metes and bounds legal description of the mining claim approved by the county recorder where the mining claim is located; and

(b) evidence that the mining claim is used for other than mining purposes.

(4) Evidence that a mining claim is used for other than mining purposes is dependent on specific facts and circumstances and includes:

(a) evidence that the mining claim will be actively and solely used for other than mining purposes for more than a temporary period of time;

(b) evidence that a restrictive covenant or conservation easement prohibiting mining activities on the mining claim is recorded in the county where the mining claim is located;

(c) evidence that local zoning ordinances prohibit mining activities on the mining claim; or

(d) in the case where the mining claim has been used for mining activities at any time, the mining claim has been reclaimed as evidenced by the return of the mine reclamation bond to the owner of the mining claim by the Division of Oil, Gas, and Mining.

KEY: taxation, personal property, property tax, appraisals
March 28, 2019 **Art. XIII, Sec 2**
Notice of Continuation November 10, 2016 **9-2-201**
11-13-302
41-1a-202
41-1a-301
59-1-210
59-2-102
59-2-103
59-2-103.5
59-2-104
59-2-201
59-2-210
59-2-211
59-2-301
59-2-301.3
59-2-302
59-2-303
59-2-303.1
59-2-305
59-2-306
59-2-401
59-2-402
59-2-404
59-2-405
59-2-405.1
59-2-406
59-2-508
59-2-514
59-2-515
59-2-701
59-2-702
59-2-703
59-2-704
59-2-704.5
59-2-705
59-2-801
59-2-918 through 59-2-924
59-2-1002
59-2-1004
59-2-1005
59-2-1006
59-2-1101
59-2-1102
59-2-1104
59-2-1106
59-2-1107 through 59-2-1109
59-2-1113
59-2-1115
59-2-1202
59-2-1202(5)
59-2-1302
59-2-1303
59-2-1308.5
59-2-1317
59-2-1328
59-2-1330
59-2-1347
59-2-1351
59-2-1365
59-2-1703

R907. Transportation, Administration.
R907-66. Procurement of Consultant Services - Procedures and Contract Administration.
R907-66-1. Authority and Purpose.

(1) Authority. The Department of Transportation (the "Department") makes this rule pursuant to authority granted by Utah Code Sections 63G-6a-106(3)(a) and 72-1-201(1)(h).

(2) Purpose. The Department solicits for and contracts with consultants to perform design professional, engineering, and engineering-related services.

(a) This Rule, R907-66, establishes procedures for procuring services of design, engineering and engineering-related professionals, identified herein as consultants, and administering the attendant contracts utilizing Federal-aid highway program funding or Utah state funding.

(b) For detailed guidance beyond federal and state codes, federal regulations, and this rule, the Department's Consultant Services Division maintains the Consultant Services Manual of Instruction, which includes procedures and guidelines for preparing and publishing solicitations such as requests for qualifications that have project-specific requirements.

R907-66-2. Definitions.

For purposes of this rule, R907-66, the following definitions apply:

(1) "Brooks Act" means a commonly used term for the Federal Property and Administrative Services Act of 1949 (Public Law 92--582, 86 Stat. 1278 (1972) and 40 U.S.C. Chapter 11, Section 1101-1104.

(2) "Competitive negotiation" means any form of negotiation that utilizes qualifications-based procedures complying with the Brooks Act.

(3) "Consultant" means an expert the Department contracts with to perform professional services as may be necessary to the planning, progress, and completion of any design, engineering, and engineering-related service.

(4) "Desk review" means a process that includes a limited-scope examination of a Consultant's original source documentation and communication to provide reasonable assurance that costs presented are not materially misstated and comply with FAR and 2 CFR Part 200.

(5) "The division" means the Consultant Services Division of the Department of Transportation.

(6) "Engineering," "the practice of engineering," and "professional engineering" mean the same as the terms are defined in Utah Code Section 58-22-102(9)(a).

(7) "FAR" means Federal Acquisition Regulations, Title 48, Code of Federal Regulations.

(8) "Federal-aid highway funds" means funds authorized by Congress to assist the Department in providing for construction, reconstruction, and improvement of highways and bridges on eligible Federal-Aid highway routes and for other special purpose programs and projects.

(9) "Other Professional Services" means grant writing, asset management, transportation research, prototype development, technology transfer, project-related public involvement, right of way acquisition services, or other services as deemed necessary by the executive director or designee.

(10) "Qualifications-based selection" or "QBS" means that procurement process 40 U.S.C. Sections 1101 -- 1104 (Brooks Act), as a process for public agencies to use for architectural, engineering, and related professional services for public construction projects and Utah Code 63G-6a Part 15 for procurement of design professional services.

(11) "Risk Assessment" means a process that includes identifying and analyzing potential internal control deficiencies and evaluation of initial evidence for indications of noncompliance with FAR and 2 CFR Part 200 and making judgments on the tolerability of the risk of accepting the Consultant's indirect cost rate(s) as presented without further action.

R907-66-3. Qualifications-based Selection of Consultants for Design, Engineering and Engineering-related Services.

(1) The Department will perform qualifications-based selection procedures, including competitive negotiations to procure, manage, and administer contracts with consultants and other professional services.

R907-66-4. Incorporation by Reference of Applicable Federal Law.

To receive grants of federal-aid highway funds the Department must conform to applicable federal law. Therefore, the Department incorporates by reference the following federal regulations:

(1) 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards for both federal and state funded projects. 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

(2) 23 CFR 1.11, Engineering Services. 23 CFR 1.11 Engineering Services

(3) 23 CFR 1.33, Conflicts of Interest. 23 CFR 1.33 Conflicts of Interest

(4) 23 CFR 172, Procurement, Management, and Administration of Engineering and Design Related Service Contracts. Procurement, Management, and Administration of Engineering and Design Related Services

R907-66-5. Small Purchase Cap.

(1) Utah Code Section 63G-6a-506(2) grants the Department authority to make rules governing small purchases of any procurement item.

(2) When procuring services of consultants, the Division will follow the simplified acquisition threshold established by 48 CFR 2.101 as the small purchase maximum or small purchase cap for individual procurement of consultant services.

(3) The Division will establish pools of prequalified consultants or other professional service providers for various work disciplines for consultant selection to perform services with an estimated value less than the Small Purchase Cap following the Utah Procurement Code Section 63G-6a-507 Approved Vendor List Procurement Process.

(4) The Department will publish detailed procedures the Consultant Services Division will follow to establish pre-qualified consultant pools in the Consultant Services Manual of Instruction, Pool Solicitation or other Solicitations such as Requests for Qualifications.

R907-66-6. Selection of Consultants for Services with Estimated Values in Excess of the Small Purchase Cap.

The Department will select consultants for contracts with a value in excess of the small purchase cap set forth in R907-66-5 in accordance with 23 CFR Part 172, Utah Procurement Code 63G-6a Part 15 Design Professional Services, the Consultant Services Manual of Instruction, and the specific Solicitation such as the Request for Qualifications.

R907-66-7. Consultant Financial Screening and Auditing.

(1) To provide reasonable assurance that the Consultant's presented Indirect Cost Rate(s), hourly billing rates, and direct costs comply with the FAR and 2 CFR Part 200, Subpart E, Cost Principles, the Department will conduct risk assessments, desk reviews, and audits as necessary for consultants seeking to perform design professional, engineering, or engineering-related services for the Department.

(2) Consultants submit their firm's Financial Screening Application (including all required supporting documents)

within 90 days of their most recent fiscal year-end or 60 days prior to the anniversary date of their previous financial screening application approval, whichever occurs first.

(3) The Department Office of Internal Audit may conduct an audit to determine costs are allowable and in compliance with the requirements of 2 CFR Part 200.

R907-66-8. Competitive Contract Negotiations.

(1) The Department will conduct competitive negotiations for contracts with the consultant firm it considers most qualified to provide services necessary to complete a project using guidelines developed by the Division. The Department will prepare independent estimates of the value of such services for use in negotiations.

(2) Negotiations follow state and federal procurement procedures and are based on compensation that the Department considers fair and reasonable. Negotiations will end if the Department decides that it cannot agree on terms with the firm it considers most qualified. The Division will then begin negotiations with the firm it determines to be next most qualified firm. This process continues until either mutually agreeable terms are agreed to or the Division chooses to begin the selection process again to identify other firms qualified to provide such services.

(3) The guidelines for both consultant selection and negotiations are public information and may be found within the Consultant Services Manual of Instruction, the project-specific solicitation or request for qualifications, and other guidelines established by the Division and published on the Department's Internet web site.

R907-66-9. Award of Contracts.

The Division will award a contract to the best qualified, responsive and responsible consultant with which it can negotiate a fair and reasonable cost as required by the Utah Procurement Code and 23 CFR Part 172, and in accordance with the Department's Consultant Services Manual of Instruction and other guidelines established by the Consultant Services Division.

R907-66-10. Execution of Contracts.

The Department will not consider a contract effective until funding has been approved and all signature lines have been filled in with the appropriate officer's signature.

R907-66-11. Notice to Proceed.

(1) Consultants may not begin performing work under a contract before the Division has issued to the consultant a notice to proceed for the contract.

(2) The Department will not pay for any work a consultant performs before the Department has issued to the consultant a notice to proceed for the contract.

KEY: procurement, small purchases, design and engineering services

March 26, 2019 63G-6-105

Notice of Continuation October 7, 2016 72-1-201

R918. Transportation, Operations, Maintenance.
R918-4. Using Volunteer Groups and Third-Party Contractors for the Adopt-a-Highway and Sponsor-a-Highway Litter Pickup Programs.
R918-4-1. Purpose and Authority.

The purpose of this rule is to establish a procedure for using volunteer groups and third-party contractors for litter pickup and to provide additional resources to increase UDOT's litter control effort at a minimal cost. This program is not operated to provide a highway signing program for a free speech forum. This rule is enacted under the general rulemaking authority in Section 72-1-201.

R918-4-2. Application for the Adopt-A-Highway Program.

(1) A group or person who wishes to participate in a program to pick up litter along UDOT right-of-way may apply with the UDOT Region in which the right-of-way is located. The application will contain, at a minimum, the name of the organization or person, the right-of-way requested, along with alternatives if desired, the name and address of a contact person, and the name of the sponsoring organization requested to be placed on the Recognition Sign. UDOT may provide an application form or agreement to formalize the terms and conditions of this rule.

(2) If the name of an organization is to appear on the sign, the applicant must submit, upon request, documentation from the state showing the form, status, and official name of the entity. Only the official name of the organization will be printed on the sign.

(3) UDOT also coordinates a program similar to Adopt-A-Highway, known as Sponsor-A-Highway, wherein a private contractor performs the actual litter pickup on behalf of local businesses or other entities ("sponsors") in return for a sponsorship fee. The sponsoring entity is recognized with a sign. A business, government entity, group, or person who wishes to participate in the Sponsor-A-Highway program may apply to the contractor. The contractor must submit the name of the entity, sponsorship segment, and proposed Sponsor-A-Highway sign rendering to UDOT for approval.

R918-4-3. Conditions of Adopt-A-Highway Participation.

If the Adopt-A-Highway application is granted, UDOT will notify the applicant's contact person in writing and promptly send to him or her a contract that sets forth the following basic conditions:

(1) the location of the right-of-way;

(2) a hold harmless agreement, waiver of liability, and indemnification for third-party claims;

(3) safety rules;

(4) information concerning safety apparel that must be used and that which is recommended;

(5) the name of the entity or organization that is applying for the permit;

(6) an explanation of the condition in which UDOT expects the applicant to keep the roadway and notification that the decision whether the applicant has done so is solely within UDOT's discretion;

(7) notification of reasons for termination, which include failure to comply with any part of the agreement, fraud in the application, failure to follow safety requirements or commands;

(8) a date when the agreement will terminate, along with any automatic renewal provisions;

(9) volunteer groups must provide a responsible supervisor to properly control the activities of the group, with the expertise and degree of supervision to be decided by UDOT;

(10) no person under the age of fourteen years may participate in the litter pick-up program or be on the right-of-way;

(11) volunteers must accept and receive safety instructions by the Region Safety/Risk Manager, or designee;

(12) volunteers must stay off the traveled area of the roadway, except when traveled area must be crossed, with any crossing being done by the entire group together along with the signing, flagging, or supervision directed by the Region Safety/Risk Manager or designee;

(13) volunteers must stay off the traveled areas of Interstate Routes, Freeways, and divided highways at all times;

(14) in areas where the Region Director or Safety/Risk Manager or Traffic Engineer believes it appropriate, the applicant must use advance warning signs;

(15) work must be done during daylight hours;

(16) such other information as UDOT believes may be required to adequately advise the applicant of its responsibilities and provide for the public safety;

(17) clean up the assigned right-of-way at least three times a year as well as when UDOT specifically requests; and

(18) notify UDOT as soon as reasonably possible if they find items that appear suspicious or unsafe, i.e., syringes, drug paraphernalia, or closed containers.

R918-4-4. Conditions of Sponsor-A-Highway Participation.

A business, government entity, group, or person participating in the Sponsor-A-Highway program must:

(1) be legally empowered to enter a contract in the state of Utah; and

(2) use their legal name or a registered DBA name.

R918-4-5. UDOT discretion to allow use of right-of-way.

(1) Nothing in this rule or any other UDOT rule may be construed to require UDOT to make any portion of right-of-way available for litter pick up. The decision whether to do so is exclusively within UDOT's discretion. Similarly, the decision to take a route out of the litter pick-up program is also within UDOT's exclusive discretion even if the route is currently available and being used for litter pick-up.

(2) Should UDOT determine that a route no longer qualifies for participation in the Adopt-a-Highway program, UDOT will notify the person or organization assigned the route of that determination. The notification constitutes termination of the contract, regardless of how much time is left on the contract.

(3) UDOT may also terminate a contract at any time if it determines that continuing the contract would be counterproductive to the program's purpose or have undesirable results such as vandalism, increased litter, or would otherwise jeopardize the safety of the participants, the traveling public, or UDOT employees.

R918-4-6. Recognition Signs.

(1) If the applicant's authorized representative (contact person) signs the contract provided by UDOT, UDOT will place a recognition sign along the route, if all other conditions are met. UDOT will not place either slogans or logos on Adopt-A-Highway signs. The name may be edited to comply with space limitations.

(2) Slogans, DBA names, registered trademarks, and registered service marks may be included on Sponsor-A-Highway signs, subject to UDOT review and approval.

R918-4-7. Replacement of Signs.

(1) Adopt-A-Highway Signs: UDOT will not replace damaged or missing signs unless the damage was due to weather or other natural cause and then only if there is sufficient funding. In no case will UDOT replace a sign more than once every five years.

(2) Sponsor-A-Highway Signs: Sponsor-A-Highway signs remain the property of the Sponsor-A-Highway contractor.

R918-4-8. UDOT's Responsibilities.

UDOT will:

(1) furnish volunteers with UDOT-standard vests, which must be returned after cleanup activities are completed;

(2) furnish litter bags, which, when filled, must be placed along the shoulder of the road for collection by UDOT personnel;

(3) furnish advance warning signs in areas where the Region Director, Safety/Risk Manager, or Traffic Engineer believes it appropriate; and

(4) install contractor furnished Sponsor-A-Highway signs at locations designated by the Region Traffic Engineer and maintain the sign base, posts, and mounting hardware.

KEY: adopt-a-highway, sponsor-a-highway, litter, volunteer
March 26, 2019 72-1-201
Notice of Continuation October 8, 2018

R994. Workforce Services, Unemployment Insurance.
R994-403. Claim for Benefits.
R994-403-101a. Filing a New Claim.

(1) A new claim for unemployment benefits is made by filing with the Department of Workforce Services Claims Center. A new claim can be filed by telephone, completing an application at the Department's web site, or as otherwise instructed by the Department.

(2) The effective date of a new claim for benefits is the Sunday of the week in which the claim is filed, provided the claimant did not work full-time during that week, or is not entitled to earnings equal to or in excess of the WBA for that week. A claim for benefits can only be made effective for a prior week if the claimant can establish good cause for late filing in accordance with R994-403-106a.

(3) When a claimant files a new claim during the last week of a quarter and has worked less than full-time for that week, the Department will make the claim effective that week if it is advantageous to the claimant, even if the claimant has earnings for that week that are equal to or in excess of the WBA.

(4) Wages used to establish eligibility for a claim cannot be used on a subsequent claim.

R994-403-102a. Cancellation of Claim.

(1) Once a weekly claim has been filed and the claimant has been deemed monetarily eligible, the claim is considered to have been established, even if no payment has been made or waiting week credit granted. The claim then remains established for 52 weeks during which time another regular claim may not be filed against the state of Utah unless the claim is canceled.

(2) A claim may be canceled if the claimant requests that the claim be canceled and one of the following circumstances can be shown:

(a) no weekly claims have been filed;

(b) cancellation is requested prior to the issuance of the monetary determination;

(c) the request is made within the same time period permitted for an appeal of the monetary determination and the claimant returns any benefits that have been paid;

(d) the claimant had earnings, severance, or vacation payments equal to or greater than the WBA applicable to all weeks for which claims were filed;

(e) the claimant meets the eligibility requirements for filing a new claim following a disqualification due to a strike in accordance with the requalifying provisions of Subsection 35A-4-405(4)(c);

(f) the claimant meets the requirements for cancellation established under the provisions for combined wage claims in R994-106-107; or

(g) the claimant has filed an unemployment compensation for ex-military (UCX) claim, and it is determined the claimant does not have wage credits under Title 5, chapter 85, U.S. Code.

(3) If a claimant is disqualified from the receipt of unemployment benefits because he or she was discharged for a crime in connection with work under R994-405-210, whether the claimant was deemed monetarily eligible or not, the claim will be established for 52 weeks and cannot be canceled even if the requirements of subsection (2) have been satisfied.

R994-403-103a. Reopening a Claim.

(1) A claim for benefits is considered "closed" when a claimant reports four consecutive weeks of earnings equal to or in excess of the WBA or does not file a weekly claim within 27 days from the last week filed. In those circumstances, the claimant must reopen the claim before benefits can be paid.

(2) A claimant may reopen the claim any time during the 52-week period after first filing by contacting the Claims Center. The effective date of the reopened claim will be the Sunday of the week in which the claimant requests reopening unless good cause is established for failure to request reopening during a prior week in accordance with R994-403-106a.

R994-403-104g. Using Unused Wages for a Subsequent Claim.

(1) A claimant may have sufficient wage credits to monetarily qualify for a subsequent claim without intervening employment.

(2) With the exception of subsection (3), benefits will not be paid under Subsection 35A-4-403(1)(g) from the effective date of the claim and continuing until the week the claimant provides proof of covered employment equal to at least six times the WBA. Each of the following elements must be satisfied:

(a) the claimant must have performed work in covered employment after the effective date of the original claim, but not necessarily during the benefit year of the original claim;

(b) actual services must have been performed. Vacation, severance pay, or a bonus cannot be used to requalify; and

(c) the claimant must have earnings from covered employment, as defined in R994-201-101(9), equal to at least six times the WBA of the original or subsequent claim, whichever is lower.

(3) Intervening covered employment is not required if the claimant did not receive benefits during the preceding benefit year.

R994-403-105a. Filing Weekly Claims.

(1) Claims must be filed on a weekly basis. For unemployment benefit purposes, the week begins at 12:01 a.m. on Sunday and ends at midnight on Saturday. The claimant is the only person who is authorized to file weekly claims. The responsibility for filing weekly claims cannot be delegated to another person.

(2) Each weekly claim should be filed as soon as possible after the Saturday week ending date. If the claim has not been closed, the Department will allow 20 days after the week ending date to file a timely claim. A weekly claim filed 21 or more calendar days after the week ending date will be denied unless good cause for late filing is established in accordance with R994-403-106a.

R994-403-106a. Good Cause for Late Filing.

(1) Claims must be filed timely to insure prompt, accurate payment of benefits. Untimely claims are susceptible to errors and deprive the Department of its responsibility to monitor eligibility. Benefits may be paid if it is determined that the claimant had good cause for not filing in a timely manner.

(2) The claimant has the burden to establish good cause by competent evidence. Good cause is limited to circumstances where it is shown that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable. Some reasons for good cause for late filing may raise other eligibility issues. Some examples that may establish good cause for late filing are:

(a) a crisis of several days duration that interrupts the normal routine during the time the claim should be filed;

(b) hospitalization or incarceration; or

(c) coercion or intimidation exercised by the employer to prevent the prompt filing of a claim.

(3) The Department is the only acceptable source of information about unemployment benefits. Relying on inaccurate advice from friends, relatives, other claimants or similar sources does not constitute good cause.

(4) Good cause for late filing cannot extend beyond 65 weeks from the filing date of the initial claim.

R994-403-107b. Registration, Workshops, Deferrals - General Definition.

(1) A claimant must register for work with the Department,

unless, at the discretion of the Department, registration is waived or deferred.

(2) The Department may require attendance at workshops designed to assist claimants in obtaining employment.

(3) Failure, without good cause, to comply with the requirements of Subsections (1) and (2) of this section may result in a denial of benefits. The claimant has the burden to establish good cause through competent evidence. Good cause is limited to circumstances where it is shown that the failure to comply was due to circumstances beyond the control of the claimant or which were compelling and reasonable. The proof of inability to register or report may raise an able or available issue.

(4) The denial of benefits begins with the Sunday of the week the claimant failed to comply and will continue through the Saturday prior to the week the claimant contacts the Department and complies by either registering for work, reporting as required, or scheduling an appointment to attend the next available workshop or conference. The denial can be waived if the Department determines the claimant complied within 7 calendar days of the decision date.

R994-403-108b. Deferral of Work Registration and Work Search.

(1) The Department may elect to defer the work registration and work search requirements. A claimant placed in a deferred status is not required to actively seek work but must meet all other availability requirements of the act. Deferrals are generally limited to the following circumstances:

(a) Labor Disputes.

A claimant who is unemployed due to a labor dispute may be deferred while an eligibility determination under Subsection 35A-4-405(4) is pending. If benefits are allowed, the claimant must register for work immediately.

(b) Union Attachment.

(i) A claimant who is a union member in good standing, is on the out-of-work list, or is otherwise eligible for a job referral by the union, and has earned at least half of his or her base period earnings through the union, may be eligible for a deferral. If a deferral is granted to a union member, it shall not be extended beyond the mid-point of the claim unless the claimant can demonstrate a reasonable expectation of obtaining employment through the union.

(ii) If the claimant is not in deferred status because the claimant did not earn at least 50 percent of his or her base period wage credits in employment as a union member, or the deferral has ended, the claimant must meet the requirements of an active, good faith work search by contacting employers in addition to contacts with the union. This work search is required even though unions may have regulations and rules which penalize members for making independent contacts to try to find work or for accepting nonunion employment.

(c) Employer Attachment.

A claimant who has an attachment to a prior employer and reasonable assurance of returning to full-time employment within ten weeks of filing or reopening a claim may have the work registration requirement deferred to the expected date of recall. A claimant is presumed to have reasonable assurance of employment if he or she previously worked for the employer and there has been no change in the conditions of his or her employment which would indicate severance of the employment relationship. The deferral should generally not extend longer than ten weeks. To extend beyond ten weeks, the claimant must have earned at least half of his or her base period earnings with the employer in question and the employer must submit a request to the department.

(d) Three Week Deferral.

A claimant who accepts a definite offer of full-time work to begin within three weeks, shall be deferred for that period.

(e) Seasonal.

A claimant may be deferred when, due to seasonal factors, work is not available in the claimant's primary base period occupation and other suitable work is not available in the area.

(f) Department approval.

If Department approval is granted under the elements of R994-403-202, the claimant will be placed in deferred status once the training begins and will not be required to register for work or to seek and accept work. The deferral also applies to break periods between successive terms as long as the break period is four weeks or less. A claimant must make a work search prior to the onset of training, even if the claimant has been advised that the training has been approved.

(2) Deferrals cannot be granted if prohibited by state or federal law for certain benefit programs.

R994-403-109b. Profiled Claimants.

(1) The Department will identify individuals who are likely to exhaust unemployment benefits through a profiling system and require that they participate in reemployment services. These services may include job search workshops, job placement services, counseling, testing, and assessment.

(2) In order to avoid disqualification for failure to participate in reemployment services, the claimant must show good cause for nonparticipation. Good cause is limited to circumstances where the claimant can show that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable.

(3) Failure to participate in reemployment services without good cause will result in a denial of benefits beginning with the week the claimant refuses or fails to attend scheduled services and continuing until the week the claimant participates in the required reemployment service.

(4) Some reasons for good cause for nonparticipation may raise other eligibility issues.

R994-403-110c. Able and Available - General Definition.

(1) The primary obligation of the claimant is to become reemployed. A claimant may meet all of the other eligibility criteria but, if the claimant cannot demonstrate ability, availability, and an active good faith effort to obtain work, benefits cannot be allowed.

(2) A claimant must be attached to the labor force, which means the claimant can have no encumbrances to the immediate acceptance of full-time work. The claimant must:

(a) be actively engaged in a good faith effort to obtain employment; and

(b) have the necessary means to become employed including tools, transportation, licenses, and childcare if necessary.

(3) The continued unemployment must be due to the lack of suitable job opportunities.

(4) The only exception to the requirement that a claimant actively seek work is if the Department has approved schooling under Section 35A-4-403(2) and the claimant meets the requirements of R994-403-107b.

(5) The only exception to the requirements that the claimant be able to work and actively seeking full-time work are that the claimant meets the requirements of R994-403-111c(6).

R994-403-111c. Able.

(1) The claimant must have no physical or mental health limitation which would preclude immediate acceptance of full-time work. A recent history of employment is one indication of a claimant's ability to work. If there has been a change in the claimant's physical or mental capacity since his or her last employment, there is a presumption of inability to work which the claimant must overcome by competent evidence. The claimant must show that there is a reasonable likelihood that

jobs exist which the claimant is capable of performing before unemployment insurance benefits can be allowed. Pregnancy is treated the same as other physical limitations.

(2) For purposes of determining weekly eligibility for benefits, it is presumed a claimant who is not able to work more than one-half the normal workweek will be considered not able to perform full-time work. The normal workweek means the normal workweek in the claimant's occupation. A claimant will be denied under this section for any week in which the claimant refuses suitable work due to an inability to work, regardless of the length of time the claimant is unable to work.

(a) Past Work History.

Benefits will not be denied solely on the basis of a physical or mental health limitation if the claimant earned base period wages while working with the limitation and is:

(i) willing to accept any work within his or her ability;

(ii) actively seeking work consistent with the limitation; and

(iii) otherwise eligible.

Under these circumstances, the unemployment is considered to be due to a lack of employment opportunities and not due to an inability to work.

(b) Medical Verification.

When an individual has a physical or mental health limitation, medical information from a competent health care provider is one form of evidence used to determine the claimant's ability to work. The provider's opinion is presumed to be an accurate reflection of the claimant's ability to work, however, the provider's opinion may be overcome by other competent evidence. The Department will determine if medical verification is required.

(3) Temporary Disability.

(a) Employer Attached.

A claimant is not eligible for benefits if the claimant is not able to work at his or her regular job due to a temporary disability and the employer has agreed to allow the claimant to return to the job when he or she is able to work. In this case, the claimant's unemployment is due to an inability to work rather than lack of available work. The claimant is not eligible for benefits even if there is other work the claimant is capable of performing with the disability. If a claimant is precluded from working due to Federal Aviation Administration regulations because of pregnancy, and the employer has agreed to allow the claimant to return to the job, the claimant is considered to be on a medical leave of absence and is not eligible for benefits.

(b) No Employer Attachment.

If the claimant has been separated from employment with no expectation of being allowed to return when he or she is again able to work, or the temporary disability occurred after becoming unemployed, benefits may be allowed even though the claimant cannot work in his or her regular occupation if the claimant can show there is work the claimant is capable of performing and for which the claimant reasonably could be hired. The claimant must also meet other eligibility requirements including making an active work search.

(4) Hospitalization.

A claimant is unable to work if hospitalized unless the hospitalization is on an out-patient basis or the claimant is in a rehabilitation center or care facility and there is independent verification that the claimant is not restricted from immediately working full-time. Immediately following hospitalization, a rebuttable presumption of physical inability continues to exist for the period of time needed for recuperation.

(5) Workers' Compensation.

(a) Compensation for Lost Wages.

A claimant is not eligible for unemployment benefits while receiving temporary total disability workers' compensation benefits.

(b) Subsequent Awards.

The Department may require that a claimant who is receiving permanent partial disability benefits from workers' compensation show that he or she is able and available for full-time work and can reasonably expect to obtain full-time work even with the disability.

(c) Workers' compensation disability payments are not reportable as wages.

(6) Physical or Mental Health Limitation.

(a) A claimant who is not able to work full-time due to a physical or mental health limitation, may be considered eligible under this rule if:

(i) the claimant's base period employment was limited to part-time because of the claimant's physical or mental health limitations;

(ii) the claimant's prior part-time work was substantial. Substantial is defined as at least 50 percent of the hours customarily worked in the claimant's occupation;

(iii) the claimant is able to work at least as many hours as he or she worked prior to becoming unemployed;

(iv) there is work available which the claimant is capable of performing; and

(v) the claimant is making an active work search.

(b) The Department may require that the claimant establish ability by competent evidence.

R994-403-112c. Available.

(1) General Requirement.

The claimant must be available for full-time work. Any restrictions on availability, such as lack of transportation, domestic problems, school attendance, military obligations, church or civic activities, whether self-imposed or beyond the control of the claimant, lessen the claimant's opportunities to obtain suitable full-time work.

(2) Activities Which Affect Availability.

It is not the intent of the act to subsidize activities which interfere with immediate reemployment. A claimant is not considered available for work if the claimant is involved in any activity which cannot be immediately abandoned or interrupted so that the claimant can seek and accept full-time work.

(a) Activities Which May Result in a Denial of Benefits.

For purposes of establishing weekly eligibility for benefits, a claimant who is engaged in an activity for more than half the normal workweek that would prevent the claimant from working, is presumed to be unavailable and therefore ineligible for benefits. The normal workweek means the normal workweek in the claimant's occupation. This presumption can be overcome by a showing that the activity did not preclude the immediate acceptance of full-time work, referrals to work, contacts from the Department, or an active search for work. When a claimant is away from his or her residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of unavailability may be overcome. The conclusion of unavailability can also be overcome in the following circumstances:

(i) Definite Offer of Work or Recall.

If the claimant has accepted a definite offer of full-time employment or has a date of recall to begin within three weeks, the claimant does not have to demonstrate further availability except as provided in subparagraphs (B) and (C) of this section and is not required to seek other work. Because the statute requires that a claimant be able to work, if a claimant is unable to work for more than one-half of any week due to illness or hospitalization, benefits will be denied.

(ii) Jury Duty or Court Attendance.

Jury duty or court attendance is a public duty required by law and a claimant will not be denied benefits if he or she is unavailable because of a lawfully issued summons to appear as a witness or to serve on a jury unless the claimant:

(A) is a party to the action;

(B) had employment which he or she was unable to continue or accept because of the court service; or

(C) refused or delayed an offer of suitable employment because of the court service.

The time spent in court service is not a personal service performed under a contract of hire and therefore is not considered employment.

(b) Activities Which Will Result in a Denial of Benefits.

(i) Refusal of Work.

When a claimant refuses any suitable work, the claimant is considered unavailable. Even though the claimant had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work was available. Benefits are also denied when a claimant fails to be available for job referrals or a call to return to work under reasonable conditions consistent with a previously established work relationship. This includes referral attempts from a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

(ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because the claimant was not able or available to do his or her work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during the last week of employment and the claimant was not paid for the day or days of absence, benefits will be denied for that week. The claimant will be denied benefits under this section regardless of the length of the absence.

(3) Hours of Availability.

(a) Full-Time.

Except as provided in R994-403-111c(5), in order to meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week but may vary due to customary practices in an occupation. If the claimant was last employed less than full-time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

(b) Other Than Normal Work Hours.

If the claimant worked other than normal work hours and the work schedule was adjusted to accommodate the claimant, the claimant cannot continue to limit his or her hours of availability even if the claimant was working 40 hours or more. The claimant must be available for full-time work during normal work hours as is customary for the industry.

(4) Type of Work and Wage Restrictions.

(a) The claimant must be available for work that is considered suitable based on the length of time he or she has been unemployed as provided in R994-405-306.

(b) Contract Obligation.

If a claimant is restricted due to a contractual obligation from competing with a former employer or accepting employment in the claimant's regular occupation, the claimant is not eligible for benefits unless the claimant can show that he or she:

(i) is actively seeking work outside the restrictions of the noncompete contract;

(ii) has the skills and/or training necessary to obtain that work; and

(iii) can reasonably expect to obtain that employment.

(5) Employer/Occupational Requirements.

If the claimant does not have the license or special equipment required for the type of work the claimant wants to obtain, the claimant cannot be considered available for work unless the claimant is actively seeking other types of work and has a reasonable expectation of obtaining that work.

(6) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church service, relocation, a reasonable expectation of recall to a former employer for which the claimant is not in deferral status, or any other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept and is actively seeking temporary work. The claimant must also show there is a realistic expectation that there is temporary work in the claimant's occupation, otherwise the claimant may be required to accept temporary work in another occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

(7) Distance to Work.

(a) Customary Commuting Patterns.

A claimant must show reasonable access to public or private transportation, and a willingness to commute within customary commuting patterns for the occupation and community.

(b) Removal to a Locality of Limited Work Opportunities.

A claimant who moves from an area where there are substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which the claimant is qualified and which the claimant is willing to perform. If the work is so limited in the new locale that there is little expectation the claimant will become reemployed, the continued unemployment is the result of the move and not the failure of the labor market to provide employment opportunities. In that case, the claimant is considered to have removed himself or herself from the labor market and is no longer eligible for benefits.

(8) School.

(a) A claimant attending school who has not been granted Department approval for a deferral must still meet all requirements of being able and available for work and be actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his or her efforts to secure full-time work. If the hours of school attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is seeking work, a rebuttable presumption is established that the claimant is not available for full-time work and benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his or her school schedule, if necessary, to accept work must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he or she were to withdraw.

(b) A presumption of unavailability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which the claimant could reasonably expect to obtain.

(9) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend school. Youth under the age of 16 may not work:

(a) during school hours except as authorized by the proper

school authorities;

(b) before or after school in excess of 4 hours a day;

(c) before 5:00 a.m. or after 9:30 p.m. on days preceding school days;

(d) in excess of 8 hours in any 24-hour period; or

(e) more than 40 hours in any week.

(10) Domestic Obligations.

When a claimant has an obligation to care for children or other dependents, the claimant must show that arrangements for the care of those individuals have been made for all hours that are normally worked in the claimant's occupation and must show a good faith, active work search effort.

R994-403-113c. Work Search.

(1) General Requirements.

Unless the claimant qualifies for a work search deferral pursuant to R994-403-108b, a claimant must make an active, good faith effort to secure employment each and every week for which benefits are claimed. Efforts to find work must be judged by the standards of the occupation and the community.

(2) Active.

An active effort to look for work means that the claimant must make a minimum of four new job contacts each week unless the claimant is otherwise directed by the unemployment division. Those contacts should be made with employers that hire people in the claimant's occupation or occupations for which the claimant has work experience or would otherwise be qualified and willing to accept employment. If the claimant fails to make four new job contacts during the first week filed, involvement in job development activities that are likely to result in employment will be accepted as reasonable, active job search efforts.

(3) Good Faith.

Good faith efforts are defined as those methods which a reasonable person, anxious to return to work, would make if desirous of obtaining employment. A good faith effort extends beyond simply making a specific number of contacts to satisfy the Department requirement.

R994-403-114c. Claimant's Obligation to Prove Weekly Eligibility.

The claimant:

(1) has the burden of proving that he or she is able, available, and actively seeking full-time work:

(2) must report any information that might affect eligibility;

(3) must provide any information requested by the Department which is required to establish eligibility;

(4) must immediately notify the Department if the claimant is incarcerated; and

(5) must keep a detailed record of his or her weekly job contacts so that the Department can verify the contact at any time for an audit or eligibility review. A detailed record includes the following information:

(a) the date of the contact,

(b) the name of the employer or other identifying information such as a job reference number,

(c) employer contact information such as the employer's mailing address, phone number, email address, or website address, and name of the person contacted if available,

(d) details of the position for which the claimant applied,

(e) method of contact, and

(f) results of the contact.

R994-403-115c. Period of Ineligibility.

(1) Eligibility for benefits is established on a weekly basis. If the Department has determined that the claimant is not able or available for work, and it appears the circumstances will likely continue, an indefinite disqualification will be assessed, and the claimant must requalify by showing that he or she is able and available for work.

(2) If the Department has reason to believe a claimant has not made a good faith effort to seek work, or the Department is performing a routine audit of a claim, the Department can only require that the claimant provide proof of work search activities for the four weeks immediately preceding the Department's request. However, if the claimant admits he or she did not complete the work search activities required under this rule, the Department can disqualify a claimant for more than four weeks. The claimant will be disqualified for any week during which he or she fails to provide the information required under R994-403-114c(5).

(3) If the Department seeks verification of a job contact from an employer, the claimant will only be disqualified if the employer provides clear and convincing evidence that there was no contact.

(4) The claimant will be disqualified for all weeks in which it is discovered that the claimant was not able or available to accept work without regard to the four-week limitation.

R994-403-116e. Eligibility Determinations: Obligation to Provide Information.

(1) The Department cannot make proper determinations regarding eligibility unless the claimant and the employer provide correct information in a timely manner. Claimants and employers therefore have a continuing obligation to provide any and all information and verification which may affect eligibility.

(2) Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the claimant's eligibility.

R994-403-117e. Claimant's Responsibility.

(1) The claimant must provide all of the following:

(a) his or her correct name, social security number, citizenship or alien status, address and date of birth;

(b) the correct business name and address for each base period employer and for each employer subsequent to the base period;

(c) information necessary to determine eligibility or continuing eligibility as requested on the initial claim form, or on any other Department form including work search information. This includes information requested through the use of an interactive voice response system or the Internet;

(d) the reasons for the job separation from base period and subsequent employers when filing a new claim, requalifying for a claim, or any time the claimant is separated from employment during the benefit year. The Department may require a complete statement of the circumstances precipitating the separation; and

(e) any other information requested by the Department. The Claimant is required to return telephone calls and respond to requests that are made electronically, verbally, or by U.S. Mail. Generally, claimants will be given 48 hours, excluding hours during weekends or legal holidays, to respond to requests made verbally or electronically and five (5) full business days to respond to requests mailed through the U. S. Mail.

(2) Claimants are also required to report, at the time and place designated, for an in-person interview with a Department representative if so requested.

(3) By filing a claim for benefits, the claimant has given consent to the employer to release to the Department all information necessary to determine eligibility even if the information is confidential.

R994-403-118e. Disqualification Periods if a Claimant Fails to Provide Information.

(1) A claimant is not eligible for benefits if the Department

does not have sufficient information to determine eligibility. Except as provided in subsection (5) of this section, a claimant who fails to provide necessary information without good cause is disqualified from the receipt of unemployment benefits until the information is received by the Department. Good cause is limited to circumstances where the claimant can show that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable.

(2) If insufficient or incorrect information is provided when the initial claim is filed, the disqualification will begin with the effective date of the claim.

(3) If a potentially disqualifying issue is identified as part of the weekly certification process and the claimant fails to provide the information requested by the Department, the disqualification will begin with the Sunday of the week for which eligibility could not be determined.

(4) If insufficient or incorrect information is provided as part of a review of payments already made, the disqualification will begin with the week in which the response to the Department's request for information is due.

(5) The disqualification will continue through the Saturday prior to the week in which the claimant provides the information. The denial can be waived if the Department determines the claimant complied within 7 calendar days of the date the decision was issued.

R994-403-119e. Overpayments Resulting from a Failure to Provide Information.

(1) Any overpayment resulting from the claimant's failure to provide information, or based on incorrect information provided by the claimant, will be assessed as a fault overpayment in accordance with Subsection 35A-4-406(4) or as a fraud overpayment in accordance with Subsection 35A-4-405(5).

(2) Any overpayment resulting from the employer's failure to provide information will be assessed as a nonfault overpayment in accordance with Subsection 35A-4-406(5).

(3) If more than one party was at fault in the creation of an overpayment, the overpayment will be assessed as:

(a) a fraud or fault overpayment if the claimant was more at fault than the other parties; or

(b) a nonfault overpayment if the employer and/or the Department was more at fault, or if the parties were equally at fault.

R994-403-120e. Employer's Responsibility.

Employers must provide wage, employment, and separation information and complete all forms and reports as requested by the Department. The employer also must return telephone calls from Department employees in a timely manner and answer all questions regarding wages, employment, and separations.

R994-403-121e. Penalty for the Employer's Failure to Comply.

(1) A claimant has the right to have a claim for benefits resolved quickly and accurately. An employer's failure to provide information in a timely manner results in additional expense and unnecessary delay.

(2) If an employer or agent fails to provide adequate information in a timely manner without good cause, the ALJ will determine on appeal that the employer has relinquished its rights with regard to the affected claim and is no longer a party in interest. The employer's appeal will be dismissed and the employer is liable for benefits paid.

(3) The ALJ may, in his or her discretion, choose to exercise continuing jurisdiction with respect to the case and subpoena or call the employer and claimant as witnesses to determine the claimant's eligibility. If, after reaching the merits, the ALJ determines to reverse the initial decision and deny benefits, the employer is not eligible for relief of charges resulting from benefits overpaid to the claimant prior to the date of the ALJ's decision.

(4) In determining whether to exercise discretion and reach the merits, the ALJ may take into consideration:

(a) the flagrancy of the refusal or failure to provide complete and accurate information. An employer's or agent's refusal to provide information at the time of the initial Department determination on the grounds that it wants to wait and present its case before an ALJ, for instance, will be subject to the most severe penalty;

(b) whether or not the employer or agent has failed to provide complete and accurate information in the past or on more than one case; and

(c) whether the employer is represented by counsel or a professional representative. Counsel and professional representatives are responsible for knowing Department rules and are therefore held to a higher standard.

R994-403-122e. Good Cause for Failure to Comply.

If the employer or claimant has good cause for failing to provide the information in the time frame requested, no disqualification or penalty will be assessed. Good cause is limited to circumstances where the claimant or employer can show that the reasons for the delay in filing were due to circumstances that were compelling and reasonable or beyond the party's control.

R994-403-123. Obligation of Department Employees.

Employees of the Department are obligated, regardless of when the information is discovered, to bring to the attention of the proper Department representatives any information that may affect a claimant's eligibility for unemployment insurance benefits or information affecting the employer's contributions.

R994-403-201. Department Approval for School Attendance - General Definition.

(1) Unemployment insurance is not intended to subsidize schooling. However, it is recognized that training may be a practical way to reduce chronic and persistent unemployment due to a lack of work skills, job obsolescence or foreign competition. Even though the claimant is granted Department approval, the claimant must still be able to work. With Department approval, a claimant meets the availability requirement based on his or her school attendance and successful performance. With the exception of very short-term training, Department approval is intended for classroom training as opposed to on-the-job training. Department approval is to be used selectively and judiciously. It is not to be used as a substitute for selective placement, job development, on-the-job training, or other available programs.

(2) If a claimant is ineligible under 35A-4-403(1)(c) due to school attendance, Department approval will be considered.

(3) Department approval will be granted when required by state or federal law for specific training programs.

R994-403-202. Qualifying Elements for Approval of Training.

All of the following nine elements must be satisfied for a claimant to qualify for Department approval of training. Some of these elements will be waived or modified when required by state or federal law for specific training programs.

(1) The claimant's unemployment is chronic or persistent, or likely to be chronic or persistent, due to any one of the following three circumstances:

(a) A lack of basic work skills. A lack of basic work skills may not be established unless a claimant:

(i)(A) has a history of repeated unemployment attributable to lack of skills and has no recent history of employment

earning a wage substantially above the federal minimum wage or

(B) qualifies for Department sponsored training because the claimant meets the eligibility requirements for public assistance;

(ii) has had no formal training in occupational skills;

(iii) does not have skills developed over an extended period of time by training or experience; and

(iv) does not have a marketable degree from an institution of higher learning; or

(b) a change in the marketability of the claimant's skills has resulted due to new technology, or major reductions within an industry; or

(c) inability to continue working in occupations using the claimant's skills due to a verifiable, permanent physical or emotional disability,

(2) a claimant must have a reasonable expectation for success as demonstrated by:

(a) an aptitude for and interest in the work the claimant is being trained to perform, or course of study the claimant is pursuing; and

(b) sufficient time and financial resources to complete the training.

(3) The training is provided by an institution approved by the Department.

(4) The training is not available except in school. For example, on-the-job training is not available to the claimant.

(5) The length of time required to complete the training should generally not extend beyond 24 months.

(6) The training should generally be vocationally oriented unless the claimant has no more than two terms, quarters, semesters, or similar periods of academic training necessary to obtain a degree.

(7) There is a reasonable expectation of employment following completion of the training. Reasonable expectation means the claimant will find a job using the skills and education acquired while in training pursuant to a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(8) A claimant did not leave work to attend school even if the employer required the training for advancement or as a condition of continuing employment.

(9) The schooling is full-time, as defined by the training facility.

R994-403-203. Extensions of Department Approval.

Initial approval shall be granted, for the school term beginning with the week in which the attendance began, or the effective date of the claim, whichever is later. The Department may extend the approval if the claimant establishes proof of:

(1) satisfactory attendance;

(2) passing grades;

(3) continuance of the same course of study and classes originally approved; and

(4) compliance with all other qualifying elements.

R994-403-204. Availability Requirements When Approval is Granted.

(1) The work search and registration requirements for a claimant who is granted Department approval are found in R994-403-108b(1)(f). Once the claimant is actually in training, benefits will not be denied when work is refused as satisfactory attendance and progress in school serves as a substitute for the availability requirements of the act.

(2) Absences from school will not necessarily result in a denial of benefits during those weeks the claimant can demonstrate he or she is making up any missed school work and is still making satisfactory progress in school. Satisfactory progress is defined as passing all classes with a grade level sufficient to qualify for graduation, licensing, or certification, as appropriate.

(3) A disqualification will be effective with the week the claimant knew or should have known he or she was not going to receive a passing grade in any of his or her classes or was otherwise not making satisfactory progress in school. It is the claimant's responsibility to immediately report any information that may indicate a failure to maintain satisfactory progress.

(4) The claimant must attend school full-time as defined by the educational institution. If a claimant discontinues school attendance, drops or changes any classes before the end of the term, Department approval may be terminated immediately. However, discontinuing a class that does not reduce the school credits below full-time status will not result in the termination of Department approval. Department approval may be reinstated during any week a claimant demonstrates, through appropriate verification, the claimant is again attending class regularly and making satisfactory progress.

(5) Notwithstanding any other provisions of this section, if the claimant was absent from school for more than one-half of the workweek due to illness or hospitalization, the claimant is considered to be unable to work and unemployment benefits will be denied for that week. A claimant has the responsibility to report any sickness, injury, or other circumstances that prevented him or her from attending school.

(6) A claimant is ineligible for Department approval if the claimant is retaking a class that was originally taken while receiving benefits under Department approval. However, if Department approval was denied during the time the course was originally in progress, approval may be reinstated to cover that portion of the course not previously subsidized if the claimant can demonstrate satisfactory progress.

R994-403-205. Short-Term Training.

Department approval may be granted even though a claimant has marketable skills and does not meet the requirements for Department approval as defined in R994-403-202 if the entire course of training is no longer than eight weeks and will enhance the claimant's employment prospects. A claimant will not be granted a waiver for training that is longer than eight weeks even if the claimant needs only eight weeks or less to complete the training. This is intended as a one-time approval per benefit year and may not be extended beyond eight weeks.

R994-403-301. Requirements for Special Benefits.

Some benefit programs, including Extended Benefits, have different availability and work search requirements. The rule governing work search for Extended Benefits is R994-402. Other special programs are governed by the act or federal law.

R994-403-302. Foreign Travel.

(1) Benefits will not be denied if the claimant is required to travel to seek, apply for, or accept work within the United States or in a foreign country where the claimant has authorization to work and where there is a reciprocal agreement. The trip itself must be for the purpose of obtaining work. There is a rebuttable presumption that the claimant is not available for work when the trip is extended to accommodate the claimant's personal needs or interests, and the extension is for more than one-half of the workweek.

(2) Unemployment benefits cannot be paid to a claimant located in a foreign country unless the claimant has authorization to work there and there is a reciprocal agreement concerning the payment of unemployment benefits with that foreign country.

(3) Unemployment benefits are intended, in part, to stimulate the economy of Utah and the United States and thus are expected to be spent in this country. A claimant who travels

to a foreign country must report to the Department that he or she is out of the country, even if it is for a temporary purpose and regardless of whether the claimant intends to return to the United States if work becomes available. Failure to inform the Department will result in a fraud overpayment for the weeks benefits were paid while the claimant was in a foreign country. The claimant may be eligible if the travel is to Canada but must notify the Department of that travel. Canada is the only country with which Utah has a reciprocal agreement. If the claimant travels to, but is not eligible to work in, Canada and fails to notify the Department of the travel, it will result in a fraud overpayment for the weeks benefits were paid while the claimant was in Canada.

KEY: filing deadlines, registration, student eligibility, unemployment compensation
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