R33. Administrative Services, Purchasing and General Services.
R33-1. Utah Procurement Rules, General Procurement Provisions.
R33-1-1. Definitions.

(A) Terms used in the procurement rules are defined in Sections 63G-6a-103 and 104.

(B) In addition:

(1) "Actual Costs" means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.

(2) "Adequate Price" Competition means:

(a) when a minimum of two competitive bids, proposals, or quotes are received from responsible vendors that have submitted responsive solicitation responses.

(3) "Acquiring Agency" is a conducting procurement unit subject to Section 63F-1-205 acquiring new technology or technology as therein defined.

(4) "Bias" means:

(a) a predisposition or a preconceived opinion that prevents an individual from impartially performing any duty or responsibility set forth in Utah Code 63G-6a or other applicable law or rule; or

(b) a prejudice in favor of or against a thing, individual, or group that results in an action or treatment that a reasonable person would consider to be unfair or have the appearance of being unfair.

(5) "Bid Bond" is an insurance agreement, accompanied by a monetary commitment, by which a third party (the Surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

(6) "Bid Rigging" means agreement among potential competitors to manipulate the competitive bidding process, for example, by agreeing not to bid, to bid a specific price, to rotate bidding, or to give kickbacks.

(7) "Bid Security" means the deposit of cash, certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the owner that the bidder, if awarded the contract, will execute such contract in accordance with the bidding requirements and the contract documents.

(8) "Brand Name or Equal Specification" means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.

(9) "Brand Name Specification" means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU or catalogue number.

(10) "Collusion" means when two or more persons act together to achieve a fraudulent or unlawful act. Collusion inhibits free and open competition in violation of law.

(11) "Cost Analysis" means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred.

(12) "Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(13) "Cronyism" is an anticompetitive practice that may violate federal and state antitrust and procurement laws. Cronyism in government contracting is a form of favoritism where contracts are awarded on the basis of friendships, associations or political connections instead of fair and open competition.

(14) "Evaluation Criteria" means the objective or subjective criteria that will be used to evaluate a vendor's response to a solicitation.

(15) "Include, Includes, or Including" has the same meaning as Section 68-3-12(1)(f). When used in code or rule, "include," "includes," or "including" means that the items listed are not an exclusive list, unless the word "only" or similar language is used to expressly indicate that the list is an exclusive list.

(16) "Mandatory Requirement" means a condition set out in the specifications/statement of work that must be met without exception.

(17) "Minor Irregularity" is a variation from the solicitation that does not affect the price of the bid, offer, or contract or does not give a bidder/offeror an advantage or benefit not shared by other bidders/offerors, or does not adversely impact the interests of the procurement unit.

(18) "New Technology" means any invention, discovery, improvement, or innovation, that was not available to the acquiring agency on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to, or new applications of, existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.

(19)(a) "Objective Criteria" means the quantifiable requirements, standards, and specifications set forth in a solicitation by which solicitation responses from vendors will be evaluated and scored by evaluators based on the measurable and verifiable facts, evidence, and documentation provided in each vendor's solicitation response.

(b) Objective criteria is not evaluated and scored based on the personal judgement, interpretation, or opinion of evaluators. Objective criteria is evaluated and scored strictly on the observable, verifiable, and measurable facts, evidence, and documentation provided in each vendor's solicitation response.

(c) Examples of objective criteria that may be included in a solicitation:

(i) Vendors must document that they have a minimum of five years of experience on similar projects;

(ii) Vendors must have three licensed technicians on the project; and

(iii) Vendors must certify that they have an "A" rating from an accredited rating agency.

(20) "Participating Addendum" means an agreement issued in conjunction with a Cooperative Contract that authorizes a public entity to use the Cooperative Contract.

(21) "Payment Bond" is a bond that guarantees payment for labor and materials expended on the contract.

(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) "Price Analysis" means the evaluation of price data without analysis of the separate cost components and profit.

(24) "Price Data" means factual information concerning prices for procurement items.

(25) "Reasonable Person Standard" means an objective test to determine if a reasonably prudent person who exercises an average degree of care, skill, and judgment would be justified in drawing the same conclusions under the same circumstances or having knowledge of the same facts.

(26) "Section and Subsection" refers to, as applicable, the Utah Code and the Administrative Rule.

(27) "Service" means labor, effort, or work to produce a result that is beneficial to a procurement unit and includes a:

(a) Professional service;
(b) Management and operation service;
(c) Consulting service;
(d) Advertising or promotional service;
(e) Concession service;
(f) Vending service;
(g) Management and operation service;
(h) Promotional service;
(i) Banking service;
(j) Credit card service;
(k) Electronic benefit transfer (EBT) card service; or
(l) Women, infants, and children (WIC) card service.

(28)(a) "Subjective Criteria" means the open-ended requirements, standards, and specifications set forth in a solicitation by which solicitation responses from vendors will be evaluated and scored by evaluators based on the personal judgement, interpretations, and opinions of the evaluators after reviewing and analyzing the information presented in each vendor's solicitation response.

(b) Subjective criteria is not evaluated and scored strictly on the observable, verifiable, and measurable facts, evidence and documentation provided in each vendor's solicitation response. Subjective criteria is also evaluated and scored based on the personal judgement, interpretation, and opinion of the evaluators after reviewing and analyzing the information presented in each vendor's solicitation response.

(c) Examples of subjective criteria that may be included in a solicitation:

(i) Vendors must describe how they will manage the project to meet the deadline;

(ii) Vendors must demonstrate that they have the knowledge, skills, and ability to accomplish the scope of work; and

(iii) Vendors must explain how their product complies with the specifications.

(29) "Surety bond" (performance bond) means a promise to pay one the oblige (owner) a certain amount if the principal (contractor) fails to meet some obligation, such as fulfilling the terms of a contract. The surety bond protects the oblige (owner) against losses resulting from the principal's failure to meet the obligation. In the event that the obligations are not met, the oblige (owner), will recover its losses via the bond.

(30) "Steering a Contract to a Favored Vendor" is defined as a person involved in the procurement process, including any phase of the procurement process, who inappropriately acts with bias or prejudice in violation of the law to favor one vendor over another vendor(s) in awarding a government contract.

(a) Steering a contract to a favored vendor includes:

(i) Taking part in collusion or manipulation of the procurement process;

(ii) Accepting any form of illegal gratuity, bribe or kickback paid by a vendor in exchange for a contract award;

(iii) Awarding a contract without engaging in a standard procurement process to a vendor without proper justification;

(iv) Involvement in a bid rigging scheme;

(v) Writing specifications that are overly restrictive, beyond the reasonable needs of the procurement unit, or in a way that gives an unfair advantage to a particular vendor without proper justification;

(vi) Intentionally dividing a purchase to avoid engaging in a standard competitive procurement process as set forth in Section 63G-6a-506(8);

(vii) Leaking bid, proposal, or other information to a particular vendor that is prejudicial to other vendors;

(viii) Improperly avoiding engaging in a standard procurement process in order to extend the duration of a vendor's existing contract through means of a contract extension; or

(ix) Participating in the procurement process while having a financial conflict of interest as set forth in Section R33-24-105.

(31) "Technology" means any type of technology defined in Section 63F-1-102(8).

R33-1-2. Applicability of Rules.

(1) Title R33 shall apply to:

(a) A procurement unit for which the Utah State Procurement Policy Board is identified in Section 63G-6a-103 as the applicable rulemaking authority, except to the extent the procurement unit has adopted its own administrative rules as authorized under Section 63G-6a-103(3); and

(b) A procurement unit with independent procurement authority or a procurement unit for which the Utah State Procurement Policy Board is not identified in Section 63G-6a-103 as the applicable rulemaking authority, and the procurement unit has adopted Title R33 or a portion of Title R33 by rule, ordinance, policy, or other authorized means.

R33-1-2.5. Use of Similar Laws and Rules to Establish Precedent or Extrapolate Legal Intent.

When making a determination and a specific law or rule pertaining to the issue does not exist, the chief procurement officer or head of a procurement unit with independent procurement authority may refer to other applicable laws that are similar in nature to the issue to establish a precedent or extrapolation of legal intent to assist in making a determination based on the reasonable person standard set forth in R33-1-1.

R33-1-3. Determinations by Chief Procurement Officer or Head of a Procurement Unit with Independent Procurement Authority.

(1) Unless specifically stated otherwise, all determinations under Utah Procurement Code and Title R33 shall be made by the chief procurement officer or head of a procurement unit with independent procurement authority.

(2) Determinations by the chief procurement officer or head of a procurement unit with independent procurement authority shall be made:

(a) In accordance with the provisions set forth in Sections 63G-6a-106 and 303 and other rules and laws if applicable; or

(b) By applying the reasonable person standard to determine:

(i) If the actions of a person involved in the procurement process would cause a reasonable person to conclude that the person has acted in violation of the Utah Procurement Code or Title R33;

(ii) If the circumstances surrounding a procurement would cause a reasonable person to conclude that a violation of the Utah Procurement Code or Title R33 has occurred; or

(iii) If the evidence presented would cause a reasonable person to conclude that certain facts associated with a procurement are true.

R33-1-4. Competitive Procurement Required for Expenditure of Public Funds or Use of Public Property or Other Public Assets to Acquire a Procurement Item Unless Exception is Authorized.

(1) Unless the chief procurement officer or head of a procurement unit with independent procurement authority issues a written exception in accordance with provisions set forth in the Utah Procurement Code and applicable Rules documenting why a competitive procurement process is not required and why it is in the best interest of the procurement unit to award a contract without engaging in a standard procurement process, a procurement unit shall conduct a standard procurement process whenever:

(a) Public funds are expended or used to acquire a procurement item; or

(b) A procurement unit's property, name, influence, assets, resources, programs, or other things of value is used as consideration in the formation of a contract for a procurement item.

R33-1-12. Mandatory Minimum Requirements in a Solicitation.

(1) Mandatory minimum requirements may be used in a solicitation to assist the conducting procurement unit in identifying the most qualified persons responding to a solicitation and to limit the number of persons eligible to move forward to subsequent stages in the solicitation or evaluation process. Examples of mandatory minimum requirements include:

(a) Ability to meet delivery deadlines;

(b) Qualifications;

(c) Certifications;

(d) Licensing;

(e) Experience;

(f) Compliance with State or Federal regulations;

(g) Type of services provided; or

(i) Availability of product, equipment, supplies, or services.

KEY: government purchasing, Utah procurement rules, general procurement provisions, definitions
June 21, 2017 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-2. Rules of Procedure for Procurement Policy Board.
R33-2-1. Purpose.

The purpose of this Rule R33-2 is to establish procedures for the meetings of the Procurement Policy Board. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-2-2. Authority.

This Rule R33-2 is authorized under Subsection 63G-6a-202(5) which directs that the Procurement Policy Board "adopt rules of procedure for conducting its business." The Procurement Policy Board is also authorized to make rules under Section 63G-6a-203 et. seq.

R33-2-3. Definitions.

All definitions in the Utah Procurement Code, Title 63G, Chapter 6a, Utah Code, shall apply to this Rule R33-2. In addition the following definitions shall apply to this Rule R33-2:

(1) "Attendance" means a person attending a Board meeting, either in person or through electronic means as authorized by this Rule.

(2) "Board" means the Procurement Policy Board established under Section 63G-6a-202.

(3) "Chair" means the person elected as Chair of the Board pursuant to Subsection 63G-6a-202(5)(a)(ii).

(4) "Chief Procurement Officer" means the Chief Procurement Officer as defined in the Utah Procurement Code.

(5) "Director" means the Director of the Division of Purchasing and General Services or a duly authorized designee.

(6) "Division" means the Division of Purchasing and General Services.

(7) "Electronic meeting" is as defined in Section 52-4-103.

(8) "Open and Public Meetings Act" means those laws provided by Title 52, Chapter 4, Utah Code.

(9) "Presiding Officer" means the Chair or designee.

R33-2-4. Composition of Board.

(1) The Board consists of fifteen voting members, as well as a nonvoting secretary appointed by the Chief Procurement Officer, who must be an employee of the Division.

(2) The secretary shall not be considered as part of the quorum requirement for Board meetings or determinations.

R33-2-5. Calling Meetings.

The Chair or any three voting members may call meetings of the Board. The Executive Director of the Department of Administrative Services or Director may also call a meeting.

R33-2-6. Chair, Presiding Officer and Basic Responsibilities.

(1) The Chair shall be the Presiding Officer at all Board meetings.

(2) The Chair may designate, either because of unavailability or any other reason, an alternate Presiding Officer, who is a member of the Board.

(3) The Presiding Officer may make motions and have a vote on each matter before the Board. The Presiding Officer may second motions.

(4) Unless otherwise directed by vote of the Board, the Presiding Officer shall be responsible for the operation of the meeting, shall have control over the items on the agenda, the order of the agenda, time limits that are needed, and other matters that relate to the orderly running of the meeting. Notwithstanding this, the Director or any three voting members may also place items on the Board agenda.

(5) The Chair shall be elected by the Board and serve for one year. The Chair may be elected to succeeding terms.

R33-2-7. Secretary to the Board.

(1) The Chief Procurement Officer shall appoint an employee of the Division to serve as Secretary to the Board. The Secretary shall be present at each meeting of the Board, shall provide the posting of notice, minutes, any required recording, and all secretarial related requirements related to the Open and Public Meetings Act. The Secretary shall coordinate with others as needed for compliance with the Open and Public Meetings Act.

(2) The Secretary shall maintain a record of Board meetings which shall include minutes, agendas and submitted documents, including those submitted electronically, that shall be available at reasonable times to the public.

R33-2-8. Meetings.

Meetings are generally held in the conference room of the Division of Purchasing and General Services, 3rd floor, State Office Building, Capitol Hill, in Salt Lake City, Utah. The date, time and location may be identified or modified by the Chair and Director at any time when it is in the interest of the Board and the public.

R33-2-9. Compliance with Open and Public Meetings Act.

All meetings of the Board shall be conducted in accordance with the Open and Public Meetings Act. All meetings are open to the public unless closed in whole or in part pursuant to the requirements of the Open and Public Meetings Act.

R33-2-10. Notice and Agenda.

(1) Notice shall be given of all meetings in accordance with the Open and Public Meetings Act.

(2) The Director or Presiding Officer may determine items to be placed on the agenda. A vote of the Board may also place an item on an agenda for a future meeting. Board members may also contact the Chair or Director to request that an item be placed on the agenda.

(3) The order of business shall be in the order placed on the agenda, unless the Presiding Officer or vote of the Board alters the order of business and there is no prejudice to interested persons.

(4) Members of the Board, the Division, governmental agencies and the public may submit a request to the Secretary to the Board that an item be placed on the agenda subject to review and approval by the Presiding Officer or Director.

(5) Each agenda shall include an agenda item that allows board members to request that an item be placed on a future agenda.

R33-2-11. Attendance, Quorum and Voting.

(1) Eight members of the Board are required for a quorum to transact business.

(2) For any determination of the Board, it must be approved by a majority vote of those voting members present and it must receive an affirmative vote from at least five members.

(3) Voting shall be expressed publicly when called for by the Presiding Officer. An affirmative vote shall be recorded for all Board members present that neither vote negatively nor specifically abstain. The number of affirmative, negative and abstaining votes shall be announced by the Presiding Officer, and the vote of each member shall be recorded by the Secretary.

(4) Members must be in attendance, either in person or by electronic means in accordance with this Rule, in order to vote.

R33-2-12. Motions, Second to a Motion, Discussion,

Continuances and Resolutions.

(1) Any voting member may make or second a motion.

(2) Items may be continued to any subsequent meeting by vote of the Board.

(3) A second to a motion is required prior to discussion by Board members.

(4) After a motion is seconded, the Presiding Officer shall ask for discussion of the matter. The Presiding Officer shall call upon those who request to discuss the matter. The Presiding Officer retains the authority to place reasonable restrictions on the discussion to assure that the discussion is orderly and relevant to the motion. After the discussion, or if no Board member desires to discuss the matter, the Board shall proceed to vote on the matter without the need for a formal call to question.

(5) The Board may enact resolutions.

R33-2-13. Committees and Appeals Panel.

The Board Chair may appoint committees to investigate or report on any matter which is of concern to the Board. The appointment of an Appeals Panel is described in Rule R33-17.

R33-2-14. Order at Meetings.

(1) The Presiding Officer shall preserve order and decorum at all meetings of the Board and shall determine questions of order, which may be subject to a vote of the Board.

(2) A person or persons creating a disturbance or otherwise obstructing the orderly process of a Board meeting may be ordered to leave the meeting.

R33-2-15. Rules of Order.

All matters not covered by this Rule R33-2 shall be determined by Robert's Rules of Order, latest published edition; an abbreviated edition of Robert's Rules of Order as determined by the Presiding Officer; or abbreviated procedures as determined by the Presiding Officer.

R33-2-16. Electronic Meetings.

(1) Purpose. Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to adopt a rule governing the use of electronic meetings. This Rule R33-2 establishes procedures for conducting Board meetings by electronic means.

(2) Procedure. The following provisions govern any meeting at which one or more Board members appear electronically pursuant to Section 52-4-207:

(a) If one or more members of the Board desire to participate electronically, such member(s) shall contact the Director or Secretary. The Director shall assess the practicality of facility requirements needed to conduct the meeting electronically in a manner that allows for the attendance, participation and monitoring as required by this Rule. If it is practical, the Presiding Officer or Director shall determine whether to allow for such electronic participation, and the public notice of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Board not participating electronically will be present and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location and be provided in accordance with the Open and Public Meetings Act. The anchor location is the physical location where the electronic meeting originates or where the participants are connected. The anchor location shall be identified in the public notice for the meeting. Unless otherwise designated in the notice, the anchor location shall be a room in the Utah State Capitol Hill Complex where the Board would normally meet if the Board was not holding an electronic meeting.

(c) Notice of the possibility of an electronic meeting shall be given to the Board members at least 24 hours before the meeting. In addition, the notice shall describe how a Board member may participate in the meeting electronically.

(d) When notice is given of the possibility of a Board member participating electronically, any Board member may do so and any voting Board member, whether at the anchor location or participating electronically, shall be counted as present for purposes of a quorum and may fully participate and vote. At the commencement of the meeting, or at such time as any Board member initially appears electronically, the Presiding Officer shall identify for the record all those who are participating electronically. Votes by members of the Board who are not at the anchor location of the meeting shall be confirmed by the Presiding Officer.

(e) The anchor location will have space and facilities so that interested persons and the public may attend, monitor and participate in the open portions of the meeting, as appropriate.

R33-2-17. Suspension of the Rules.

By a vote of the Board, and to the extent allowed by law, any requirement of this Rule R33-2-1 through R33-2-17 may be suspended when necessary to better serve the public in the conduct of a Board meeting.

KEY: government purchasing, Procurement Policy Board, rules of procedure
July 8, 2014 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-3. Procurement Organization.
R33-3-101. Delegation of Authority of the Chief Procurement Officer.

In addition to the other requirements of Part 3 of the Utah Procurement Code, the Chief Procurement Officer may delegate in writing any authority pursuant to Section 63G-6a-304 as deemed appropriate to any employees of the office of the chief procurement officer or of an executive branch procurement unit, respectively. These delegations shall remain in effect unless modified or revoked in writing. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

KEY: government purchasing, chief procurement officer, delegation of authority
July 8, 2014 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-4. Supplemental Procurement Procedures.
R33-4-101. Request for Statement of Qualifications.
Reserved.

R33-4-101a. Rejection of a Late Solicitation Response -- Delivery and Time Requirements.
(1) Except as provided in Subsection (4), an issuing procurement unit may not accept a response to a request for statement of qualifications after the deadline for receipt of responses to a request for statement of qualifications has passed.
(2) When submitting a response to a request for statement of qualifications electronically, vendors must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If a vendor is in the middle of uploading a response when the closing time arrives, the procurement unit will stop the process and the response will not be accepted.
(3) When submitting a response to a request for statement of qualification by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means) vendors are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a response being late.
(a) All responses received by physical delivery will be date and time stamped by the procurement unit.
(4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results in a response not being received by the established due date and time, the response shall be accepted as being on time.

R33-4-101b. Vendors with Exclusive Authorization to Bid.
(1) The requirements of this rule shall only apply when a procurement unit issues a request for statements of qualification under Utah Code 63G-6a-410 to responsible vendors with an exclusive dealership, franchise, distributorship, or other arrangement, from a manufacturer identifying the vendor as the only one authorized to submit bids or quotes for the specified procurement item within the State of Utah or a region within the State of Utah.
(a) Under the provisions of this rule, no vendor described in (1) may be excluded from the list of prequalified vendors, unless a determination is made by the procurement unit that a vendor is not qualified, responsive or responsible.
(b) The request for statements of qualifications shall indicate that all vendors on the prequalified vendor list will be invited to submit bids or quotes.
(2) After the prequalified list has been compiled, a procurement unit may award a contract by obtaining bids or quotes from all vendors on the prequalified list taking into consideration a best value analysis that includes, as applicable:
(a) cost;
(b) compatibility with existing equipment, technology, software, accessories, replacement parts, or service;
(c) training, knowledge and experience of employees of the procurement unit and of the vendors;
(d) past performance of vendors and pertaining to the procurement item being purchased;
(e) the costs associated with transitioning from an existing procurement item to a new procurement item; or
(f) other factors determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority.
(3) Procurement units must follow the requirements in R33-4-110 when obtaining quotes and the requirements in Part 6 of the Utah Procurement Code when obtaining bids.
(4) An exception to the requirements of this rule may be authorized by the chief procurement officer or head of a procurement unit with independent procurement authority.

R33-4-103. Specifications.
(1) Public entities shall include in solicitation documents specifications for the procurement item(s).
(2) Specifications shall be drafted with the objective of clearly describing the procurement unit's requirements and encouraging competition.
(a) Specifications shall emphasize the functional or performance criteria necessary to meet the needs of the procurement unit.
(3) Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications. Procurement units may retain the services of a person to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. However the person assisting in writing specifications shall not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation.
(a) Subsection R33-4-104(3) does not apply to the following:
(i) a design build construction project; and
(ii) other procurements determined in writing by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.
(b) Violations of this Subsection R33-4-104(3) may result in:
(i) the bidder or offeror being declared ineligible for award of the contract;
(ii) the solicitation being canceled;
(iii) termination of an awarded contract; or
(iv) any other action determined to be appropriate by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.
(4) Brand Name or Equal Specifications.
(a) Brand name or equal specifications may be used when:
(i) "or equivalent" reference is included in the specification; and,
(ii) as many other brand names as practicable are also included in the specification.
(b) Brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required. Specifications unique to the brands shall be described in sufficient detail that another person can respond with an equivalent brand.
(c) When a manufacturer's specification is used in a solicitation, the solicitation shall state the minimum acceptable requirements of an equivalent. When practicable, the procurement unit shall name at least three manufacturer's specifications.
(5) Brand Name Requirements.
(a) If only one brand can meet the requirements set forth in the specifications, the procurement unit shall solicit from as many providers of the brand as practicable; and
(b) If there is only one provider that can meet the requirements set forth in the specifications, the procurement unit shall conduct the procurement in accordance with Section 63G-6a-802 and Section R33-8-101b.

R33-4-109. Procedures When Two Bids, Quotes, or Statement of Qualifications Cannot Be Obtained.
(1) The requirement that a procurement unit obtain a minimum of two bids, quotes, or statements of qualifications is waived when only one vendor submits a bid, provides a quote, or submits a statement of qualifications under the following

circumstances:

(a) A solicitation meeting the public notice requirements of Utah Code 63G-6a-112 results in only one vendor willing to bid, provide quotes, or submit a statement of qualifications;

(b) Vendors on a multiple award contract, prequalification, or approved vendor list fail to bid, provide quotes, or submit statements of qualifications; or

(c) A procurement unit makes a reasonable effort to invite all known vendors to bid, provide quotes, or submit statements of qualifications and all but one of the invited vendors contacted fail to bid, provide quotes, or submit statements of qualifications.

(i) Reasonable effort shall mean:

(A) Public notice under Utah Code 63G-6a-112;

(B) An electronic or manual search for vendors within the specific industry, fails to identify any vendors willing to submit bids or provide quotes;

(C) Contacting industry-specific associations or manufacturers for the names of vendors within that industry; or

(D) A determination by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority that a reasonable effort has been made.

(2) Before accepting a bid or quote from only one vendor, the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall consider:

(a) whether pricing is fair and reasonable as set forth in R33-6-109(1);

(b) canceling the procurement as set forth in R33-9-103; and

(c) bid security requirement as set forth in R33-11-202.

(3) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, shall maintain records documenting the circumstances and reasons why fewer than two bids, quotes, or statements of qualifications were obtained.

R33-4-110. Use of Electronic, Telephone, or Written Quotes.

(1) Quote means an informal purchasing process which solicits pricing information from several sources.

(2) Quotation means a statement of price, terms of sale, and description of goods or services offered by a vendor to a procurement unit; and

(a) A quotation is nonbinding and does not obligate a procurement unit to make a purchase or a vendor to make a sale.

(3) Electronic quote means a price quotation provided by a vendor through electronic means such as the internet, online sources, email, an interactive web-based market center, or other technology.

(4) A procurement unit may use electronic, telephone, or written quotes to obtain pricing and other information for a procurement item within the small purchase or approved vendor threshold limits established by rule provided:

(a) Quotations are for the same procurement item, including terms of sale, description, and quantity of goods or services;

(b) It is disclosed to the vendor that the quote is for a governmental entity and an inquiry is made as to whether the vendor is willing to provide a price discount to a governmental entity; and

(c) The procurement unit maintains a public record that includes:

(i) The name of each vendor supplying a quotation; and

(ii) The amount of each vendor's quotation.

(5) An executive branch procurement unit, subject to this rule:

(a) May obtain electronic, telephone, or written quotations for a procurement item costing less than $5,000;

(b) Shall send a request to obtain quotations for a procurement item costing more than $5,000 to the division of state purchasing;

(i) The division shall obtain quotations for executive branch procurement units for procurement items costing more than $5,000; and

(c) May not obtain quotations for a procurement item available on state contract unless otherwise specified in the terms of a solicitation or contract or authorized by rule or statute.

KEY: government purchasing, general procurement provisions, specifications, small purchases
June 21, 2017 63G-6a
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R33. Administrative Services, Purchasing and General Services.
R33-5. Other Standard Procurement Processes.
R33-5-101. Request for Information.

In addition to the requirements of Part 5 of the Utah Procurement Code, a Request for Information should indicate the procedure for business confidentiality claims and other protections provided by the Utah Government Records and Access Management Act.

R33-5-104. Small Purchases.

(1) Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-506. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2)(a) Unless otherwise required as part of another standard procurement process being used pursuant to the small purchase rule, small purchases conducted under this rule do not require a solicitation or public notice.

(b) As set forth in the definition of "solicitation" in Utah Code 63G-6a-103, the small purchase standard procurement process does not require a solicitation to be conducted;

(i) 63G-6a-103 "Solicitation" means an invitation for bids, request for proposals, request for statement of qualifications, or request for information.

(3) Small Purchase thresholds:

(a) The "Individual Procurement" threshold is a maximum amount of $1,000 for a procurement item;

(i) For individual procurement item(s) costing up to $1,000, a procurement unit may select the best source by direct award and without seeking competitive bids or quotes.

(b) The single procurement aggregate threshold is a maximum amount of $5,000 for multiple procurement item(s) purchased from one source at one time; and

(c) The annual cumulative threshold from the same source is a maximum amount of $50,000.

(4) Whenever practicable, the Division of Purchasing and General Services and procurement units shall use a rotation system or other system designed to allow for competition when using the small purchases process.

R33-5-105. Small Purchases Threshold for Design Professional Services.

(1) The small purchase threshold for design professional services is a maximum amount of $100,000.

(2) Design professional services may be procured up to a maximum of $100,000, by direct negotiation after reviewing the qualifications of a minimum of three design professional firms.

(3)(a) Approved Vendor List: In order to ensure the fair and equitable treatment of all vendors on an approved vendor list, a procurement unit shall when using this rule in conjunction with an approved vendor list, select a minimum of three design professional firms from the approved vendor list using one or more of the following methods:

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

(ii) Assignment of vendors to a specified geographic area;

(iii) Assignment of vendors based on each vendor's particular expertise or field; or

(iv) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(b) After selecting a minimum of three firms from the approved vendor list using one of the methods specified in Subsection (3)(a), the procurement unit shall rank the firms in order and begin fee negotiations, up to $100,000, with the highest ranked firm. If an agreement cannot be reached with the highest ranked firm, the procurement unit shall move to the next highest ranked firm and so on until a fee agreement is reached;

(c) If a fee agreement cannot be reached with the first group of firms selected, the procurement unit may select additional firms from the approved vendor list using the same process set forth in subsection (3)(a) and (b) or the procurement unit may cancel the procurement;

(d) Each procurement unit using an approved vendor list under this rule shall document that all vendors on the approved vendor list have a fair and equitable opportunity to obtain a contract;

(4) A procurement unit shall include minimum specifications when using the small purchase threshold for design professional services.

(5) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing in the qualification process described under Section 63G-6a-410, the approved vendor list process described under Section 63G-6a-507, and the evaluation and fee negotiation process described in Part 15 of the Utah Procurement Code in the procurement of design professional services.

(6) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and

(f) All other applicable laws and rules.

R33-5-106. Small Purchases Threshold for Construction Projects.

(1) The small construction project threshold per individual project is a maximum of $100,000 for direct construction costs, including design and allowable furniture or equipment costs;

(2) A procurement unit shall include minimum specifications when using the small purchases threshold for construction projects.

(3) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing in the qualification process described under Section 63G-6a-410, the approved vendor list process described under Section 63G-6a-507, and the obtaining of quotes, bids or proposals in the procurement of small construction projects.

(4) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may procure individual small construction projects up to a maximum of $25,000 by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting and other construction related requirements are met. The awarded contractor must certify that it is capable of meeting the minimum specifications of the project.

(5) The chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority, may procure individual small construction projects costing more than $25,000 up to a maximum of $100,000 by obtaining a minimum of two competitive quotes that include minimum specifications and shall award to the contractor with the lowest quote that meets the specifications after documenting that all applicable building code approvals, licensing requirements, permitting and other construction related requirements are met.

(8) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and

(f) All other applicable laws and rules.

R33-5-106.5. Small Purchases Threshold for Construction Projects Using An Approved Vendor List.

(1) The small construction project threshold per individual project using an approved vendor list is a maximum of $2,500,000 for direct construction costs, including design and allowable furniture or equipment costs;

(2) Approved Vendor List: In order to ensure the fair and equitable treatment of all vendors on an approved vendor list, a procurement unit shall:

(a) For individual construction projects up to a maximum of $25,000 contract with a vendor/contractor by direct award using one of the following methods to select the vendor/contractor:

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

(ii) Assignment of vendors to a specified geographic area;

(iii) Assignment of vendors based on each vendor's particular expertise or field; or

(iv) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(b) For individual construction projects over $25,000 up to a maximum of $100,000 by obtaining a minimum of two competitive quotes from vendors/contractors on the approved vendor list;

(i) Procurement units shall use one of the following methods to select vendors from whom quotes are obtained:

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

(B) Assignment of vendors to a specified geographic area;

(C) Assignment of vendors based on each vendor's particular expertise or field; or

(D) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(ii) When using one of the methods listed in Subsection (2)(b) to select vendors to provide quotes, a procurement unit may also obtain an additional quote from the vendor that provided the lowest quote on the most recently completed procurement conducted by the procurement unit using the approved vendor list;

(iii) When quotes or bids are obtained under subsection (2)(b), procurement units shall purchase the procurement item from the vendor/contractor on the approved vendor list that provides the lowest quote for the procurement item; or

(c) For individual construction projects over $100,000 up to a maximum of $2.5 million, by inviting all vendors/contractors on the approved vendor list to submit bids in accordance with the provisions set forth in Utah Code 63G-6a, Part 6, except public notice requirements in Part 6 are waived.

R33-5-107. Quotes for Small Purchases from $1,001 to $50,000.

(1) For procurement item(s) where the cost is greater than $1,000 but up to a maximum of $5,000, a procurement unit shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(2) For procurement item(s) where the cost is greater than $5,000 up to a maximum of $50,000, a procurement unit with independent procurement authority or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall obtain a minimum of two competitive quotes that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(3) For procurement item(s) costing over $50,000, a procurement unit with independent procurement authority or the Division of Purchasing and General Services on behalf of an executive branch procurement unit without independent procurement authority, as applicable, shall conduct an invitation for bids or other procurement process outlined in the Utah Procurement Code.

(4) Limited Purchasing Delegation for Small Purchases. The Division of Purchasing and General Services may delegate limited purchasing authority for small purchases costing more than $5,000 up to a maximum of $50,000, to an executive branch procurement unit provided that the executive branch procurement unit enters into an agreement with the Division outlining the duties and responsibilities of the unit to comply with applicable laws, rules, policies and other requirements of the Division.

(5) The names of the vendors offering quotations and bids and the date and amount of each quotation or bid shall be recorded and maintained as a governmental record.

(6) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions; and

(f) All other applicable laws and rules.

(7)(a) Approved Vendor List: In order to ensure the fair and quitable treatment of all vendors on an approved vendor list, a procurement unit shall, when using this rule in conjunction with an approved vendor list, obtain a minimum of two quotes from vendors on the approved vendor list using one or more of the following methods to select vendors from whom to obtain quotes:

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

(ii) Assignment of vendors to a specified geographic area;

(iii) Assignment of vendors based on each vendor's particular expertise or field;or

(iv) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(b) Each procurement unit using an approved vendor list under this rule shall document that all vendors on the approved vendor list have a fair and equitable opportunity to obtain a contract;

(c) When using one of the methods listed in Subsection (7)(a) to select vendors to provide quotes, a procurement unit may also obtain an additional quote from the vendor that provided the lowest quote on the most recently completed

procurement conducted by the procurement unit using the approved vendor list;

(d) Whenever practicable, procurement units may obtain quotes from all vendors on an approved vendor list; and

(e) Procurement units shall purchase the procurement item from the vendor on the approved vendor list that provides the lowest quote for the procurement item.

R33-5-108. Small Purchases of Professional Service Providers and Consultants.

(1) The small purchase threshold for professional service providers and consultants is a maximum amount of $100,000.

(2) Professional service providers and consultants may be procured up to a maximum of $100,000, by direct negotiation after reviewing the qualifications of a minimum of three firms or individuals.

(3)(a) Approved Vendor List: In order to ensure the fair and equitable treatment of all vendors on an approved vendor list, a procurement unit shall, when using this rule in conjunction with an approved vendor list, select a minimum of three professional service providers or consultants from the approved vendor list using one or more of the following methods:

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

(ii) Assignment of vendors to a specified geographic area;

(iii) Assignment of vendors based on each vendor's particular expertise or field;

(iv) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(b) After selecting a minimum of three firms or individuals from the approved vendor list using one of the methods specified in Subsection (3)(a), the procurement unit shall rank the firms or individuals in order and award a contract via direct award up to $100,000 to the highest ranked firm or individual.

(4) Executive Branch procurement units, to the extent they do not have independent procurement authority, shall involve the Division of Purchasing at the beginning of the quote or solicitation process, in the procurement of professional services or consulting services.

(5) A procurement unit using this rule must comply with the following:

(a) Utah Code 63G-6a-506(8) -- Prohibition against dividing a procurement into one or more smaller procurements;

(b) Utah Code 63G-6a, Part 24 -- Unlawful Conduct and Penalties;

(c) R33-24-104 -- Socialization with Vendors and Contractors;

(d) R33-24-105 -- Financial Conflict of Interests Prohibited;

(e) R33-24-106 -- Personal Relationship, Favoritism, or Bias Participation Prohibitions;

(f) R33-4-103(3) -- Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications; and

(g) All other applicable laws and rules.

R33-5-202. Contract Award Based on Established Terms.

(1) In accordance with Section 63G-6a-113 and 507(6)(b), a procurement unit may award a contract to a vendor on an approved vendor list at an established price based on:

(a) A price list, rate schedule, or pricing catalog:

(i) Submitted by a vendor and accepted by the procurement unit; or

(ii) Mandated by the procurement unit or a federal agency; or

(b) A federal regulation for a health and human services program.

(2) Established terms submitted by vendors on an approved vendor list:

(a) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog submitted by the vendor, the procurement unit shall, as applicable:

(i) Assign work or purchase from the approved vendor with the lowest price, rate or catalog price;

(A) In case of a tie for the lowest price, the procurement unit shall follow the process described in Section R33-6-111 to resolve tie; and

(B) If the lowest-cost approved vendor cannot provide the procurement item or quantity needed, then work shall be assigned or the purchase made from the next lowest-cost vendor, and so on, until the procurement unit's needs are met;

(ii) Establish a cost threshold based on cost analysis as set forth in Section R33-12-603 and 604, and assign work or purchase from an approved vendor meeting the cost threshold using one of the following methods:

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

(B) Assignment of vendors to a specified geographic area;

(C) Assignment of vendors based on each vendor's particular expertise or field; or

(D) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority; and

(iii) In accordance with Section 63G-6a-1206.5, an approved vendor may lower its price, rate, or catalog price at any time during the time a contract is in effect in order to be assigned work or receive purchases under Subsections (i) and (ii).

(3) Established terms mandated by procurement unit or federal agency:

(a) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog mandated by the procurement unit or a federal agency, the procurement unit shall use one of the following methods to assign work or purchase from a vendor on an approved vendor list:

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

(ii) Assignment of vendors to a specified geographic area;

(iii) Assignment of vendors based on each vendor's particular expertise or field; or

(iv) Another method approved by the chief procurement officer or head of a procurement unit with independent procurement authority;

(4) When awarding a contract to an approved vendor based on a price list, rate schedule, or pricing catalog based on a federal regulation for a health and human services program the procurement unit shall follow the requirements set forth in the applicable federal regulation to assign work or make a purchase.

(5) In accordance with the provisions set forth in Section 63G-6a-2105, the chief procurement officer may award a contract(s) to vendors on an approved vendor list on a statewide, regional, or combined statewide and regional basis.

R33-5-203. Performance Rating System for Vendors on an Approved Vendor List.

(1) A procurement unit may develop a performance rating system to evaluate the performance of vendors on an approved vendor list, provided the performance rating system is described in the Request for Statement of Qualifications used to establish the approved vendor list. and includes:

(a) The minimum performance rating threshold that approved vendors must achieve in order to remain on the approved vendor list; and

(b) A statement indicating that vendors whose performance does not meet the minimum performance rating

threshold may be disqualified and removed from the approved vendor list.

(2) A procurement unit that disqualifies and removes a vendor from an approved vendor list shall:

(a) Make a written finding that:

(i) Describes the performance rating system;

(ii) Identifies the minimum performance rating threshold; and

(iii) Explains the performance rating achieved by the disqualified vendor; and

(b) Provide a copy of the written finding to the disqualified vendor.

R33-5-204. Approved Vendor Lists -- Using Small Purchase Process.

(1) When awarding a contract to an approved vendor using the small purchasing process, the procurement unit shall follow the small purchase requirements set forth in Section 63G-6a-506 and the following Administrative Rules as applicable:

(a) Section R33-5-104. Small Purchases

(b) Section R33-5-105. Small Purchases Threshold for Design Professional Services;

(c) Section R33-5-106. Small Purchases Threshold for Construction Projects;

(d) Section R33-5-107. Quotes for Small Purchases from $1,001, to $50,000;

(e) Section R33-5-108. Small Purchases of Professional Service Providers and Consultants;

(2) Executive branch employees are required to use state contracts for all small purchases for procurement items available on state contract.

KEY: government purchasing, procurements, request for information
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R33. Administrative Services, Purchasing and General Services.
R33-6. Bidding.
R33-6-101. Competitive Sealed Bidding; Multiple Stage Bidding; Reverse Auction.

(1) Competitive Sealed Bidding shall be conducted in accordance with the requirements set forth in Sections 63G-6a-601 through 63G-6a-612. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) The conducting procurement unit is responsible for all content contained in the competitive sealed bidding, multiple stage bidding, and reverse auction solicitation documents, including:

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

(b) approving content of attachments;

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

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

(e) understanding the description of the procurement item(s)being sought, all criteria, requirements, factors, and formulas to be used for determining the lowest responsible bidder and responsive bid.

(3)(a) The award of a contract shall be to the responsible bidder with the lowest responsive bid who meets the objective criteria described in the invitation for bids.

(b) Bids shall be based on the lowest bid for the entire term of the contract, excluding renewal periods.

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

R33-6-102. Bidder Solicitation Response.

(1) The invitation for bids shall include the information required by Section 63G-6a-603 and shall also include a "Bid Form" or forms, which shall provide lines for each of the following:

(a) the bidder's bid price;

(b) the bidder's acknowledged receipt of addenda issued by the procurement unit;

(c) the bidder to identify other applicable submissions; and

(d) the bidder's signature

(2) Bidders may be required to submit descriptive literature and/or product samples to assist the chief procurement officer or head of a procurement unit with independent procurement authority in evaluating whether a procurement item meets the specifications and other requirements set forth in the invitation to bid.

(a) Product samples must be furnished free of charge unless otherwise stated in the invitation for bids, and if not destroyed by testing, will upon written request within any deadline stated in the invitation for bids, be returned at the bidder's expense. Samples must be labeled or otherwise identified as specified in the invitation for bids by the procurement unit.

(3) The provisions of Section R33-7-105 shall apply to protected records.

(4) Bid, payment and performance bonds or other security may be required for procurement items as set forth in the invitation for bids. Bid, payment and performance bond amounts shall be as prescribed by applicable law or must be based upon the estimated level of risk associated with the procurement item and may not be increased above the estimated level of risk with the intent to reduce the number of qualified bidders.

(5) All bids must be based upon a definite calculated price

(a) "Indefinite quantity contract" means a fixed price contract for an indefinite amount of procurement items to be supplied as ordered by a procurement unit, and does not require a minimum purchase amount, or provide a maximum purchase limit;

(b) "Definite quantity contract" means a fixed price contract that provides for the supply of a specified amount of goods over a specified period, with deliveries scheduled according to a specified schedule; and

(c) Bids may not be based on using another bidder's price, including a percentage discount, formula, other amount related to another bidder's price, or conditions related to another bid or acceptance of an entire bid or a portion of a bid.

R33-6-103. Pre-Bid Conferences and Site Visits.

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

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

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

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

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation; or

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

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

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

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

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

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

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

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

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

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

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

site visit.

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

(i) the attendance log;

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

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

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

R33-6-104. Addenda to Invitation for Bids.

Prior to the deadline for receipt of solicitation responses, a procurement unit may issue addenda which may modify any aspect of the Invitation for Bids.

(a) Addenda shall be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.

(b) After the due date and time for submitting bids, at the discretion of the chief procurement officer or head of a procurement unit with independent procurement authority, addenda to the Invitation for Bids may be limited to bidders that have submitted bids, provided the addenda does not make a substantial change to the Invitation for Bids that, in the opinion of the chief procurement officer or head of a procurement unit with independent procurement authority, likely would have impacted the number of bidders responding to the Invitation for Bids.

R33-6-105. Rejection of a Late Bid -- Delivery and Time Requirements.

(1) Except as provided in Subsection (4), an issuing procurement unit may not accept a bid after the deadline for receipt of the solicitation responses to an invitation for bids has passed as set forth in Section 63G-6a-604(4).

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

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

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

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

R33-6-106. Voluntary Withdrawal of a Bid.

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

R33-6-107. Errors Discovered After the Award of Contract.

(1) Errors discovered after the award of a contract may only be corrected if, after consultation with the chief procurement officer or head of a procurement unit with independent procurement authority and the attorney general's office or other applicable legal counsel, it is determined that the correction of the mistake does not violate the requirements of the Utah Procurement Code or these administrative rules.

(2) Any correction made under this subsection must be supported by a written determination signed by the chief procurement officer or the head of a procurement unit with independent procurement authority.

R33-6-108. Re-solicitation of a Bid.

(1) Re-solicitation of a bid may occur only if the chief procurement officer or head of a procurement unit with independent procurement authority determines that:

(a) A material change in the scope of work or specifications has occurred;

(b) procedures outlined in the Utah Procurement Code were not followed;

(c) additional public notice is desired;

(d) there was a lack of adequate competition; or

(e) other reasons exist that are in the best interests of the procurement unit.

(2) Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

R33-6-109. Only One Bid Received.

(1) If only one responsive bid is received from a responsible bidder in response to an Invitation for Bids, including multiple stage bidding, an award may be made to the single bidder if the chief procurement officer or head of a procurement unit with independent procurement authority determines that the price submitted is fair and reasonable as set forth in R33-12-603 and R33-12-604, and that other prospective bidders had a reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise, the bid may be rejected and:

(a) a new invitation for bids solicited; or

(b) the procurement canceled.

R33-6-110. Multiple or Alternate Bids.

(1) Multiple or alternate bids will not be accepted, unless otherwise specifically required or allowed in the invitation for bids.

(2) If a bidder submits multiple or alternate bids that are not requested in the invitation for bids, the chief procurement officer or head of a procurement unit with independent procurement authority will only accept the bidder's primary bid and will not accept any other bids constituting multiple or alternate bids.

R33-6-111. Methods to Resolve Tie Bids.

(1) In accordance with Section 63G-6a-608, in the event of tie bids, the contract shall be awarded to the procurement item offered by a Utah resident bidder, provided the bidder indicated on the invitation to bid form that it is a Utah resident bidder.

(2) If a Utah resident bidder is not identified, the preferred method for resolving tie bids shall be for the chief procurement officer or head of a procurement unit with independent procurement authority by tossing a coin in the presence of a minimum of three witnesses with the firm first in alphabetical order being heads.

(3) Other methods to resolve a tie bid described in Section 63G-6a-608 may be used as deemed appropriate by the chief procurement officer or head of a procurement unit with independent procurement authority.

R33-6-112. Publication of Award.

(1) The issuing procurement unit shall, on the day on which the award of a contract is announced, make available to each bidder and to the public a notice that includes:

(a) the name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and

(b) the names and the prices of each bidder to which the

contract is not awarded.

R33-6-113. Multiple Stage Bidding Process.

Multiple stage bidding shall be conducted in accordance with the requirements set forth in Section 63G-6a-609.

(1) The chief procurement officer or head of a procurement unit with independent procurement authority may hold a pre-bid conference as described in Section R33-6-103 to discuss the multiple stage bidding process or for any other permissible purpose.

KEY: government purchasing, sealed bidding, multiple stage bidding, reverse auction
June 21, 2017 63G-6a
Notice of Continuation July 8, 2019

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

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

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

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

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

(b) instructions for submitting price.

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

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

(b) approving content of attachments;

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

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

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

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

R33-7-103. Multiple Stage RFP Process.

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

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

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

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

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

(1) Definitions:

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

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

(i) The lowest cost proposal submitted;

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The individual assigned by the issuing procurement unit to evaluate cost proposals shall do so outside the presence of the evaluation committee and shall not share the cost proposals or the results of the cost proposal evaluations with the evaluation committee until all technical scoring is completed in stage three;

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

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

(iv) Cost shall be evaluated in accordance with Section

63G-6a-707; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) that are determined to be excessive;

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

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

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

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

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

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

R33-7-105. Protected Records.

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

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

(c) Other Protected Records under GRAMA.

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

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

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

R33-7-106. Notification.

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

(2) Except as provided by court order, the procurement unit to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under Section R33-7-105 but which the procurement unit or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. Section R33-7-106 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

(3) Any allowed disclosure of public records submitted in the request for proposal process will be made only after the

selection of the successful offeror(s) has been made public in compliance with Section 63G-6a-709.5.

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

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

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

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

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

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

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

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

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

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

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

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

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

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

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

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

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

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

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

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

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

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

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

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

(i) the attendance log;

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

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

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

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

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

(a) making changes to:

(i) the scope of work;

(ii) the schedule;

(iii) the qualification requirements;

(iv) the criteria;

(v) the weighting; or

(vi) other requirements of the Request for Proposal.

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

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

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

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

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

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

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

(4) To the extent that an error on the part of the procurement unit or an employee of a procurement unit results

in a proposal not being received by the established due date and time, the proposal shall be accepted as being on time.

R33-7-501. Evaluation of Proposals.

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

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

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

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

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

R33-7-501.5. Minimum Score Thresholds.

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

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

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

(i) Minimum scores for each evaluation category;

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

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

(b) Thresholds may not be based on:

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

(ii) A predetermined number of offerors.

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

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

R33-7-601. Best and Final Offers.

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

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

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

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

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

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

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

(i) a management plan;

(ii) references;

(iii) statements of qualifications; and

(iv) a management fee.

(b) the management fee contains only the following:

(i) preconstruction phase services;

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

(iii) overhead and profit for the construction phase.

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

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

R33-7-701.1. Cost-Benefit Analysis.

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

R33-7-702. Only One Proposal Received.

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

(a) conduct a review to determine if:

(i) the proposal meets the minimum requirements;

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

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

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

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

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

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

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

(i) the person submitting the proposal is responsible;

(ii) the proposal is responsive; and

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

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

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

(i) Explain the evaluation and scoring process;

(ii) Discuss requirements and prohibitions pertaining to:

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

(B) financial conflicts of interest as set forth in Section

R33-24-105;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) resolve any factual disagreements;

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

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

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

(i) a proposal be rejected for;

(A) being non-responsive,

(B) not meeting the mandatory minimum requirements, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) The evaluation committee may, with approval from the issuing procurement unit, request best and final offers from responsible offerors who have submitted responsive proposals

that meet the minimum qualifications, evaluation criteria, or applicable score thresholds identified in the RFP, under the circumstances set forth in Section 63G-6a-707.5 and Section R33-7-601.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Technical specifications;

(b) Qualifications and experience;

(c) Programming;

(d) Design;

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

(f) Quality or suitability for a particular purpose;

(g) Financial solvency;

(h) Management and methodological plan; and

(i) Performance ratings or references.

(2) The standard scoring methodology is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R33-7-802. Publicizing Awards.

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

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

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

(c) the rankings of the proposals;

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

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

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

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

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

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

working documents;

(c) non-public financial statements; and

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

R33-7-900. Public-Private Partnerships.

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

KEY: government purchasing, request for proposals, standard procurement process
July 26, 2018 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-8. Exceptions to Standard Procurement Process.
R33-8-101. Award of Contract Without Engaging in a Standard Procurement Process.

(1) Under the provisions set forth in Section 63G-6a-802, the chief procurement officer or head of a procurement unit with independent procurement authority may award a contract without engaging in a standard procurement process under the following circumstances:

(a) There is only one source for the procurement item;

(b) Transitional costs are a significant consideration in selecting a procurement item and the results of a cost-benefit analysis document that transitional costs are unreasonable or cost-prohibitive and awarding a contract without engaging in a standard procurement process is in the best interest of the procurement unit; or

(c) Other circumstances described by the applicable rulemaking authority that make awarding a contract through a standard procurement process impractical and not in the best interest of the procurement unit.

R33-8-101a. Sole Source Contract Awards.

(1) The underlying purposes and policies of the Utah Procurement Code are to ensure the fair and equitable treatment of all persons who deal with the procurement system and to foster effective broad-based competition within the free enterprise system. The most effective way to achieve this is by conducting a standard procurement process whenever public funds are expended for a procurement item. Sole source contract awards do not involve a standard procurement process and should only be used when justified after reasonable research has been conducted to determine if there are other available sources and an analysis has been conducted to determine if a sole source award is cost justified.

(2) Circumstances for which a sole source contract award may be justified include procurements for:

(a) A procurement item for which there is no comparable product or service, such as a one-of-a-kind item available from only one vendor;

(b) A component or replacement part for which there is no commercially available substitute, and which can be obtained only directly from the manufacturer; or

(c) An exclusive maintenance, service, or warranty agreement.

(3) Prior to awarding a sole source contract, the chief procurement officer or head of a procurement unit with independent procurement authority shall, whenever practicable, conduct a price analysis in accordance with Section R33-12-603.

(4) An urgent or unexpected circumstance or requirement for a procurement item does not justify the award of a contract without engaging in a standard procurement process.

R33-8-101b. Transitional Costs -- Cost-Benefit Analysis.

(1) For the purpose of this section, the following definitions shall apply:

(a) "Competing type of procurement item" means a type of procurement item that is the same, equivalent, or superior to the existing type of procurement item currently under contract in all material aspects including:

(i) performance;

(ii) specifications;

(iii) scope of work; and

(iv) provider qualifications, certifications, and licensing.

(b) "Competing provider" means another provider other than the existing provider under contract that provides a competing type of procurement item.

(c) "Significant", "unreasonable or cost-prohibitive" transitional costs are defined as costs associated with changing from an existing provider of a procurement item to another provider of that procurement item or from an existing type of procurement item to another type that:

(i) constitute a measurably large amount that would likely have an influence or effect on the award of a contract if a competitive procurement were to be conducted for the procurement item being considered; and

(ii) provides a compelling justification for not conducting a competitive standard procurement process.

(2) Transitional costs that must be considered in a cost-benefit analysis include:

(a) Costs that are directly associated with changing from an existing provider of a procurement item to a competing provider of that procurement item or from an existing type of procurement item to a competing type of procurement item; and

(b) A full lifecycle cost analysis of the existing type of procurement item and competing type of procurement items in order to determine which procurement item is more cost-effective.

(3) Transitional costs that may be considered in a cost-benefit analysis include:

(a) Costs identified in Subsection 63G-6a-103;

(b) Costs offered by a competing provider(s) for a competing type of procurement item in a competitive bid or RFP process conducted within the last 12 months;

(c) Costs offered by a competing provider(s) for a competing type of procurement item in a competitive bid or RFP process conducted prior to the most recent 12 months, updated using an applicable price index;

(d) Written cost estimates obtained by the conducting procurement unit from a competing provider(s) for a competing type of procurement item; and

(e) Other transitional costs determined to be applicable by the chief procurement officer or head of a procurement unit with independent procurement authority.

(4) Transitional costs or other information that may not be considered in a cost-benefit analysis include:

(a) Costs prohibited in Subsection 63G-6a-103;

(b) Data provided by the existing provider for the purpose of establishing:

(i) the market value of the existing type of procurement item; or

(ii) a competing provider's price for a competing type of procurement item;

(c) Costs associated with any other procurement item other than the existing type of procurement item or a competing type of procurement item;

(d) Non-monetary factors, such as the provider's performance, agency preference, and other data or information not specific to the transitional costs associated with the existing type of procurement item or a competing type of procurement item;

(e) Factors other than the monetary transitional costs directly associated with changing from an existing provider of a procurement item to a competing provider of that procurement item or from an existing type of procurement item to a competing type of procurement item; and

(f) Other transitional costs or other information deemed inappropriate by the chief procurement officer or head of a procurement unit with independent procurement authority.

(5) The conducting procurement unit shall complete a written cost-benefit analysis and submit it to the issuing procurement unit for approval.

(6) The cost-benefit analysis should not be overly time-consuming to complete or involve hiring costly consultants or financial analysts.

R33-8-101c. Other Circumstances That May Make

Awarding a Contract Through a Standard Procurement Process Impractical.

(1) In accordance with Section 63G-6a-802(1)(c), the chief procurement officer or head of a procurement unit with independent procurement authority may consider, as applicable, the following circumstances when making a determination as to whether awarding a contract through a standard procurement process is impractical and not in the best interest of the procurement unit:

(a) a contract award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item;

(b) public utility services, when only one public utility service is available in an area;

(c) an item where compatibility is the overriding consideration; or

(d) a used procurement item that presents a unique, specialized, or time-limited buying opportunity.

R33-8-101d. Notice of Intent to Award a Contract Without Engaging in a Standard Procurement Process.

(1)(a) The division shall make available a Form titled: "Notice of intent to award a contract without engaging in a standard procurement process" that requires the conducting procurement unit to provide, at a minimum, the following information:

(i) a description of the procurement item, including, when applicable, the proposed scope of work;

(ii) the total dollar value of the procurement item, including, when applicable, the actual or estimated full lifecycle cost of maintenance and service agreements;

(iii) the duration of the proposed contract;

(iv) the signature of an authorized official of the conducting procurement unit; and

(v) research completed by the conducting procurement unit documenting that:

(A) There are no other competing vendors or sources for the procurement item in accordance with the provisions set forth in Section R33-8-101a;

(B) Transitional costs are a significant consideration in selecting a procurement item and the results of a cost benefit analysis documenting that transitional costs are unreasonable or cost-prohibitive and awarding a contract without engaging in a standard procurement process is in the best interest of the procurement unit in accordance with the provisions set forth in Section R33-8-101b; or

(C) Other circumstances that make awarding a contract through a standard procurement process impractical and not in the best interest of the procurement unit in accordance with the provisions set forth in Section R33-8-101c.

(b) A procurement unit with independent procurement authority may use the division's Form or develop its own Form to provide notice of intent to award a contract without engaging in a standard procurement process that contains, at a minimum, the same basic information in Subsection (1)(a).

(c) The conducting procurement unit shall submit in writing a completed "Notice of intent to award a contract without engaging in a standard procurement process" to the chief procurement officer, or head of a procurement unit with independent procurement authority for approval.

R33-8-101e. Public Notice -- Waiver of Public Notice.

(1) Except as provided in Subsection (2), publication of a "Notice of intent to award a contract without engaging in a standard procurement process" shall be published in accordance with Section 63G-6a-112 if the cost of the procurement being considered under this rule exceeds $50,000.

(2)(a) When making a determination under Sections R33-8-101a, 101b, or 101c, the chief procurement officer or head of a procurement unit with independent procurement authority may waive the requirement to publish the "Notice of intent to award a contract without engaging in a standard procurement process" for the following procurements:

(i) procurements of $50,000 or less;

(ii) public utility services;

(iii) conference and convention facilities with unique or specialized amenities, abilities, location, or services;

(iv) conference fees, including materials;

(v) speakers or trainers with unique or proprietary presentations or training materials;

(vi) hosting of in-state, out-of-state, and international dignitaries;

(vii) international, national, or local promotion of the state or a public entity,

(viii) an award when the Legislature identifies the intended recipient of a contract;

(ix) an award to a specific supplier, service provider, or contractor if the award is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item;

(x) catering services at government functions where the event requires a caterer with unique and specialized qualifications, skills, and abilities; or

(xi) other circumstances as determined in writing by the chief procurement officer or the head of a procurement unit with independent procurement authority.

(b) The chief procurement officer or head of a procurement unit with independent procurement authority may require publication of a "Notice of intent to award a contract without engaging in a standard procurement process" for any procurement identified in Subsection (2)(a) if deemed necessary to uphold the fair and equitable treatment of all persons who deal with the procurement system.

R33-8-101f. Contesting a Notice of Intent to Award a Contract Without Engaging in a Standard Procurement Process.

(1) A person may contest the notice of intent to award a contract without engaging in a standard procurement process prior to the closing of the public notice period set forth in Section 63G-6a-112 by submitting the following information in writing to the chief procurement officer or head of a procurement unit with independent procurement authority:

(a) the name of the contesting person; and

(b) a detailed explanation of the challenge, including documentation that:

(i) there are other competing sources for the procurement item;

(ii) transitional costs are not significant, unreasonable, or cost-prohibitive; or

(iii) conducting a standard procurement process is in the best interest of the conducting procurement unit.

(2) Upon receipt of a challenge contesting an award of a contract without engaging in a standard procurement process, the chief procurement officer or the head of a procurement unit with independent procurement authority shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.

(a) If a challenge is upheld, the conducting procurement unit shall conduct a standard procurement process for the procurement item being considered or cancel the procurement;

(b) If a challenge is not upheld, the conducting procurement unit may proceed with awarding a contract without engaging in a standard procurement process.

(3) A vendor's right to file a protest under Title 63G, Chapter 6a; Part 16, is not waived by a vendor's actions to

contest or challenge a procurement unit's notice of intent to award a contract without engaging in a standard procurement process under Section R33-8-101f.

R33-8-102. Reserved.

Reserved.

R33-8-110. Extension of a Contract Without Engaging in a Standard Procurement Process.

(1) One of the underlying purposes and policies of the Utah Procurement Code is to ensure the fair and equitable treatment of all persons who deal with the procurement system and to foster effective broad-based competition within the free enterprise system. The most effective way to achieve this is by conducting a standard procurement process whenever public funds are expended for a procurement item. A contract extension does not involve a standard procurement process and should only be used after thorough analysis and proper justification.

(2) Pursuant to Section 63G-6a-103, "contract administration" is a duty of the conducting procurement unit and includes all functions, duties, and responsibilities associated with closing out a contract. In fulfillment of these duties, the conducting procurement unit shall maintain a process or system for tracking contract expiration dates in order to determine well in advance of a contract expiration date if there is a continuing need for the procurement item. If the conducting procurement unit determines there is a continuing need for the procurement item, the conducting procurement unit shall whenever practicable:

(a)(i) Initiate a standard procurement process no later than 90 days prior to the contract expiration date of an existing contract; and

(ii) No later than 45 days prior to the contract expiration date, publish, if applicable, a solicitation for the procurement item; or

(b)(i) If the conducting procurement unit determines that a procurement will be complex or involve a change in industry standards or new specifications requiring negotiations, no later than 180 days prior to the contract expiration date, initiate a standard procurement process; and

(ii) No later than 45 days prior to the contract expiration date, publish, if applicable, a solicitation for the procurement item.

(3) The following do not justify an extension of a contract under Section 63G-6a-802.7:

(a) A procurement unit's intentional delay in conducting a standard procurement process to award a contract to replace an expiring contract; and

(b) A procurement unit or vendor's intentional delay in executing a contract to replace an expiring contract.

(4) Improperly avoiding engaging in a standard procurement process in order to extend the duration of a vendor's existing contract through means of a contract extension, may be classified as "steering a contract to a favored vendor" which is reportable as unlawful conduct under Section 63G-6a-2407.

R33-8-201. Trial Use or Testing of a Procurement Item, Including New Technology.

The trial use or testing of a procurement item, including new technology, shall be conducted as set forth in Section 63G-6a-802.3, Utah Procurement Code.

R33-8-301. Reserved.

Reserved.

R33-8-401. Emergency Procurement.

(1) Emergency procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-803, and this rule.

(2) An emergency procurement is a procurement procedure where the procurement unit is authorized to obtain a procurement item without using a standard competitive procurement process.

(3) An emergency procurement may only be used when circumstances create harm or risk of harm to public health, welfare, safety, or property.

(a) Circumstances that may create harm or risk to health, welfare, safety, or property include:

(i) damage to a facility or infrastructure resulting from flood, fire, earthquake, storm, or explosion;

(ii) failure or eminent failure of a public building, equipment, road, bridge or utility;

(iii) terrorist activity;

(iv) epidemics;

(v) civil unrest;

(vi) events that impair the ability of a public entity to function or perform required services;

(vii) situations that may cause harm or injury to life or property; or

(viii) other conditions as determined in writing by the chief procurement officer, or as applicable, the head of a procurement unit with independent procurement authority.

(4) Emergency procurements are limited to those procurement items necessary to mitigate the emergency.

(5) While a standard procurement process is not required under an emergency procurement, when practicable, procurement units should seek to obtain as much competition as possible through use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property, or impairing the ability of a public entity to function or perform required services.

(6) The procurement unit shall make a written determination documenting the basis for the emergency and the selection of the procurement item. A record of the determination and selection shall be kept in the contract file. The documentation may be made after the emergency condition has been alleviated.

R33-8-501. Declaration of "Official State of Emergency".

Upon a declaration of an "Official State of Emergency" by the authorized state official, the chief procurement officer shall implement the division's Continuity of Operations Plan, or COOP. When activated, the division shall follow the procedures outlined in the plan and take appropriate actions as directed by the procurement unit responsible for authorizing emergency acquisitions of procurement items.

KEY: government purchasing, exceptions to procurement requirements, emergency procurements
June 21, 2017 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-9. Cancellations, Rejections, and Debarment.
R33-9-101. Cancellation Before Opening.

(1) A solicitation under a standard procurement process may be canceled prior to the deadline for receipt of a solicitation response when it is in the best interests of the procurement unit as determined by the issuing procurement unit. In the event a solicitation is cancelled, the reasons for cancellation shall be made part of the procurement file and shall be available for public inspection and the procurement unit shall:

(a) re-solicit new responses to a solicitation using a standard procurement process using the same or revised specifications; or,

(b) withdraw the requisition for the procurement item(s).

R33-9-102. Re-solicitation.

(1) In the event there is no response to an initial solicitation, the chief procurement officer or head of a procurement unit with independent procurement authority may:

(a) contact the known supplier community to determine why there were no responses to the solicitation;

(b) research the potential vendor community; and,

(c) based upon the information in (a) and (b) require the conducting procurement unit to modify the solicitation documents.

(2) If the conducting procurement unit has modified the solicitation documents and after the re-issuance of a solicitation, there is still no competition or there is insufficient competition, the chief procurement officer or head of a procurement unit with independent procurement authority, shall:

(a) require the conducting procurement unit to further modify the procurement documents; or,

(b) cancel the requisition for the procurement item(s).

(3) An executive branch procurement unit may not reissue a canceled solicitation unless:

(a) The chief procurement officer determines that all of the issues identified in the written justification for canceling the solicitation set forth in R33-9-103 have been resolved.

R33-9-103. Cancellation Before Award But After Opening.

(1) A solicitation under a standard procurement process may be cancelled before award but after the opening of solicitation responses when the issuing procurement unit determines in writing that:

(a) the scope of work or other requirements contained in the solicitation documents were not met by any person and all solicitation responses have been determined to be either nonresponsive or not responsible;

(b) an infraction of code, rule, or policy has occurred;

(c) inadequate, erroneous, or ambiguous specifications or requirements were cited in the solicitation;

(d) the specifications in the solicitation have been or must be revised;

(e) the procurement item(s) being solicited are no longer required;

(f) the solicitation did not provide for consideration of all factors of cost to the procurement unit, such as cost of transportation, warranties, service and maintenance;

(g) solicitation responses received indicate that the needs of the procurement unit can be satisfied by a less expensive procurement item differing from that in the solicitation;

(h) except as provided in Section 63G-6a-607, all otherwise acceptable solicitation responses received are at unreasonable prices, or only one solicitation response is received and the chief procurement officer or head of a procurement unit with independent procurement authority cannot determine the reasonableness of the bid price or cost proposal;

(i) other reasons specified in 63G-6a or Administrative Rule; or

(j) other circumstances deemed to constitute reasonable cause by the chief procurement officer or head of a procurement unit with independent procurement authority.

(3) Notwithstanding the above, a procurement unit may not cancel and reissue a solicitation:

(a) To steer a contract to a favored vendor; or

(b) Except as permitted under the protest and appeal provisions set forth in Utah Code 63G-6a, Parts 16 and 17, to make a vendor who was previously disqualified or rejected in a solicitation for the procurement item eligible for a contract award for the same procurement item.

R33-9-104. Alternative to Cancellation.

In the event administrative difficulties are encountered before award but after the deadline for receipt of solicitation responses that may delay award beyond the bidders', offerors', or person's acceptance periods, the bidders, offerors, or persons should be requested, before expiration of their solicitation responses, to extend in writing the acceptance period (with consent of sureties, if any) in order to avoid the need for cancellation.

R33-9-105. Award of a Contract After Cancellation for Cause or by Mutual Agreement.

(1) If a contract awarded through a standard procurement process is cancelled for cause or by mutual agreement within the first twelve months of the contract term and the procurement item is still needed by the procurement unit, the chief procurement officer or head of a procurement unit with independent procurement authority shall make a determination as to whether it is in the best interest of the procurement unit to award a contract for the balance of the scope of work, as set forth in the solicitation, to:

(a) the responsible vendor with a responsive solicitation response, meeting all minimum score thresholds set forth in the solicitation:

(i) having the next lowest bid in an invitation for bids procurement process and in accordance with the provisions set forth in Utah Code 63G-6a, Part 6 and Administrative Rule R33; or

(ii) with the next highest total score or other authorized method to award a contract in accordance with the provisions of:

(A) the request for proposals procurement process set forth in Utah Code 63G-6a, Part 7 and Administrative Rule R33;

(B) the approved vendor list procurement process set forth in Utah Code 63G-6a-507 and R33; or

(C) the design professional procurement process set forth in Utah Code 63G-6a, Part 15 and Administrative Rule R33; or

(b) issue a new solicitation for the procurement item.

(2) The chief procurement officer or head of a procurement unit with independent procurement authority shall consider the following when making a determination under Subsection (1):

(a) the fair and equitable treatment of all persons currently involved or that may be involved in the procurement process pertaining to the procurement item;

(b) the length of time that has passed between the initial procurement and cancellation of the awarded contract;

(c) the applicability and competitiveness of prices submitted in response to the initial procurement;

(d) the willingness of the vendor to maintain prices submitted in the vendor's initial response to the solicitation for the full scope of work or, as applicable, remaining proportionate scope of work;

(e) the vendor's availability and ability to perform the work;

(f) the existence of additional or new vendors who may be

available and willing to submit responses to a new solicitation for the procurement item;

(g) costs and time delays to the procurement unit associated with conducting a new procurement; and

(h) other applicable issues unique to the solicitation or procurement item.

(3) This rule may not be used:

(a) If a contract is cancelled by a procurement unit for convenience;

(b) To extend the contract beyond the contract period identified in the solicitation; or

(c) If a contract is cancelled after the first twelve months of the contract period.

R33-9-201. Rejection of a Solicitation Response.

An issuing procurement unit may reject any or all solicitation responses, in whole or in part, as may be specified in the solicitation, when it is in the best interest of the procurement unit. In the event of a rejection of any or all bids, offers or other submissions, in whole or in part, the reasons for rejection shall be made part of the procurement file and shall be available for public inspection.

R33-9-202. Conformity to Solicitation Requirements.

(1)(a) Any solicitation response that fails to conform to the essential requirements of the solicitation shall be rejected.

(b) Any solicitation response that does not conform to the applicable specifications shall be rejected unless the solicitation authorized the submission of alternate solicitation responses and the procurement item(s) offered as alternates meet the requirements specified in the solicitation.

(c) Any solicitation response that fails to conform to the delivery schedule or permissible alternates stated in the solicitation shall be rejected.

(2) A solicitation response shall be rejected when the bidder or offeror imposes conditions or takes exceptions that would modify requirements or terms and conditions of the solicitation or limit the bidder or offeror's liability for the procurement, since to allow the bidder or offeror to impose such conditions or take exceptions would be prejudicial to another person. For example, solicitation responses shall be rejected in which the person:

(a) for commodities, protects against future changes in conditions, such as increased costs, if total possible costs to the procurement unit cannot be determined;

(b) fails to state a price and indicates that price shall be the price in effect at time of delivery or states a price but qualifies it as being subject to price in effect at time of delivery;

(c) when not authorized by the solicitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder or offeror receives (or does not receive) an award under a separate solicitation;

(d) requires that the procurement unit is to determine that the bidder or offeror's product meets applicable specifications; or

(e) limits rights of the State under any contract clause.

R33-9-204. Rejection for Nonresponsibility or Nonresponsiveness.

(1) The chief procurement officer or head of a procurement unit with independent procurement authority:

(a) Shall, subject to Section 63G-6a-903 and, as applicable, Section 63G-6a-604, reject a bid if the bid is determined not responsive or the bid is submitted by a bidder determined to be not responsible;

(b) May reject a solicitation response to any other type of standard procurement process if the solicitation response is determined to be not responsive or the solicitation response is submitted by a person determined to be not responsible; and

(c) Subsections (a) and (b) shall be conducted in accordance with the definitions of Responsible and Responsive set forth in Section 63G-6a-103.

(2) When a bid security is required and a bidder fails to furnish the security in accordance with the requirements of the invitation for bids, the bid shall be rejected.

(3) All written findings with respect to such rejections shall be made part of the procurement file and available for public inspection.

R33-9-301. Rejection for Suspension/Debarment.

Solicitation responses received from any person that is suspended, debarred, or otherwise ineligible as of the deadline for receipt of solicitation responses shall be rejected.

KEY: government purchasing, cancellations, rejections, debarment
June 21, 2017 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-10. Preferences.
R33-10-101. Providers of State Products.

(1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1002 for the providers of procurement items produced, manufactured, mined, grown, or performed in Utah, Rule R33-10 outlines the process for award of a contract when there is more than one equally low preferred bidder. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) In the event there is more than one equally low preferred bidder, the chief procurement officer or head of a procurement unit with independent procurement authority shall consider the preferred bidders as tie bidders and shall follow the process specified in Section 63G-6a-608 and Rule R33-6-110.

R33-10-102. Preference for Resident Contractors.

(1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1003 for resident Utah contractors, this rule outlines the process for award of a contract when there is more than one equally low preferred resident contractor.

(2) In the event there is more than one equally low preferred resident contractor, the chief procurement officer or head of a procurement unit with independent procurement authority shall consider the preferred resident contractors as tie bidders and shall follow the process specified in Section 63G-6a-608 and Rule R33-6-110.

KEY: preferences for resident contractors, reciprocal preferences, state products
July 8, 2014 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-11. Form of Bonds.
R33-11-101. Definitions.

(1)(a) Whenever used in this Rule, the terms "bid", "bidder" and "bid security" apply to all procurements, including non-construction procurements, when the procurement documents, regardless of the procurement type, require securities and/or bonds.

(b) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-11-201. Bid Security Requirements for Projects.

(1) Invitations for Bids and Requests for Proposals for construction contracts estimated to exceed $50,000 shall require the submission of bid bond in an amount equal to at least 5% of the bid, at the time the bid is submitted.

(2) Invitations for Bids and Requests for Proposals for other procurements may require the submission of a bid security, including specifications for the form and type of bid security, when the chief procurement officer or the head of a procurement unit with independent procurement authority determines it is in the best interest of the procurement unit

(3) If a person fails to include the required bid security, the bid shall be deemed nonresponsive and ineligible for consideration of award except as provided by Rule R33-6-108, Rule R33-6-109 or Rule R33-11-202.

(4) The chief procurement officer or head of a procurement unit with independent procurement authority may require an acceptable bid security on projects that are for amounts less than the standard amount set forth in Rule R33-11-201(1).

R33-11-202. Acceptable Bid Security Not Furnished.

(1) If acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the chief procurement officer or head of a procurement unit with independent procurement authority to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:

(a) the bid security is submitted on a form other than the required bid bond form and the bid security meets all other requirements including being issued by a surety meeting the requirements of Rule R33-11-303(1)(b) and the contractor provides acceptable bid security by the close of business of the next succeeding business day after the procurement notified the contractor of the defective bid security; or

(b) only one bid is received, and there is not sufficient time to re-solicit; or

(c) the amount of the bid security submitted, though less than the amount required by the Invitation for Bids, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or

(d) the bid security becomes inadequate as a result of the correction of a mistake in the bid or bid modification, if the bidder increases the amount of guarantee to required limits within 48 hours after the bid opening.

(2) If the successful bidder fails or refuses to enter into the contract or furnish the additional bonds required under Rule R33-11-2, then the bidder's bid security may be forfeited.

R33-11-301. Performance Bonds for Construction Contracts.

A performance bond is required for all construction contracts in excess of $50,000, in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the procurement unit within fourteen days of the contractor receiving notice of the award of the construction contract. If a contractor fails to deliver the required performance bond, the contractor's bid/offer shall be rejected, its bid security may be enforced, and award of the contract may be made to the responsible bidder or offeror with the next lowest responsive bid or highest ranked offer.

R33-11-302. Surety or Performance Bonds for Non-construction Procurement Items.

(1) A surety or performance bond may be required on any non-construction contract if the chief procurement officer or head of a procurement unit with independent procurement authority deems it necessary to guarantee the satisfactory completion of a contract, provided:

(a) The solicitation contains a statement that a surety or performance bond is required in an amount:

(i) equal to the amount of the bid, offer, or other response;

(ii) equal to the project budget or estimated project cost, if the budget or estimated project cost is published in the solicitation documents;

(iii) equal to the previous contract cost, if the previous contract cost is published in the solicitation documents; or

(iv) The Invitation for Bids or Request for Proposals contains a statement that a surety or performance bond, in an amount less than the amounts contained in (a), is required; and

(b) The solicitation contains a detailed description of the work to be performed for which the surety or performance bond is required.

(2) Surety or Performance Bonds should not be used to unreasonably eliminate competition or be of such unreasonable value as to eliminate competition.

R33-11-303. Payment Bonds.

(1) A payment bond is required for all construction contracts in excess of $50,000, in the amount of 100% of the contract price. If a contractor fails to deliver the required payment bond, the contractor's bid or offer shall be rejected, its bid security may be enforced, and award of the contract shall be made to the responsible bidder or offeror with the next lowest responsive bid or highest ranked offer.

For executive branch procurement units:

(a) Bid Bonds, Payment Bonds and Performance Bonds submitted by vendors to executive branch procurement units must be from sureties meeting the requirements of Rule R33-11-303(1)(b) and must be on the required bond forms;

(b) Surety firm requirements. All surety firms must be authorized to do business in the State of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued.

(2) The chief procurement officer, or head of a procurement unit with independent procurement authority, may waive any bonding requirement if it is determined in writing by the chief procurement officer or head of a procurement unit with independent procurement authority that:

(a) bonds cannot reasonably be obtained for the work involved;

(b) the cost of the bond exceeds the risk to the procurement unit; or

(c) bonds are not necessary to protect the interests of the procurement unit.

(3) If the conducting procurement unit fails to obtain a payment bond it shall be subject Utah Code Title 14, Chapter 1.

KEY: bid security, performance bonds, payment bonds, procurement procedures
June 21, 2017 **63G-6a**
Notice of Continuation July 8, 2019

R33. Administrative Services, Division of Purchasing and General Services.
R33-12. Terms and Conditions, Contracts, Change Orders and Costs.
R33-12-101. Required Contract Clauses.

Public entities shall comply with Section 63G-6a-1202 considering clauses for contracts. Executive branch procurement units shall also comply with the requirements of Section 63G-6a-110(6). All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-12-201. Establishment of Terms and Conditions.

(1) Executive branch procurement units without independent procurement authority shall be required to use the Standard Terms and Conditions adopted by the division for each particular procurement, unless exceptions or additions are granted by the Chief Procurement Officer after consultation with the Attorney General's Office. Public entities, other than executive branch procurement units, may enact similar requirements. Terms and conditions may be established for:

(a) a category of procurement items;

(b) a specific procurement item;

(c) general use in all procurements;

(d) the special needs of a conducting procurement unit; or

(e) the requirements of federal funding.

(2) In addition to the required standard terms and conditions, executive branch procurement units without independent procurement authority may submit their own additional special terms and conditions subject to the following:

(a) the chief procurement officer may reject terms and conditions submitted by a conducting procurement unit if:

(i) the terms and conditions are unduly restrictive;

(ii) will unreasonably increase the cost of the procurement item; or

(iii) places the state at increased risk.

(b) the chief procurement officer may require the conducting procurement unit's Assistant Attorney General to approve any additional special terms and conditions.

R33-12-301. Awarding Multiple Award Contracts.

(1) A multiple award contract is a procurement process where two or more bidders or offerors are awarded a contract under a single solicitation. Purchases are made through an order placed with a vendor on multiple award contract pursuant to the procedures established in R33-12-301.2, ordering from a multiple award contract.

(2) As authorized under Section 63G-6a-1204.5, the division or a procurement unit with independent procurement authority may enter into multiple award contracts.

(3) A multiple award contract may be awarded under a single solicitation when two or more bidders or offerors for similar procurement items are needed for:

(a) Coverage on a statewide, regional, combined statewide and regional basis, agency specific requirement, or other criteria specified in the solicitation such as:

(i) delivery;

(ii) service;

(iii) product availability; or

(iv) Compatibility with existing equipment or infrastructure.

(4) In addition to the requirements set forth in Section 63G-6a-603 and Section 63G-6a-703, when it is anticipated that a procurement will result in multiple contract awards, the solicitation shall include a statement that:

(a) Indicates that contracts may be awarded to more than one bidder or offeror;

(b) Specifies whether contracts will be awarded on a statewide, regional, combined statewide and regional basis, or agency specific requirement; and

(c) Describes specific methodology or a formula that will be used to determine the number of contract awards.

(5) Multiple award contracts in an invitation for bids shall be conducted and awarded in accordance with Utah Code 63G-6a, Part 6 to the lowest responsive and responsible bidder(s) who meet the objective criteria described in the invitation for bids and may be awarded to provide adequate regional, statewide, or combined regional and statewide coverage, agency specific requirement, or delivery, or product availability using the following methods:

(a) lowest bids for all procurement items solicited provided the solicitation indicates that multiple contracts will be awarded to the lowest bidders for all procurement items being solicited as determined by the following methods:

(i) all bids within a specified percentage, not to exceed five percent, of the lowest responsive and responsible bid, unless otherwise approved in writing by the chief procurement officer or head of a procurement unit with independent procurement authority;

(ii) all responsive and responsible bidders will be awarded a contract, provided the contract specifically directs that orders must be placed first with low bidder unless the lowest bidder cannot provide the needed procurement item, then with the second lowest bidder unless the second lowest bidder cannot provide the needed procurement item, then with the third lowest bidder unless the third lowest bidder cannot provide the needed procurement item, and so on in order from the lowest responsive and responsible bidder to the highest responsive and responsible bidder; or

(iii) other methodology described in the solicitation to award contracts;

(b) lowest bid by Category provided:

(i) the solicitation indicates that a contract will be awarded based on the lowest bid per category;

(ii) only one bidder may be awarded a contract per category;

(c) lowest bid by line item provided:

(i) the solicitation indicates that a contract will be awarded based on the lowest bid per line item, task or service;

(ii) only one bidder may be awarded a contract per line item, task or service; or

(d) Other specific objective methodology described in the solicitation, such as R33-12-302 for primary and secondary contracts, approved by the chief procurement officer or head of a procurement unit with independent procurement authority.

(6) Multiple award contracts in a request for proposals shall be conducted and awarded in accordance with Utah Code 63G-6a, Part 7 and may be awarded on a statewide, regional, combination statewide and regional basis, agency specific requirement, or other criteria set forth in the solicitation and in accordance with point thresholds and other methodology set forth in the RFP describing how multiple award contracts will be awarded with enough specificity as to avoid the appearance of any favoritism affecting the decision of whether to award a multiple contract and who should receive a multiple award contract.

R33-12-301a. Multiple Award Contracts for Unidentified Procurement Items.

(1) An unidentified procurement item is defined as a procurement item that at the time the solicitation is issued:

(a) Has not been specifically identified but will be identified at some time in the future, such as an approved vendor list or approved consultant list;

(b) Does not have a clearly defined project or procurement specific scope of work; and

(c) Does not have a clearly defined project or procurement specific budget.

(2) Unidentified procurement items may be procured under the approved vendor list thresholds established by the applicable rule making authority or Section R33-4-102.

(3) An RFP, request for statements of qualifications, or multi stage solicitation issued for a multiple award contract for unidentified procurement item(s) must specify the methodology that the procurement unit will use to determine which vendor under the multiple award contract will be selected.

(a) The methodology must include a procedure to document that the procurement unit is obtaining best value, including an analysis of cost and other evaluation criteria outlined in the solicitation.

(b) The methodology must also ensure the fair and equitable treatment of each multiple award contract vendor, including using methods to select a vendor such as:

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

(ii) assigning a potential vendor or contractor to a specified geographical area;

(iii) classifying each potential vendor or contractor based on the potential vendor's or contractor's field or area of expertise; or

(iv) obtaining quotes or bids from two or more vendors or contractors.

R33-12-301b. Ordering From A Multiple Award Contract.

(1)(a) When buying a procurement item from a multiple award contract solicited through an invitation for bids, a procurement unit shall:

(i) obtain a minimum of two quotes for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(a)(i) and place the order for the procurement item with the vendor or contractor with the lowest quoted price;

(ii) place the order for the procurement item with the lowest bidder on contract unless the lowest bidder cannot provide the needed procurement item, then the order may be placed with the second lowest bidder unless the second lowest bidder cannot provide the needed procurement item and on, in order, from lowest bidder to highest bidder as described in R33-12-301(5)(a)(ii);

(iii) place the order in accordance with instructions contained in the contract for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(a)(iii);

(iv) place the order for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(b); or

(v) place the order for the procurement item if the contract was awarded based on the method described in R33-12-301(5)(c);

(b) The requirement to obtain two or more quotes in section (1)(a)(i) is waived when there is only one bidder award for the particular procurement item or only one bidder is awarded per geographical area.

(2) When buying a procurement item from a multiple award contract solicited through an RFP, a procurement unit may place orders with any vendor or contractor under contract based on which procurement item best meets the needs of the procurement unit. Contracts awarded through the RFP process are awarded based on best value as determined by cost and non-price criteria specified in the RFP. As a result, all vendors, contractors and procurement items under contract issued through an RFP have been determined to provide best value to procurement units buying from these contracts.

(3) A procurement unit may not use a multiple award contract to steer purchases to a favored vendor or use any other means or methods that do not result in fair consideration being given to all vendors that have been awarded a contract under a multiple award.

R33-12-302. Primary and Secondary Contracts.

(1) Designations of multiple award contracts as primary and secondary may be made provided a statement to that effect is contained in the solicitation documents.

(2) When the chief procurement officer or head of a procurement unit with independent procurement authority determines that the need for procurement items will exceed the capacity of any single primary contractor, secondary contracts may be awarded to additional contractors.

(3) Purchases under primary and secondary contracts shall be made, initially to the primary contractor offering the lowest contract price until the primary contractor's capacity has been reached or the items are not available from the primary contractor, then to secondary contractors in progressive order from lowest price or availability to the next lowest price or availability, and so on.

R33-12-303. Intent to Use.

If a multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.

R33-12-401. Contracts and Change Orders -- Contract Types.

A procurement unit may use contract types to the extent authorized under Section 63G-6a-1205.

R33-12-402. Prepayments.

Prepayments are subject to the restrictions contained in Section 63G-6a-1208.

R33-12-403. Leases of Personal Property.

Leases of personal property are subject to the following:

(1) Leases shall be conducted in accordance with Division of Finance rules and Section 63G-6a-1209.

(2) A lease may be entered into provided the procurement unit complies with Section 63G-6a-1209 and:

(a) it is in the best interest of the procurement unit;

(b) all conditions for renewal and costs of termination are set forth in the lease; and

(c) the lease is not used to avoid a competitive procurement.

(3) Lease contracts shall be conducted with as much competition as practicable.

(4) Executive Branch Procurement Unit Leases with Purchase Option. A purchase option in a lease may be exercised if the lease containing the purchase option was awarded under an authorized procurement process. Before exercising this option, the procurement unit shall:

(a) investigate alternative means of procuring comparable procurement items; and

(b) compare estimated costs and benefits associated with the alternative means and the exercise of the option, for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option.

R33-12-404. Multi-Year Contracts.

(1) Procurement units may issue multi-year contracts in accordance with Section 63G-6a-1204.

(2) The standard contract term for executive branch procurement units is five years, unless the chief procurement officer or head of a procurement unit with independent procurement authority determines that a shorter or longer term contract is in the best interest of the procurement unit after considering:

(a) the cost associated with conducting more than one procurement within a five-year period if a shorter term is required;
(b) the impact on competition if a longer term is required;
(c) standard practices for the industry; and
(d) the needs of the procurement unit.

R33-12-404.1. Contracts With Renewal Options.
(1) In order to ensure fair and open competition in the procurement process and to avoid costs associated with administering contracts with renewal options, executive branch procurement units shall document in writing why renewal options are in the best interest of the procurement unit taking into consideration:
(a) federal funding requirements;
(b) the cost associated with administering renewal options;
(c) how the cost of the procurement item will be established during any renewal periods; and
(d) how the principle of upholding fair and open competition will be maintained.

R33-12-405. Installment Payments.
(1) Procurement units may make installment payments in accordance with Section 63G-6a-1208.

R33-12-501. Change Orders.
(1) In addition to the requirements contained in Section 63G-6a-1207, for executive branch procurement units without independent procurement authority, the certifications required under 63G-6a-1207(1) and 63G-6a-1207(2) must be submitted in writing by the procurement unit to the chief procurement officer prior to the commencement of any work to be performed under a contract change order unless:
(a) The procurement unit has authority, as may be granted under Section 63G-6a-304(1) and Section R33-3-101, to authorize contract change orders up to the amount delegated; or
(b) The change order is requisite to:
(i) avert an emergency; or
(ii) is required as an emergency.
(c) For purposes of this subsection "emergency" is described in Subsection R33-8-401(3) and is subject to Section 63G-6a-803.
(2) Any contract change order authorized by a procurement unit under Subsection R33-12-501(1)(c)shall, as soon as practicable, be submitted to the chief procurement officer and included in the division's contract file.

R33-12-502. Contract Modifications for New Technology and Technological Upgrades.
A contract for a procurement item may be modified to include new technology or technological upgrades associated with the procurement item, provided:
(1) The solicitation contains a statement indicating that:
(a) the awarded contract may be modified to incorporate new technology or technological upgrades associated with the procurement item being solicited, including new or upgraded:
(i) systems;
(ii) apparatuses;
(iii) modules;
(iv) components; and
(v) other supplementary items;
(b) a maintenance or service agreement associated with the procurement item under contract may be modified to include any new technology or technological upgrades; and
(c) Any contract modification incorporating new technology or technological upgrades is specific to the procurement item being solicited and substantially within the scope of the original procurement or contract.
(2) Any contract modification incorporating new technology or technological upgrades is agreed upon by all parties and is executed using the process set forth in the contract for other contract modifications.
(3) Prior to executing a contract modification incorporating new technology or technological upgrades, executive branch procurement units shall obtain the approval of the Executive Director of the Department of Technology Services.
(4) A contract modification for new technology or technology upgrades may not extend the term of the contract except as provided in the Utah Procurement Code.

R33-12-601. Requirements for Cost or Pricing Data.
(1) For contracts that expressly allow price adjustments, cost or pricing data shall be required in support of a proposal leading to the adjustment of any contract pricing.
(2) Cost or pricing data exceptions:
(a) need not be submitted when the terms of the contract state established market indices, catalog prices or other benchmarks are used as the basis for contract price adjustments or when prices are set by law or rule;
(b) if a contractor submits a price adjustment higher than established market indices, catalog prices or other benchmarks established in the contract, the chief procurement officer or head of a procurement unit with independent procurement authority may request additional cost or pricing data; or
(c) the chief procurement officer or head of a procurement unit with independent procurement authority may waive the requirement for cost or pricing data provided a written determination is made supporting the reasons for the waiver. A copy of the determination shall be kept in the contract file.

R33-12-602. Defective Cost or Pricing Data.
(1) If defective cost or pricing data was used to adjust a contract price, the vendor and the procurement unit may enter into discussions to negotiate a settlement.
(2) If a settlement cannot be negotiated, either party may seek relief through the courts.

R33-12-603. Price Analysis.
(1) Price analysis may be used to determine if a price is reasonable and competitive, such as when:
(a) there are a limited number of vendors, bidders or offerors;
(b) awarding a sole source or other contract without engaging in a standard procurement process; or
(c) identifying price that are significantly lower or higher than other vendors, bidders, or offerors.
(2) Price analysis involves a comparison of prices for the same or similar procurement items, including quality, warranties, service agreements, delivery, contractual provisions, terms and conditions, and so on.
(3) Examples of a price analysis include:
(a) prices submitted by other prospective bidders or offerors;
(b) price quotations;
(c) previous contract prices;
(d) comparisons to the existing contracts of other public entities; and,
(e) prices published in catalogs or price lists.

R33-12-604. Cost Analysis.
(1) Cost analysis includes the verification of cost data. Cost analysis may be used to evaluate:
(a) specific elements of costs;
(b) total cost of ownership and life-cycle cost;
(c) supplemental cost schedules;
(d) market basket cost of similar items;
(e) the necessity for certain costs;

(f) the reasonableness of allowances for contingencies;
(g) the basis used for allocation of indirect costs; and,
(h) the reasonableness of the total cost or price.

R33-12-605. Right to Audit.
(1) As used in this rule:
(a) "Authorized representative" includes:
(i) A purchasing procurement unit;
(ii) An internal auditor or other employee of the procurement unit;
(iii) An audit firm, consultant or examiner under contract with the procurement unit;
(iv) The State Auditor;
(v) The Legislative Auditor General; or
(vi) Federal auditors.
(b) "Books and records" mean all written or electronic information pertaining to the applicable contract between the procurement unit and the contractor including;
(i) Accounting information, financial statements, files, invoices, reports, and statements;
(ii) Pricing data;
(iii) Usage reports;
(iv) Transaction histories;
(v) Delivery logs;
(vi) Contracts, contract amendments, and other legal documents; and
(vii) Performance evaluations.
(2) Any contract between a contractor and a procurement unit which involves the expenditure of public funds may include or incorporate by reference a right to audit clause that may contain the following provisions:
(a) A statement indicating that the procurement unit or its authorized representative has the right to audit the books and records of a contractor or any subcontractor under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract;
(b) Notification procedures for initiating an audit and reporting audit findings;
(c) Dispute resolution procedures, including, to the extent practicable, negotiation, settlement, and final resolution of audit findings;
(d) A statement requiring the contractor and its subcontractors to :
(i) maintain all books and records relating to a contract for six years after the day on which the contractor receives the final payment under the contract, or until all audits initiated under this section within the six-year period have been completed, whichever is later;
(ii) Establish and maintain an accounting and record-keeping system that enables the procurement unit or its authorized representative to readily have access to the contractor's books and records in both written and electronic format;
(iii) Upon request, provide to the procurement unit or its authorized representative an electronic copy of the contractor's books and records within thirty (30) days of the request;
(iv) Allow the procurement unit or its authorized representative to interview the contractor's employees, agents, subcontractors, partners, resellers, and any other person who might reasonably have information related to the contractor's performance of of the contract.
(v) Correct errors and repay overcharges to the contracting procurement unit within thirty days of receiving written notice of the errors or overcharges documented in an audit finding;
(A) all payments relating to overcharges or other audit findings involving state cooperative contracts shall be repaid to the Utah Division of Purchasing; and
(vi) If contract errors or overcharges are in dispute, correct errors and repay overcharges within thirty days of receipt of a notice of decision issued by the chief procurement officer, the head of a procurement unit with independent procurement authority after a hearing has been conducted to attempt to resolve the dispute, or a court order.
(e) A statement indicating that:
(i) the procurement unit or its authorized representative have the right to audit the contract at any time during or after the term of the contract between the contractor and the procurement unit; including the right to examine, make copies of, or extract data from any record required to be maintained by the contractor;
(ii) An audit or other request shall:
(A) Be limited to records or other information related to or pertaining to the applicable contract;
(B) Include access to all records necessary to properly account for the contractor's performance under the contract and the payments made by the procurement unit to the contractor; and
(C) Be carried out at a reasonable time and place.
(f) A notice that if a contractor fails to maintain or provide records in accordance with the provisions of the contract, the procurement unit may:
(i) Deem the contractor to be in breach of its contract with the procurement unit;
(ii) Enter into negotiations with the contractor to initiate a corrective action plan to bring the contractor into compliance; or
(iii) Cancel the contract.
(g) A notice that the procurement unit may initiate debarment or suspension proceedings against a contractor under Section 63G-6a-904, or pursue other legal action, for any of the following:
(i) Failure to respond to an audit;
(ii) Failure to correct errors or repay overcharges;
(iii) An illegal act or fraud documented in an audit; or
(iv) Other reasons as determined by the chief procurement officer of head of a procurement unit with independent procurement authority.

R33-12-607. Applicable Credits.
Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.

R33-12-608. Use of Federal Cost Principles.
(1) In dealing with contractors operating according to federal cost principles, the chief procurement officer or head of a procurement unit with independent procurement authority, may use the federal cost principles, including the determination of allowable, allocable, and reasonable costs, as guidance in contract negotiations.
(2) In contracts not awarded under a program which is funded by federal assistance funds, the chief procurement officer or head of a procurement unit with independent procurement authority may explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The chief procurement officer or head of a procurement unit with independent procurement authority and the contractor by mutual agreement may incorporate federal cost principles into a contract during negotiation or after award.
(3) In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document including specified federal cost principles, must be satisfied. To the extent that the cost principles specified in the grant document

conflict with the cost principles issued pursuant to Section 63G-6a-1206, the cost principles specified in the grant shall control.

R33-12-609. Authority to Deviate from Cost Principles.

If a procurement unit desires to deviate from the cost principles set forth in these rules, a written determination shall be made by the chief procurement officer or head of a procurement unit with independent authority specifying the reasons for the deviation and the written determination shall be made part of the contract file.

R33-12-701. Inspections.

Circumstances under which the procurement unit may perform inspections include inspections of the contractor's manufacturing/production facility or place of business, or any location where the work is performed:

(1) whether the definition of "responsible", has been met or is capable of being met; and

(2) if the contract is being performed in accordance with its terms.

R33-12-702. Access to Contractor's Manufacturing/Production Facilities.

(1) The procurement unit may enter a contractor's or subcontractor's manufacturing/production facility or place of business to:

(a) inspect procurement items for acceptance by the procurement unit pursuant to the terms of a contract;

(b) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Section R33-12-605; and

(c) investigate in connection with an action to debar or suspend a person from consideration for award of contracts.

R33-12-703. Inspection of Supplies and Services.

(1) Contracts may provide that the procurement unit or chief procurement officer or head of a procurement unit with independent procurement authority may inspect procurement items at the contractor's or subcontractor's facility and perform tests to determine whether the procurement items conform to solicitation and contract requirements.

R33-12-704. Conduct of Inspections.

(1) Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization of the chief procurement officer or head of a procurement unit with independent procurement authority. The presence or absence of an inspector or an inspection, shall not relieve the contractor or subcontractor from any requirements of the contract.

(2) When an inspection is made, the contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

KEY: terms and conditions, contracts, change orders, costs
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R33. Administrative Services, Purchasing and General Services.
R33-13. General Construction Provisions.
R33-13-101. Purpose.

The purpose of this rule is to comply with the provisions of Sections 63G-6a-1302 and 1303 of the Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R33-13-201. Construction Management Rule.

As required by Section 63G-6a-1302, this rule contains provisions applicable to:

(1) selecting the appropriate method of management for construction contracts;

(2) documenting the selection of a particular method of construction contract management; and

(3) the selection of a construction manager/general contractor.

R33-13-202. Application.

The provisions of Rules R33-13-201 through R33-13-205 shall apply to all procurements of construction. Rule R33-5-106 establishes the requirements and thresholds for small construction projects. Construction procurement bid security and bonding requirements are contained in Part 11 of the Utah Procurement Code and Rule R33-11.

R33-13-203. Methods of Construction Contract Management.

(1) This section contains provisions applicable to the selection of the appropriate type of construction contract management.

(2) It is intended that the chief procurement officer or head of a procurement unit with independent procurement authority have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procurement unit. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.

(3) Before choosing the construction contracting method to use, a careful assessment must be made by the chief procurement officer or head of a procurement unit with independent procurement authority of requirements the project shall consider, at a minimum, the following factors:

(a) when the project must be ready to be occupied;

(b) the type of project, for example, housing, offices, labs, heavy or specialized construction;

(c) the extent to which the requirements of the procurement unit and the way in which they are to be met are known;

(d) the location of the project;

(e) the size, scope, complexity, and economics of the project;

(f) the amount and type of financing available for the project, including whether the budget is fixed or what the source of funding is, for example, general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds, lapsing/nonlapsing status and legislative intent language;

(g) the availability, qualification, and experience of the procurement unit's personnel to be assigned to the project and how much time the procurement unit's personnel can devote to the project;

(h) the availability, qualifications and experience of outside consultants and contractors to complete the project under the various methods being considered;

(i) the results achieved on similar projects in the past and the methods used; and

(j) the comparative advantages and disadvantages of the construction contracting method and how they might be adapted or combined to fulfill the needs of the procuring agencies.

(5) The following descriptions are provided for the more common construction contracting management methods which may be used by the procurement unit. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed in respect to all construction projects. In each project, these descriptions may be adapted to fit the circumstances of that project.

(a) Single Prime (General) Contractor. The single prime contractor method is typified by one business, acting as a general contractor, contracting with the procurement unit to timely complete an entire construction project in accordance with drawings and specifications provided by the procurement unit. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the procurement unit. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(b) Multiple Prime Contractors. Under the multiple prime contractor method, the procurement unit contracts directly with a number of general contractors or specialty contractors to complete portions of the project in accordance with the procurement unit's drawings and specifications. The procurement unit may have primary responsibility for successful completion of the entire project, or the contracts may provide that one or more of the multiple prime contractors has this responsibility.

(c) Design-Build. In a design-build project, an entity, often a team of a general contractor and a designer, contract directly with a procurement unit to meet the procurement unit's requirements as described in a set of performance specifications and/or a program. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

(d) Construction Manager Not at Risk. A construction manager is a person experienced in construction that has the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders as well as other responsibilities as described in the contract.

(e) Construction Manager/General Contractor (Construction Manager at Risk). The procurement unit may contract with the construction manager early in a project to assist in the development of a cost effective design. In a Construction Manager/General Contractor (CM/GC) method, the CM/GC becomes the general contractor and is at risk for all the responsibilities of a general contractor for the project, including meeting the specifications, complying with applicable laws, rules and regulations, that the project will be completed on time and will not exceed a specified maximum price.

R33-13-204. Selection of Construction Method Documentation.

The chief procurement officer or head of a procurement unit with independent procurement authority shall include in the contract file a written statement describing the facts that led to the selection of a particular method of construction contract management for each project.

R33-13-205. Special Provisions Regarding Construction Manager/General Contractor.

(1) In the selection of a construction manager/general

contractor, a standard procurement process as defined in Section 63G-6a-103 may be used or an exception allowed under Part 8 of the Utah Procurement Code.

(2) When the CM/GC enters into any subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the CM/GC shall procure the subcontractor(s) by using a standard procurement process as defined in Section 63G-6a-103 of the Utah Procurement Code or an exception to the requirement to use a standard procurement process, described in Part 8 of the Utah Procurement Code.

(3)(a) As used in this Rule, "management fee" includes only the following fees of the CM/GC:

(i) preconstruction phase services;

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

(iii) overhead and profit for the construction phase.

(b) When selecting a CM/GC for a construction project, the evaluation committee:

(i) may score a CM/GC based upon criteria contained in the solicitation, including qualifications, performance ratings, references, management plan, certifications, and other project specific criteria described in the solicitation;

(ii) may, as described in the solicitation, weight and score the management fee as a fixed rate or as a fixed percentage of the estimated contract value;

(iii) may, at any time after the opening of the responses to the request for proposals, have access to, and consider, the management fee proposed by the offerors; and

(iv) except as provided in Section 63G-6a-707, may not know or have access to any other information relating to the cost of construction submitted by the offerors, until after the evaluation committee submits its final recommended scores on all other criteria to the issuing procurement unit.

R33-13-301. Drug and Alcohol Testing Required for State Contracts: Definitions.

(1) The following definitions shall apply to any term used in Rules R33-13-301 through R33-13-304:

(a) "Covered individual" means an individual who:

(i) on behalf of a contractor or subcontractor provides services directly related to design or construction under a state construction contract; and

(ii) is in a safety sensitive position, including a design position, that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a state construction contract.

(b) "Drug and alcohol testing policy" means a policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

(i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug; or

(ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

(c) "Random testing" means that a covered individual is subject to periodic testing for drugs and alcohol:

(i) in accordance with a drug and alcohol testing policy; and

(ii) on the basis of a random selection process.

(d) For purposes of Subsection R33-13-302(5), "state" includes any of the following of the state:

(i) a department;

(ii) a division;

(iii) an agency;

(iv) a board including the Procurement Policy Board;

(v) a commission;

(vi) a council;

(vii) a committee; and

(viii) an institution, including a state institution of higher education, as defined under Section 53B-3-102.

(e) "State construction contract" means a contract for design or construction entered into by a state public procurement unit that is subject to this Rule R33-13-302 through R33-13-304.

(2) In addition:

(a) "Board" means the Procurement Policy Board created under provisions of the Utah Procurement Code.

(b) "State Public Procurement Unit" means a State of Utah public procurement unit that is subject to Section 63G-6a-1303.

(c) "State" as used throughout this Rule R33-13-302 through R33-13-304 means the State of Utah except that it also includes those entities described in Subsection R33-13-302(1)(e) as the term "state" is used in Subsection R33-13-302(5).

R33-13-302. Drug and Alcohol Testing.

(1) Except as provided in Section R33-13-303, on and after July 1, 2010, a State Public Procurement Unit may not enter into a state construction contract (includes a contract for design or construction) unless the state construction contract requires the following:

(a) A contractor shall demonstrate to the State Public Procurement Unit that the contractor:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the contractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy described in Subsection R33-13-302(1)(a)(i); and

(iii) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Subsection R33-13-302(1)(a)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the contractor.

(b) A contractor shall demonstrate to the State Public Procurement Unit, which shall be demonstrated by a provision in the contract where the contractor acknowledges these Rules R-33-13-302 through 304 and agrees to comply with all aspects of these Rules R-33-13-302 through 304, that the contractor requires that as a condition of contracting with the contractor, a subcontractor, which includes consultants under contract with the designer:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy described in Subsection R33-13-302(1)(b)(i); and

(iii) subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy described in Subsection R33-13-302(1)(b)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the subcontractor.

(2)(a) Except as otherwise provided in this Subsection R33-13-302(2), if a contractor or subcontractor fails to comply with Subsection R33-13-302(1), the contractor or subcontractor may be suspended or debarred in accordance with these Rules R33-13-302 through R33-13-304.

(b) On and after July 1, 2010, a State Public Procurement Unit shall include in a state construction contract a reference to these Rules R33-13-302 through R33-13-304.

(c)(i) A contractor is not subject to penalties for the failure of a subcontractor to comply with Subsection R33-13-302(1).

(ii) A subcontractor is not subject to penalties for the

failure of a contractor to comply with Subsection R33-13-302(1).

(3)(a) The requirements and procedures a contractor shall follow to comply with Subsection R33-13-302(1) is that the contractor, by executing the construction contract with the State Public Procurement Unit, is deemed to certify to the State Public Procurement Unit that the contractor, and all subcontractors under the contractor that are subject to Subsection R33-13-302(1), shall comply with all provisions of these Rules R33-13-302 through R33-13-304 as well as Section 63G-6a-1303; and that the contractor shall on a semi-annual basis throughout the term of the contract, report to the State Public Procurement Unit in writing information that indicates compliance with the provisions of these Rules R33-13-302 through R33-13-304 and Section 63G-6a-1303.

(b) A contractor or subcontractor may be suspended or debarred in accordance with the applicable Utah statutes and rules, if the contractor or subcontractor violates a provision of Section 63G-6a-1303. The contractor or subcontractor shall be provided reasonable notice and opportunity to cure a violation of Sections 63G-6a-1303 before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation. The greater the risk to person(s) or property as a result of noncompliance, the shorter this notice and opportunity to cure shall be, including the possibility that the notice may provide for immediate compliance if necessary to protect person(s) or property.

(4) The failure of a contractor or subcontractor to meet the requirements of Subsection R33-13-302(1):

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under the Utah Procurement Code; and

(b) may not be used by a State Public Procurement Unit, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a state construction contract.

(5)(a) After a State Public Procurement Unit enters into a state construction contract in compliance with Section 63G-6a-1303, the state is not required to audit, monitor, or take any other action to ensure compliance with Section 63G-6a-1303.

(b) The state is not liable in any action related to Section 63G-6a-1303 and these Rules R33-13-302 through R33-13-304, including not being liable in relation to:

(i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

(ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;

(iii) the requirements of a contractor's or subcontractor's drug and alcohol testing policy;

(iv) a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for:

(A) collection of a sample;

(B) testing of a sample;

(C) evaluation of a test; or

(D) disciplinary or rehabilitative action on the basis of a test result;

(v) an individual being under the influence of drugs or alcohol; or

(vi) an individual under the influence of drugs or alcohol harming another person or causing property damage.

R33-13-303. Non-applicability.

(1) These Rules R33-13-302 through R33-13-304 and Section 63G-6a-1303 does not apply if the State Public Procurement Unit determines that the application of these Rules R33-13-302 through R33-13-304 or Section 63G-6a-1303 would severely disrupt the operation of a state agency to the detriment of the state agency or the general public, including:

(a) jeopardizing the receipt of federal funds;

(b) the state construction contract being a sole source contract; or

(c) the state construction contract being an emergency procurement.

R33-13-304. Not Limit Other Lawful Policies.

If a contractor or subcontractor meets the requirements of Section 63G-6a-1303 and these Rules R33-13-302 through R33-13-304, this Rule R33-13 may not be construed to restrict the contractor's or subcontractor's ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.

KEY: construction management, general construction provisions, drug and alcohol testing, state contracts
June 21, 2017 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-14. Procurement of Design-Build Transportation Project Contracts.
R33-14-1. Procurement of Design-Build Transportation Project Contracts.

In accordance with Section 63G-6a-1402(3)(a)(ii), the Utah Department of Transportation shall make rules governing the procurement of design-build transportation projects. Rule R916-3 provides guidance under which the Utah Department of Transportation may use the design-build approach for transportation projects.

KEY: design-build transportation projects, contracts, procurement
July 8, 2014 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-15. Procurement of Design Professional Services.
R33-15-101. Application.

The provisions of Part 15 of the Utah Procurement Code apply to every procurement of services within the scope of the practice of architecture as defined by Section 58-3a-102, or professional engineering as defined in Section 58-22-102, except as authorized by Section R33-4-109. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-15-201. Architect-Engineer Evaluation Committee.

The chief procurement officer or head of a procurement unit with independent procurement authority shall designate members of the Architect-Engineer Evaluation Committee. The evaluation committee must consist of at least three members who are qualified under Section 63G-6a-707, at least one of which is well qualified in the profession of architecture or engineering.

R33-15-301. Request for Statement of Qualifications.

(1) A procurement unit shall issue a public notice for a request for statement of qualifications to rank architects or engineers.

(2) A procurement unit that issues a request for statement of qualifications shall:

(a) state in the request for statement of qualifications:

(i) the type of procurement item to which the request for statement of qualifications relates;

(ii) the scope of work to be performed;

(iii) the instructions and the deadline for providing information in response to the request for statement of qualifications;

(iv) criteria used to evaluate statements of qualifications including:

(A) basic information about the person or firm;

(B) experience and work history;

(C) management and staff;

(D) qualifications and certification;

(E) licenses and certifications;

(F) applicable performance ratings;

(G) financial statements; and

(H) other pertinent information.

(b) Key personnel identified in the statement of qualifications may not be changed without the advance written approval of the procurement unit.

(3) Architects and engineers shall not include cost in a response to a request for statement of qualifications

R33-15-302. Evaluation of Statement of Qualifications.

The evaluation committee shall evaluate statements of qualifications in accordance with Section 63G-6a-707 to rank (score) architects or engineers.

R33-15-303. Negotiation and Award of Contract.

The chief procurement officer or head of a procurement unit with independent procurement authority shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable.

R33-15-304. Failure to Negotiate Contract With the Highest Ranked Firm.

(1) If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the highest ranked firm, the chief procurement officer or head of a procurement unit with independent procurement authority shall advise the firm in writing of the termination of negotiations.

(2) Upon failure to negotiate a contract with the highest ranked firm, the chief procurement officer or head of a procurement unit with independent procurement authority shall proceed in accordance with Section 63G-6a-1505 of the Utah Procurement Code.

R33-15-305. Notice of Award.

(1) The chief procurement officer or head of a procurement unit with independent procurement authority shall award a contract to the highest ranked firm with which the fee negotiation was successful.

(2) Notice of the award shall be made available to the public.

R33-15-401. Written Justification Statements.

Executive branch procurement units shall issue a statement justifying the ranking of the firm with which fee negotiation was successful.

KEY: architects, engineers, government purchasing
June 21, 2017 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Division of Purchasing and General Services.
R33-16. Protests.
R33-16-101. Conduct.

Protests shall be conducted in accordance with the requirements set forth in Utah Code 63G-6a, Part 16. All definitions in the Utah Procurement Code shall apply to this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-16-101a. Grounds for a Protest.

(1) This Rule shall apply to all protests filed under Section 63G-6a-1602.

(2) In accordance with the requirements set forth in Section 63G-6a-1602, a person filing a protest must include a concise statement of the grounds upon which the protest is made.

(a) A concise statement of the grounds for a protest must include the relevant facts and evidence leading the protestor to contend that a grievance has occurred, including but not limited to:

(i) An alleged violation of Utah Procurement Code 63G-6a;

(ii) An alleged violation of Title R33 or other applicable rule;

(iii) A provision of the request for proposals, invitation for bids, or other solicitation allegedly not being followed;

(iv) A provision of the solicitation alleged to be:

(A) ambiguous;

(B) confusing;

(C) contradictory;

(D) unduly restrictive;

(E) erroneous;

(F) anticompetitive; or

(G) unlawful;

(v) An alleged error made by the evaluation committee or conducting procurement unit;

(vi) An allegation of bias or discrimination by officials representing the procurement unit or the evaluation committee or an individual committee member; or

(vii) A scoring criteria allegedly not being correctly applied or calculated.

(b) "Relevant Facts and Evidence" as referred to in Section 63G-6a-1602, must be specific enough to enable the protest officer to determine, if such facts and evidence are proven to be true, whether a legitimate basis for the protest exists.

(c) None of the following qualify as a concise statement of the grounds for a protest:

(i) claims made after the applicable deadlines set forth in law, rule, or the solicitation document, that the specifications, terms and conditions, or other elements of a solicitation are ambiguous, confusing, contradictory, unduly restrictive, erroneous, or anticompetitive;

(ii) vague or unsubstantiated claims or allegations that do not reference specific facts and evidence including, but not limited to, vague or unsubstantiated claims or allegations such as:

(A) the protestor should have received a higher score;

(B) another vendor should have received a lower score;

(C) a service or product provided by a protestor is better than another vendor's service or product;

(D) another vendor cannot provide the procurement item for the price bid or perform the services described in the solicitation;

(E) the procurement unit's eProcruement system or other electronic procurement system:

(i) was slow, not operating properly, or was difficult to use or understand;

(ii) could not be accessed or did not allow documents to be downloaded;

(iii) did not allow a response to be submitted after the deadline for receiving responses expired;

(F) the protestor did not receive individual notice of a solicitation or was otherwise unaware of a solicitation when a procurement unit has complied with the public notice requirement in Section 63G-6a-112; or

(G) officials representing the procurement unit or the evaluation committee or an individual committee member acted in a biased or discriminatory manner against the protestor.

(iii) Filing a protest requesting:

(A) a detailed explanation of the thinking and scoring of evaluation committee members, beyond the official justification statement described in Section 63G-6a-708

(B) protected information beyond what is provided under the disclosure provisions of the Utah Procurement Code; or

(C) other information, documents, or explanations reasonably deemed to be not in compliance with the Utah Code or this Rule by the protest officer.

(3) Each of the claims and allegations listed in Subsection (2)(c)(ii) could serve as legitimate grounds for filing a protest if properly supported by relevant facts and evidence.

(4) In accordance with Section 63G-6a-1603, a protest officer may dismiss a protest if the concise statement of the grounds for filing a protest does not comply with Utah Code 63G-6a Part 16 or this Rule.

R33-16-201. Verification of Legal Authority.

A person filing a protest may be asked to verify that the person has legal authority to file a protest on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association. A person without legal authority shall be deemed to not have standing to file a protest.

R33-16-301. Intervention in a Protest.

(1) Application. This Rule contains provisions applicable to intervention in a protest, including who may intervene and the time and manner of intervention.

(2) Period of Time to File. After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement and may notify others of the protest. A Motion to Intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those Motions to Intervene made within the time prescribed in this Rule will be considered timely. The entity or entities who conducted the procurement and those who are the intended beneficiaries of the procurement are automatically considered a Party of Record and need not file any Motion to Intervene.

(3) Contents of a Motion to Intervene. A copy of the Motion to Intervene shall also be mailed or emailed to the person protesting the procurement.

(4) Any Motion to Intervene must state, to the extent known, the position taken by the person seeking intervention and the basis in fact and law for that position. A motion to intervene must also state the person's interest in sufficient factual detail to demonstrate that:

(a) the person seeking to intervene has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(b) the person seeking to intervene has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:

(i) consumer;

(ii) customer;

(iii) competitor;

(iv) security holder of a party; or

(v) the person's participation is in the public interest.

(5) Granting of Status. If no written objection to the timely Motion to Intervene is filed with the Protest Officer within seven calendar days after the Motion to Intervene is received by the protesting person, the person seeking intervention becomes a party at the end of this seven day period. If an objection is timely filed, the person seeking intervention becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a reason for intervention exists as stated in this Rule. Notwithstanding any provision of this Rule, an awardee of the procurement that is the subject of a protest will not be denied their Motion to Intervene, regardless of its content, unless it is not timely filed with the Protest Officer.

(6) Late Motions. If a motion to intervene is not timely filed, the motion shall be denied by the Protest Officer.

R33-16-401. Protest Officer May Correct Noncompliance, Errors and Discrepancies.

(1) At any time during the protest process, if it is discovered that a procurement is out of compliance with any part of the Utah Procurement Code or Administrative Rules established by the applicable rule making authority, including errors or discrepancies, the protest officer, chief procurement officer, or head of a procurement unit with independent procurement authority, may take administrative action to correct or amend the procurement to bring it into compliance, correct errors or discrepancies or cancel the procurement.

KEY: conduct, controversies, government purchasing, protests
June 21, 2017 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-17. Procurement Appeals Panel.
R33-17-101. Statutory Requirements.

Appeals of a protest decision shall be conducted in accordance with the requirements set forth in 63G-6a, Part 17, Utah Procurement Code. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule.

R33-17-101.1. Definitions.

(1) "Administrative review" as used in this rule means, in accordance with the provisions set forth in Utah Code 63G-6a-1702, an examination conducted by a procurement appeals panel of:

(a) The notice of appeal;

(b) The protest appeal record pertaining to a protest officer's written decision;

(c) If an optional informal hearing was held, responses to questions asked by a procurement appeals panel to assist the panel in understanding the basis of the appeal and information contained in the protest appeal record, but otherwise without taking any additional evidence or any additional ground for the appeal.

(2)(a) "Appeal" as used in this rule means: a protestor filing a notice of appeal requesting an administrative review of the protest appeal record pertaining to a protest officer's decision in accordance with all provisions set forth in Utah Code 63G-6a, Part 17; and

(b) Does not include the appeal of a debarment or suspension under 63G-6a-904.

(3) "Protestor" as used in this rule means: a person who files a protest under Utah Code 63G-6a, Part 16, including any intervening party authorized under Utah Code 63G-6a-1603 and Rule R33-16-301.

(4) "Uphold the Decision of the Protest Officer" as used in this rule means: to support and maintain the decision of the protest officer, including giving deference to the protest officer's decision on questions of fact because the protest officer stands in a superior position, in terms of understanding the procurement, the needs of the agency, applicable laws, rules, ordinances, and policies, from which to evaluate and weigh the evidence and assess the credibility and accuracy of the facts, evidence, laws, and, if applicable, witnesses.

R33-17-101.5. Procedures for Filing a Notice of Appeal.

(1) When filing a notice of appeal, a protestor shall:

(a) File the notice of appeal in accordance with the requirements set forth in Utah Code 63G-6a, Part 17 and the following procedures:

(b) File the notice of appeal with the chair of the procurement policy board by the deadline for filing and include:

(i) The address of record and email address of record of the party filing the notice of appeal;

(ii) A statement indicating that:

(A) The protestor is filing a notice of appeal; and

(B) Requesting an administrative review of the protest officer's decision;

(iii) A copy of the written protest decision;

(iv) If applicable, the required security deposit or bond; and

(v) Any other requirement set forth in Utah Code 63G-6a, Part 17;

(c) Not base a notice of appeal on a ground not specified in the person's protest under Section 63G-6a-1602 or new or additional evidence not considered by the protest officer.

(2) Any part of a notice of appeal that fails to comply with each of the requirements set forth in Utah Code 63G-6a, Part 17, this rule, a ground not specified in the person's protest under Section 63G-6a-1602, or new or additional evidence not considered by the protest officer shall be dismissed by the chair of the procurement policy board or the procurement appeals panel appointed to conduct the administrative review.

(3) The protest appeal record is restricted to the following:

(a) A copy of the protest officer's written decision;

(b) All documentation and other evidence the protest officer relied upon in reaching the protest officer's decision;

(c) The recording of the hearing, if the protest officer held a hearing;

(d) A copy of the protestor's written protest; and

(e) All documentation and other evidence submitted by the protestor supporting the protest or the protestor's claim of standing.

R33-17-101.8. Procedures for Conducting an Administrative Review.

(1) When conducting an administrative review of a protest officer's decision, a procurement appeals panel:

(a) shall:

(i) Comply with all requirements set forth in Utah Code 63G-6a, Part 17 and this rule:

(ii) Conduct an administrative review of the appeal within 30 days after the day on which the procurement appeals panel is appointed, or before a later agreed to date, unless the appeal is dismissed by the chair of the procurement policy board:

(iii) Consider and decide the appeal based solely on:

(A) Without conducting a hearing:

(I) the notice of appeal; and

(II) the protest appeal record; or

(B) If an informal hearing is held:

(I) responses received during the informal hearing,

(II) the notice of appeal; and

(III) the protest appeal record; and

(iv) Not otherwise take any additional evidence or consider any additional ground for the appeal;

(v) Not consider any claim in the notice of appeal dismissed by the chair of the procurement policy board in consultation with the attorney general's office for noncompliance with Sections 63G-6a-1702(2)(3)(4), or 1703;

(vi) Uphold a protest officer's decision unless the procurement appeals panel determines that the protest officer's decision is arbitrary and capricious or clearly erroneous; and

(vii) Within seven days after the day on which the procurement appeals panel concludes the administrative review:

(A) issue a written decision of the appeal; and

(B) mail, email, or had deliver the written decision on the appeal to the parties to the appeal and to the protest officer; and

(b) May:

(i) Consult with the assistant attorney general assigned to the appeal;

(ii) Conduct the administrative review without conducting a hearing;

(iii) At the sole discretion of the procurement appeals panel, conduct an informal hearing if the procurement appeals panel considers a hearing to be necessary:

(A) ask questions and receive responses during the informal hearing to assist the procurement appeals panel in understanding the basis of the appeal and information contained in the protest appeal record;

(B) not take any additional evidence or consider any additional ground for the appeal; and

(iv) Dismiss an appeal if the appeal does not comply with the requirements of Utah Code 63G-6a.

R33-17-101.10. Determination Regarding Arbitrary and Capricious.

(1) If, after reviewing the notice of appeal, the protest

appeal record and, if applicable, responses received during an informal hearing, the protest appeals panel determines that:

(a) There is a reasonable basis for the decision made by the protest officer and, given the same facts and evidence as those reviewed by the protest officer, a reasonable person could have reached the same decision as the protest officer, then the protest appeals panel shall conclude that the protest officer's decision was not arbitrary and capricious and shall uphold the decision of the protest officer; or

(b) There is no reasonable basis for the protest officer's decision and, given the same facts and evidence as those reviewed by the protest officer, a reasonable person could not have reached the same decision as the protest officer, then the protest appeals panel shall conclude that the protest officer's decision was arbitrary and capricious and shall remand the matter to the protest officer to cure the problem or render a new decision.

(2) Minor errors and omissions committed by a protest officer during the protest decision process that are irrelevant, immaterial, or inconsequential to the overall protest decision may not be considered sufficient grounds for making a determination that the protest officer's decision was arbitrary and capricious.

R33-17-101.13. Determination Regarding Clearly Erroneous.

(1) If, after reviewing the notice of appeal, the protest appeal record and, if applicable, responses received during an informal hearing, the protest appeals panel determines that:

(a) There is a reasonable basis for the decision made by the protest officer and, given the same facts, evidence, and laws as those reviewed by the protest officer, a reasonable person could have reached the same decision as the protest officer, then the protest appeals panel shall conclude that the protest officer's decision was not clearly erroneous and shall uphold the decision of the protest officer; or

(b) There is no reasonable basis for the decision made by the protest officer and, given the same facts, evidence, and laws as those reviewed by the protest officer, a reasonable person could not have reached the same decision as the protest officer, then the protest appeals panel shall conclude that the protest officer's decision was clearly erroneous and shall remand the matter to the protest officer to cure the problem or render a new decision.

(2) Minor errors and omissions committed by a protest officer during the protest decision process that are irrelevant, immaterial, or inconsequential to the overall protest decision may not be considered sufficient grounds for making a determination that the protest officer's decision was clearly erroneous.

R33-17-102. Verification of Legal Authority.

A person filing an appeal to a protest decision may be asked to verify that the person has legal authority to file an appeal on behalf of the public or private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association. A person without legal authority shall be deemed to not have standing to file a notice of appeal.

R33-17-103. Informal Hearing.

(1) A hearing conducted under Part 17 shall be an informal procedure wherein the rules of evidence and civil procedures do not apply.

(2) A procurement appeals panel shall establish procedures for conducting an informal hearing including:

(a) establishing time limits and deadlines;

(b) determining who may address the procurement appeals panel; and

(c) determining other procedural matters.

(3) All communication during the informal hearing shall be directed to the coordinator of the procurement appeals panel.

(a) A recording shall be made of each informal hearing held on an appeal under Utah Code 63G-6a, Part 17.

R33-17-104. Expedited Proceedings.

A party to a protest having standing may submit a written request to the coordinator of the procurement appeals panel requesting that the administrative review be expedited. The coordinator of the procurement appeals panel shall consider the request and, if possible and practical, accommodate the request.

R33-17-105. Electronic Participation.

Any panel member or, if applicable, participant may participate electronically if:

(a) a request to participate electronically is submitted to the coordinator of the panel at least 24 hours in advance of the proceeding;

(b) the means for electronic participation, by phone, computer or otherwise, is available at the location; and

(c) the electronic means allows other members of the panel and, if applicable, other participants to hear the person or persons participating electronically.

KEY: hearings, Procurement Appeals Board, verification of legal authority
June 21, 2017 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-18. Appeals to Court and Court Proceedings.
R33-18-101. Process.

(1) A person who receives an adverse decision, or a procurement unit, may appeal a decision of a procurement appeals panel to the Utah Court of Appeals within seven days after the day on which the decision is issued.

(2) All appeals to the Utah Court of Appeals are subject to the provisions of the requirements set forth in Utah Code 63G-6a, Part 18. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-18-201. Appeals by Procurement Units -- Limitations.

A procurement unit may only appeal a procurement appeals panel decision in accordance with Section 63G-6a-1802(2).

KEY: appeals, protests, Utah Court of Appeals
June 21, 2017 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-19. General Provisions Related to Protest or Appeal.
R33-19-101. Encouraged to Obtain Legal Advice From Legal Counsel.

(1) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) Part 19 of the Utah Procurement Code contains provisions regarding:

(a) limitations on challenges of:

(i) a procurement;

(ii) a procurement process;

(iii) the award of a contract relating to a procurement;

(iv) a debarment; or

(v) a suspension; and

(b) the effect of a timely protest or appeal;

(c) the costs to or against a protester;

(d) the effect of prior determinations by employees, agents, or other persons appointed by the procurement unit;

(e) the effect of a violation found after award of a contract;

(f) the effect of a violation found prior to the award of a contract;

(g) interest rates; and

(h) a listing of determinations that are final and conclusive unless they are arbitrary and capricious or clearly erroneous.

(3) Due to the complex nature of protests and appeals, any person involved in the procurement process, protest or appeal, is encouraged to seek advice from the person's own legal counsel.

KEY: appeals, protests, general provisions, procurement code
June 21, 2017 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-20. Records.
R33-20-101. General Provisions Related to Records.

General provisions related to records are in Part 20 of the Utah Procurement Code and in Rule R33-12.

KEY: records, general provisions, procurement code
July 8, 2014 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-21. Interaction Between Procurement Units.
R33-21-101. Cooperative Purchasing.

Cooperative purchasing shall be conducted in accordance with the requirements set forth in Section 63G-6a-2105. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This Rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R33-21-201. State Cooperative Contracts.

(a) An executive branch procurement unit shall obtain procurement items from state cooperative contracts whether statewide or regional unless the chief procurement officer determines, in accordance with Section 63G-6a-506(5)(b)(i), that it is in the best interest of the state to obtain an individual procurement item outside the state contract.

(b) In accordance with Section 63G-6a-2105, public entities, nonprofit organizations, and agencies of the federal government may obtain procurement items from state cooperative contracts awarded by the chief procurement officer.

R33-21-201e. Division May Charge Administrative Fees on State Cooperative Contracts -- Prohibition Against Other Procurement Units Charging Fees on State Contracts.

(1) In accordance with Section 63A-1-109.5, 63A-2-103, 63G-6a-303(2), and other applicable State of Utah law, the Director of the Division of Purchasing and General Services serving as the chief procurement officer of the state shall administer the state's cooperative purchasing program and may impose or assess an administrative fee on contractors and vendors on state cooperative contracts as part of its internal service fund authorization.

(2) The Division shall include a provision in each state cooperative contract prohibiting any other procurement unit from charging any type of fee, surcharge, or rebate on a state cooperative contract issued by the chief procurement officer.

R33-21-301. Discount Pricing for Large Volume Purchases for Items on State Contract.

(1) Eligible users of state cooperative contracts may seek to obtain additional volume discount pricing for large volume orders provided state cooperative contractors are willing to offer additional discounts for large volume orders.

(a) Eligible users may not coerce, intimidate or in any way compel vendors on state cooperative contracts to offer additional discount pricing.

(b) Eligible users seeking additional pricing discounts for large volume purchases shall issue a "Request for Price Quotations" to each vendor on a state cooperative contract for the procurement item being purchased.

(c) Executive branch procurement units without independent procurement authority shall contact the division to issue the request for price quotations.

(d) The request for price quotations shall include:

(i) a detailed description of the procurement item;

(ii) the estimated number or volume of procurement items that will be purchased;

(iii) the period of time that price quotations will be accepted, including the date and time price quotations will be opened;

(iv) the manner in which price quotations will be accepted;

(v) the place where price quotations shall be submitted; and

(vi) the period of time the price quotation must be guaranteed.

(e) Price quotations shall be kept confidential until the date and time of the opening and may not be disclosed to other vendors on state cooperative contracts until after the date and time of the opening. Email quotations are acceptable.

(f) Price quotations will be opened in the presence of a minimum of two witnesses.

(g) Price quotations will become public at the time of the opening.

(2) All terms and conditions of the state cooperative contract shall remain in effect unless the chief procurement officer approves the modification.

(3) This process may not be used for:

(a) an anti-competitive practice such as:

(i) bid rigging;

(ii) steering a contract to a preferred state cooperative contractor;

(iii) utilizing auction techniques where price quotations are improperly disclosed and contractors bid against each other's price;

(iv) disclosing pricing or other confidential information prior to the date and time of the opening; or

(v) any other practice prohibited by the Utah Procurement Code.

(4) All sales resulting from the quotations received under the process conducted in accordance with Section R33-21-301 shall be recorded as usage under the existing state cooperative contract, are subject to the administrative fee associated with the state cooperative contract, and shall be reported to the division.

KEY: cooperative purchasing, state contracts, procurement units
June 21, 2017 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-22. Reserved.
R33-22-101. Reserved.

Part 22 of Title 63G, Chapter 6a, the Utah Procurement Code, does not exist at this point in time. Rules R33-1 through R33-24 are designed to match the corresponding Part of the Utah Procurement Code. When Part 22 of the Utah Procurement Code contains statutory language, the Board will consider whether to prepare draft rules for rulemaking process.

KEY: government purchasing, reserved
July 8, 2014 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-23. Reserved.
R33-23-101. Reserved.

Part 23 of Title 63G, Chapter 6a, the Utah Procurement Code, does not exist at this point in time. Rules R33-1 through R33-24 are designed to match the corresponding Part of the Utah Procurement Code. When Part 23 of the Utah Procurement Code contains statutory language, the Board will consider whether to prepare draft rules for rulemaking process.

KEY: government purchasing, reserved
July 8, 2014 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-24. Unlawful Conduct and Ethical Standards.
R33-24-101. Unlawful Conduct.

Unlawful conduct shall be governed in accordance with the requirements set forth in Sections 63G-6a-2401 through 2407. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R33-24-102. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Procurement Professionals.

(1) Each executive branch employee classified as a "Procurement Professional" shall be governed by:

(a) Part 24 of the Utah Procurement Code, "Unlawful Conduct and Penalties."

(b) Executive Order EO/003/2010 issued by the Governor (http://www.rules.utah.gov/execdocs/2010/ExecDoc149415.htm);

(c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act;"

(d) Section 76-8-103, "Bribery or Offering a Bribe;" and

(e) any other applicable law.

R33-24-103. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Employees.

(1) Each executive branch employee not classified as a "Procurement Professional" shall be governed by:

(a) Executive Order EO/003/2010 issued by the Governor (http://www.rules.utah.gov/execdocs/2010/ExecDoc149415.htm);

(c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act;"

(d) Section 76-8-103, "Bribery or Offering a Bribe;" and

(e) any other applicable law.

R33-24-104. Socialization with Vendors and Contractors.

(1) A procurement professional shall not:

(a) participate in social activities with vendors or contractors that will interfere with the proper performance of the procurement professional's duties;

(b) participate in social activities with vendors or contractors that will lead to unreasonably frequent disqualification of the procurement professional from the procurement process; or

(c) participate in social activities with vendors or contractors that would appear to a reasonable person to undermine the procurement professional's independence, integrity, or impartiality.

(2) If an executive branch procurement professional participates in a social activity prohibited under R33-24-104(1), or has a close personal relationship with a vendor or contractor, the procurement professional shall promptly notify their supervisor and the supervisor shall take the appropriate action, which may include removal of the procurement professional from the procurement or contract administration process that is affected.

R33-24-105. Financial Conflict of Interests Prohibited.

(1) A procurement conflict of interest is a situation in which the potential exists for an executive branch employee's personal financial interests, or for the personal financial interests of a family member, to influence, or have the appearance of influencing, the employee's judgment in the execution of the employee's duties and responsibilities when conducting a procurement or administering a contract.

(2) In order to preserve the integrity of the State's procurement process, an executive branch employee may not take part in any procurement process, contracting or contract administration decision:

(a) relating to the employee or a family member of the employee; or

(b) relating to any entity in which the employee or a family member of the employee is an officer, director or partner, or in which the employee or a family member of the employee owns or controls 10% or more of the stock of such entity or holds or directly or indirectly controls an ownership interest of 10% or more in such entity.

(3) If a procurement process, contracting or contract administration matter arises relating to the employee or a family member of the employee, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the procurement, contracting or administration matter. The employee must also comply with all disclosure requirements in Utah Code Title 67 Chapter 16, Utah Public Offers' and Employees' Ethics Act.

R33-24-106. Personal Relationship, Favoritism, or Bias Participation Prohibitions.

(1) Executive branch employees are prohibited from participating in any and all discussions or decisions relating to the procurement, contracting or administration process if they have any type of personal relationship, favoritism, or bias that would appear to a reasonable person to influence their independence in performing their assigned duties and responsibilities relating to the procurement process, contracting or contract administration or prevent them from fairly and objectively evaluating a proposal in response to a bid, RFP or other solicitation. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

(2) If an executive branch employee has a personal relationship, favoritism, or bias toward any individual, group, organization, or vendor responding to a bid, RFP or other solicitation, the employee must make a written disclosure to the supervisor and the supervisor shall take appropriate action, which may include recusing the employee from any and all discussions or decisions relating to the solicitation, contracting or administration matter in question. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

R33-24-107. Professional Relationships and Social Acquaintances Not Prohibited.

(1) It is not a violation for an executive branch employee who participates in discussions or decisions relating to the procurement, contracting or administration process to have a professional relationship or social acquaintance with a person, contractor or vendor responding to a solicitation, or that is under contract with the State, provided that there is compliance with Section R33-24-105, Section R33-24-106, the Utah Public Officers' and Employees' Ethics Act, The Governor's Executive Order (EO 002 2014) "Establishing an Ethics Policy for Executive Branch Agencies and Employees," and other applicable State laws.

R33-24-108. Ethical Standards for an Employee of a Procurement Unit Involved in the Procurement Process.

An employee of a procurement unit involved in the

procurement process shall uphold and promote the independence, integrity, and impartiality of the procurement process as required in the Utah Procurement Code and, as applicable, Title R33 and shall avoid impropriety and the appearance of impropriety.

KEY: executive branch employees, procurement code, procurement professionals, unlawful conduct
August 22, 2016 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-25. Executive Branch Insurance Procurement.
R33-25-101. Applicability and Standard Procurement Method.

(1) This rule only applies to executive branch procurement units.

(2) All new or renewal insurance purchases will be made in accordance with this Rule and the Utah Procurement Code.

(3) A procurement unit may use the request for proposals procurement process set forth in Utah Code 63G-6a, Part 7 to award a contract for insurance agents, brokers, and underwriting companies.

(4) A procurement unit may consider the following criteria to qualify agents, brokers, and underwriting companies to move on to a subsequent stage in a request for proposals procurement process:

(a) financial resources of agent, broker and underwriting company;

(b) quality of prior service rendered to the state;

(c) service facilities available in-state;

(d) service reputation;

(e) experience and expertise in providing similar types of insurance;

(f) coverages and services to be provided;

(g) qualifications of key personnel; and

(h) any other criteria that will help to ensure the best possible coverage and service to the procurement unit.

(5) A procurement unit may establish minimum requirements and score thresholds to qualify agents, brokers, and underwriting companies to move on to a subsequent stage in the request for proposals procurement process.

(6) During the evaluation process, the evaluation committee may make a recommendation to the conducting procurement unit that an agent, broker, or underwriting company be rejected for being deemed not responsible, not meeting the mandatory minimum requirements, not meeting any applicable minimum score threshold or whose proposal is not responsive.

R33-25-102. Alternate Multiple Stage Bid Process.

(1) This rule only applies to executive branch procurement units.

(2) To avoid oversaturation of limited primary or reinsurance markets, a multiple stage bid process may be used at the option of the procurement unit.

(3) Agents, brokers, and underwriting companies must be qualified according to the evaluation criteria described in R33-25-101.

(4) The three highest ranked agents, brokers, or underwriting companies, as determined by the evaluation committee, will be deemed qualified to proceed to the final stage.

(5) Agents, brokers or underwriting companies who are qualified to proceed to the final stage must submit a list of markets in order of preference to the procurement unit. The procurement unit will, as equitably as practicable, assign no more than five and no less than three markets to each final bidder, based upon their preferences.

(6) Qualified agents, brokers or underwriting companies must then submit a responsive bid for each assigned market.

(7) Upon receipt of the bids, the procurement and contract award shall be conducted in accordance with Part 6 of the Utah Procurement Code.

KEY: alternate multiple stage bid process, executive branch insurance procurement, procurement methods, government purchasing

June 21, 2017 63G-6a
Notice of Continuation July 8, 2019

R33. Administrative Services, Purchasing and General Services.
R33-26. State Surplus Property.
R33-26-101. State-Owned Surplus Property -- General.

This rule sets forth policies and procedures which govern the acquisition and disposition of State-owned and federal surplus property items, and vehicles. It applies to all State and local public agencies and eligible non-profit educational and health institutions when dealing with federal surplus property. It also applies to all state agencies unless specifically exempted by law and to the general public when dealing with the State Surplus Property agency.

R33-26-102. Requirements.

Under the provisions of Section 63A-2-103, the Division of Purchasing and General Services shall manage and administer the State's surplus property program, including:

(1) The federal surplus property program as the Utah State Agency for Surplus Property and in compliance with 41 CFR 102-37 and Public Law 94-519 through a State Plan of Operation. The standards and procedures governing the contract between the state and the federal government are contained in the Plan of Operation.

(2) The disposition of state-owned surplus property items, including vehicles and non-vehicle surplus property.

(3) Information technology equipment.

R33-26-103. Definitions.

All definitions in Section 63A-2-101.5 shall apply to Rule R33-26. In addition the following definitions shall apply to Rule R33-26:

(1) "All-terrain type I vehicle" means any motor vehicle 52 inches or less in width, having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure tires, having a seat designed to be straddled by the operator, and designed for or capable of travel over unimproved terrain;

(2) "All-terrain type II vehicle" means any other motor vehicle, not defined in Section 103 designed for or capable of travel over unimproved terrain and includes a class A side-by-side vehicle. "All-terrain type II vehicle" does not include golf carts, any vehicle designed to carry a person with a disability, any vehicle not specifically designed for recreational use, or farm tractors as defined under Section 41-1a-102.

(3) "Aircraft" means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

(4) "Bundled sale" means the act of packaging or grouping multiple State-owned surplus property items together for the purpose of offering those items for sale in a single transaction in which the buyer receives all surplus property items bundled together and sold in the transaction.

(5) "Camper" means any structure designed, used, and maintained primarily to be mounted on or affixed to a motor vehicle that contains a floor and is designed to provide a mobile dwelling, sleeping place, commercial space, or facilities for human habitation or for camping.

(6) "Disposition" means the act of selling, disposing, or transferring state-owned vehicle and non-vehicle property, declared to be surplus property, to the care, custody, or possession of another person.

(7) "Division" means the Division of Purchasing and General Services within the Department of Administrative Services created under Section 63A-2-101.

(8) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(9) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

(10) "Motorcycle" means a motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground.

(11) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.

(12) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(13) As used in this section "Personal handheld electronic device":

(a) means an electronic device that is designed for personal handheld use and permits the user to store or access information, the primary value of which is specific to the user of the device; and,

(b) includes a mobile phone, pocket personal computer, personal digital assistant, wireless, or similar device.

(14) "Personal Watercraft" means a motorboat that is:

(a) less than 16 feet in length;

(b) propelled by a water jet pump; and

(c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

(15)(a) "Pickup truck" means a two-axle motor vehicle with motive power manufactured, remanufactured, or materially altered to provide an open cargo area.

(b) "Pickup truck" includes motor vehicles with the open cargo area covered with a camper, camper shell, tarp, removable tarp, or similar structure.

(16) "Reconstructed vehicle" means every vehicle type required to be registered in this state that is materially altered from its original construction by the removal, addition, or substitution of essential parts, new or used.

(17)(a) "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either self-propelled or pulled by another vehicle.

(b) "Recreational vehicle" includes:

(i) a travel trailer;

(ii) a camping trailer;

(iii) a motor home;

(iv) a fifth wheel trailer; and

(v) a van.

(18) "Road tractor" means every motor vehicle designed and used for drawing other vehicles and constructed so it does not carry and load either independently or any part of the weight of a vehicle or load this is drawn.

(19) "Sailboat" means any vessel having one or more sails and propelled by wind.

(20) "Semitrailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests or is carried by another vehicle.

(21)(a) "Special mobile equipment" means every vehicle:

(i) not designed or used primarily for the transportation of persons or property;

(ii) not designed to operate in traffic; and

(iii) only incidentally operated or moved over the highways.

(b) "special mobile equipment" includes:

(i) farm tractors;

(ii) on or off-road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, and trenchers;

(iii) ditch-digging apparatus; and

(iv) forklifts, warehouse equipment, golf carts, electric carts, etc.

(22) "State agency" means any executive branch department, division, or other agency of the state.

(23) "State-owned surplus property item":

(a) means state-owned property as defined in Section 63A-2-101.5 and Section R33-26-103 whether acquired by purchase, seizure, donation, or otherwise:

(i) that is no longer being used by the state or no longer usable by the state;

(ii) that is out of date;

(iii) that is damaged and cannot be repaired or cannot be repaired at a cost that is less than the property's value;

(iv) whose useful life span has expired; or

(v) that the state agency possessing the property determines is not required to meet the needs or responsibilities of the state agency;

(b) includes:

(i) a motor vehicle as defined in Section R33-26-103;

(ii) equipment;

(iii) furniture;

(iv) information technology equipment; and

(v) supplies; and

(c) does not include:

(i) real property;

(ii) an asset of the School and Institutional Trust Lands Administration, established in Section 53C-1-201;

(iii) a firearm or ammunition; or

(iv) an office or household item made of aluminum, paper, plastic, cardboard, or other recyclable material, without any meaningful value except for recycling purposes.

(24) "Trailer" means a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(25) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle without motive power, designed as a temporary dwelling for travel, recreational, or vacation use that does not require a special highway movement permit when drawn by a self-propelled motor vehicle.

(26) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

(27) "Vehicle" means:

(a) all-terrain vehicle type I and II,

(b) aircraft,

(c) camper,

(d) farm tractor,

(e) motor boat,

(f) motorcycle,

(g) motor vehicle,

(h) off highway vehicle,

(i) personal watercraft,

(j) pickup truck,

(k) reconstructed vehicle,

(l) recreational vehicle,

(m) road tractor,

(n) sailboat,

(o) semitrailer,

(p) special mobile equipment,

(q) trailer,

(r) travel trailer,

(s) truck tractor,

(t) vessel; and

(28) "Vessel" means every type of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

R33-26-200. Disposition of State-Owned Surplus Property Items.

(1) The State surplus property program shall be administered by the Department of Administrative Services, Division of Purchasing and General Services.

(2) Disposition of State-owned surplus property items shall be through the following methods:

(a) Online auction;

(b) Live auction;

(c) Pick up, sale, and disposal;

(d) Disposal;

(e) Destruction;

(f) Direct sale to the public;

(g) Donation to a public school or state administered program; or

(h) Another method approved by the director of the divisions.

(3) State agencies shall complete Form SP-1 and electronically transmit it to the State Surplus Property agency.

(a) Completion of Form SP-1 meets the requirements set forth in Subsection 63A-2-401(7) for a state agency to declare State property as surplus.

(i) Form SP-1 may be accessed at: surplus.utah.gov;

(ii) The following information must be included on Form SP-1:

(A) a minimum of two digital photographs for each State-owned surplus property item being listed for sale;

(B) a brief description of the State-owned surplus property item detailing its condition;

(C) an estimate of the Sate-owned surplus property item's value;

(D) the location of the State-owned surplus property item; and

(E) the contact information of the person assigned by the state agency to assist the public with the transaction.

(4) Online auction shall be the primary method used for the disposition of non-vehicle State-owned surplus property items.

(a) Online auctions shall be administered by the State Surplus Property agency.

(b) Each state agency will be responsible for:

(i) Storing State-owned surplus property items on site until the online auction has been completed and each State-owned surplus property item is:

(A) picked up by the person to whom the item has been sold to via online auction;

(B) disposed of or donated by the state agency;

(C) picked up by the vendor under contract with the division; or

(D) picked up by a local vendor under contract with the state agency;

(ii) Assigning an employee of the agency to assist the public with the online auction including:

(A) answering questions about the State-owned surplus property item;

(B) providing directions;

(C) scheduling the pickup;

(D) other miscellaneous tasks; and

(iii) Developing internal policies regarding employees:

(A) assisting the public with lifting and transporting State-owned surplus property items;

(B) transporting State-owned surplus property items with a minimal value of less than $100 to charities for donation;

(C) receiving State-owned surplus property items with a minimal value of less than $100 as a donation by the state agency.

(c) A state agency may seek an exception from the requirement to dispose of State-owned surplus property items through online auction in accordance with Subsection 63A-2-

401(3).

(i) State agencies that are granted an exception must:

(A) complete Form SP-1 and transmit it to the State Surplus Property agency; and

(B) coordinate with the State Surplus Property agency to schedule a date and time for State-owned surplus property items to be delivered.

(ii) State agencies may contract with the State Surplus Property agency to have items identified in subsection (4)(c)(i) picked up and delivered to the State Surplus Property agency in accordance with the authorized fee schedule.

(iii) State agencies may contract with a vendor to have items identified in subsection (4)(c)(i) picked up and delivered to the State Surplus Property agency.

(5) The State Surplus Property agency shall administer the disposition of State-owned surplus vehicles.

(a) State-owned surplus vehicles may be sold at the agency location or delivered to the State Surplus Property agency for disposition.

(6) State-owned surplus electronic data devices shall be disposed of in accordance with Rule R33-26-202.

(7)(a) State-owned surplus property items with a minimal value may be disposed of as waste by a state agency in accordance with Subsection 63A-2-411.

(b) State-owned surplus property items that do not appreciate in value that had an initial purchase price of less than $100 or deemed to be valued at less than $100 by the State Surplus Property agency:

(i) may be disposed of as waste by a state agency by the means described in Subsection 63A-2-411(3); or

(ii) may be packaged together and sold as a bundled sale.

(8) The State Surplus Property agency is not authorized to accept or dispose of hazardous waste or any item containing hazardous waste. State agencies must dispose of hazardous waste and items containing hazardous waste in accordance with applicable laws.

(9) State agencies that cannot or elect not to dispose of a surplus item having a minimal value of less than $100 as waste in the trash, donate the item to a charity, or donate the item to an employee of the state agency, may contract with a vendor to dispose of the item, recycle the item, or repurpose the item.

(a) State agencies may contract with the State Surplus Property agency to have items identified in Subsection (9) picked up and delivered to the State Surplus Property agency in accordance with the authorized fee schedule.

(b) State agencies may contract with a private sector vendor to have items identified in Subsection (9) picked up and delivered to the State Surplus Property agency.

R33-26-201. Non-vehicle Disposition Procedures.

(1) State-owned, non-vehicle personal property shall not be destroyed, sold, transferred, traded-in, traded, discarded, donated or otherwise disposed of unless the procedures set forth in this Rule are followed.

(2) This rule applies to and includes any residue that may be remaining from agency cannibalization of property.

(3) When a department state agency determines that state-owned non-vehicle personal property is in excess of current needs, it will:

(a) transfer the state-owned, non-vehicle surplus property items directly to another department or agency of the state without involvement of the division; or

(b) notify the State Surplus Property agency that the agency has a State-owned surplus property item.

R33-26-202. Disposal of State-Owned Surplus Electronic Data Devices.

(1) For the purpose of this rule, Electronic Data Device means an electronic device capable of downloading, storing or transferring State-owned data. Electronic Data Devices include:

(a) Computers;

(b) Tablets (iPad, Surface Pro, Google Nexus, Samsung Galaxy, etc.);

(c) Smart phones;

(d) Personal Digital Assistants (PDAs);

(e) Digital copiers and multifunction printers;

(f) Flash drives and other portable data storage devices; and

(g) Other similar devices.

(2) The State has determined that the security risk of a potential data breach resulting from the improper disposal or sale of an electronic data device, as defined in this rule, outweigh the potential revenue that may be received by the State from the sale of an electronic data device deemed surplus property. Therefore, the State has adopted this Administrative Rule regarding the proper disposal of State-owned surplus electronic data devices:

(a) Each State agency shall ensure that all surplus State-owned electronic data devices are disposed of in accordance with the following procedures.

(b) Surplus State-owned electronic devices defined under this Rule may not be sold or gifted via on-line auction or any other means.

(i) An exception for directors and other State officials may be granted by the Director of the Division of Purchasing after receiving documentation from:

(A) the Executive Director of the Department of Technology Services certifying that all connectivity to sensitive, confidential, protected, and classified State data has been removed from the State-owned electronic data device and that the State-owned electronic data device no longer has access to the State's network; and

(B) the State Surplus Property agency regarding the market value of the State-owned electronic data device.

(c) Surplus State-owned electronic data devices must be disposed of through the vendor under contract with the State, unless a separate contractual agreement has been entered into with the manufacturer or supplier of the device for proper destruction and disposal.

(d) The Division of Purchasing shall enter into a contract with a vendor for the destruction and proper disposal of all State-owned surplus electronic data devices.

(e) Proper disposal includes:

(i) Recycling components and parts after the State-owned electronic data device has been destroyed to the point that State-owned data cannot be retrieved;

(ii) Disposal in a landfill approved for electronic waste after the State-owned electronic data device has been destroyed to the point that State-owned data cannot be retrieved; or

(iii) Resale by the contractor of computers, digital copiers and multifunction printers that have had the hard drive destroyed.

(f) State agencies shall request assistance from the Department of Technology Services (DTS) to destroy the hard drives of computers and other State-owned surplus electronic data devices purchased through DTS prior to the agency transferring the devices to the vendor under contract with the State.

(g) State agencies shall contact the vendor under contract with the State to destroy and properly dispose of all other State-owned surplus electronic data communication devices.

(3) Subject to Subsections (1) and (2), except as it relates to a vehicle or federal surplus property items, the

transfer of surplus property items from one state agency directly another does not require approval by the division, the director of the division, or any other person.

R33-26-204. Federal Surplus Property.

(1) Federal surplus property items are not available for sale to the general public. Donation of federal surplus property shall be administered in accordance with the procedures identified in the State Plan of Operation for the Federal Property Assistance Program.

(2) Public auctions of federal surplus property are authorized under certain circumstances and conditions. The division shall coordinate such auctions when deemed necessary or appropriate. Federal surplus property auctions are primarily conducted online, but are regulated and accomplished by the U.S. General Services Administration.

R33-26-205. Related Party Transactions.

(1) The division has a duty to the public to ensure that State-owned surplus property is disposed of in accordance with Title 63A, Chapter 2. A conflict of interest may exist or appear to exist when a related party attempts to purchase a State-owned surplus property item.

(2) A related party is defined as someone who may fit into any of the following categories pertaining to the State-owned surplus property item in question:

(a) has purchasing authority;

(b) has maintenance authority;

(c) has disposition or signature authority;

(d) has authority regarding the disposal price;

(e) has access to restricted information; and

(f) may be perceived to be a related party using other criteria which may prohibit independence.

R33-26-206. Priorities.

(1) Public agencies are given priority for the purchase of State-owned surplus property items.

(2) Property that is determined by the Division to be unique, in short supply or in high demand by public agencies may be held for a period of up to 30 days before being offered for sale to the general public by Surplus Property.

(3) For this rule, the entities listed below, in priority order, are considered to be public agencies:

(a) state agencies;

(b) state universities, colleges, and community colleges;

(c) other tax supported educational agencies or political subdivisions in the State of Utah including cities, towns, counties and local law enforcement agencies;

(d) other tax-supported educational entities; then

(e) non-profit health and educational institutions.

(4) State-owned surplus property items that are not purchased by or transferred to public agencies may be offered for public sale.

(5) The division shall make the determination as to whether property is subject to hold period. The decision shall consider the following:

(a) the cost to the State;

(b) the potential liability to the State;

(c) the overall best interest of the State.

R33-26-301. Accounting and Reimbursement Procedures.

(1) The division will record and maintain records of all transactions related to the acquisition and sale of all State and federal surplus property items.

(2) The division may maintain a federal working capital reserve not to exceed one year's operating expenses. In the event the division accumulates funds in excess of the allowable working capital reserve, they will reduce the Retained Earnings balance accordingly. The only exception is where the division is accumulating excess funds in anticipation of the purchase of new facilities or capital items. Prior to the accumulation of excess funds, the division must obtain the written approval of the Executive Director of the Department of Administrative Services.

R33-26-302. Reimbursement.

(1) Reimbursement to state agencies from the sale of their vehicles and non-vehicle items will be made through the Division of Finance via interagency transfers or warrant requests. The division is authorized to deduct operating costs from the selling price of all vehicles and non-vehicle items. In all cases property will be priced to sell for fair market value. Items that are not marketable for whatever reason may be discounted in price or disposed of by abandonment, donation, or sold as scrap.

(2) Payment for vehicles, non-vehicle items, information technology equipment, federal surplus property, and personal handheld devices shall be as follows:

(a) Payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank financial cards, and personal checks. Personal checks may not be accepted for amounts exceeding $100. Two-party checks shall not be accepted;

(b) Payment received from governmental entities, school districts, special districts, and higher education institutions shall be in the form of agency or subdivision check or purchasing card;

(c) Payment made by governmental entities, school districts, special districts, and higher education institutions shall be at the time of purchase and prior to removal of the property purchased; or

(d) The division director or designee may make exceptions to the payment provisions of this rule for good cause. A good cause exception requires a weighing of:

(i) the cost to the State;

(ii) the potential liability to the State; and

(iii) the overall best interest of the State.

(3) The division shall initiate formal collection procedures in the event that a check from the general public, state subdivisions, or other agencies is returned to the division for "insufficient funds".

(a) In the event that a check is returned to the division for "insufficient funds," the division may:

(i) prohibit the debtor from making any future purchases from the division until the debt is paid in full; and

(ii) have the division accountant send a certified letter to the debtor stating that the debtor has 15 days to pay the full amount owed with cash or certified funds, including any and all additional fees associated with the collection process, such as returned check fees; and if the balance is not paid within the 15 day period, the matter will be referred to the Office of State Debt Collection for formal collection proceedings.

(b) Debts for which payments have not been received in full within the 15 day period referred to above shall be assigned to the Office of State Debt Collection in accordance with statute.

R33-26-401. Public Sale of State-Owned Vehicles.

(1) State-owned excess vehicles may be purchased at any time by the general public, subject to any holding period that may be assigned by the division and subject to the division's operating days and hours.

(2) Federal surplus property auctions to the general public may be accomplished on occasions and subject to the limitations as indicated previously.

(3) The frequency of public auctions, for either State-owned vehicles or federal surplus property will be regulated by current law as applicable, the volume of items held in

inventory by the division, and the profitability of conducting auctions versus other approaches to disposing of surplus property.

(4) State-owned vehicles available for sale may not have any ancillary or component parts or equipment removed, destroyed, or detached, from the vehicle prior to sale without the approval of the division.

(5) State agencies are prohibited from removing ancillary or component parts or equipment from vehicles intended for surplus unless:

(a) the state agency intends on using the ancillary or component parts or equipment on other agency vehicles;

(b) the state agency in possession of the vehicle intends to transfer the ancillary or component parts or equipment to another state agency; or

(c) the state agency has obtained prior approval from the division to remove ancillary or component parts or equipment from the vehicle intended for surplus.

R33-26-601. Utah State Agency for Surplus Property Adjudicative Proceedings.

As required by the Utah Administrative Procedures Act, this Rule provides the procedures for adjudicating disputes brought before the division under the authority granted by Section 63A-2-401 and Title 63G, Chapter 4, et seq.

R33-26-602. Proceedings to Be Informal.

All matters over which the division has jurisdiction including bid validity determination and sales issues, which are subject to Title 63G, Chapter 4, will be informal in nature for purposes of adjudication. The Director of the Division of Purchasing and General Services or his designee will be the presiding officer.

R33-26-603. Procedures Governing Informal Adjudicatory Proceedings.

(1) No response needs to be filed to the notice of agency action or request for agency action.

(2) The division may hold a hearing at the discretion of the director of the Division of Purchasing and General Services or his designee unless a hearing is required by statute. A request for hearing must be made within ten days after receipt of the notice of agency action or request for agency action.

(3) Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence and comment on the issues.

(4) A hearing will be held only after timely notice of the hearing has been given.

(5) No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information and materials not restricted by law.

(6) No person may intervene in an agency action unless federal statute or rule requires the agency to permit intervention.

(7) Any hearing held under this rule is open to all parties.

(8) Within thirty days after the close of any hearing, the director of the Division of Purchasing and General Services or his designee shall issue a written decision stating the decision, the reasons for the decision, time limits for filing an appeal with the director of the superior agency, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.

(9) The decision rendered by the Director of the Division of Purchasing and General Services or his designee shall be based on the facts in the division file and if a hearing is held, the facts based on evidence presented at the hearing.

(10) The agency shall notify the parties of the agency order by promptly mailing a copy thereof to each at the address indicated in the file.

(11) Whether a hearing is held or not, an order issued under the provisions of this rule shall be the final order and then may be appealed to the appropriate district court.

R33-26-900. Charges and Fees Assessed for State Surplus Property Agency Services.

(1) In accordance with Section 63A-2-405, the State Surplus Property agency will charge rates and fees, as approved by the Rate Setting Committee as set forth in Sections 63J-1-410 and 504, for services associated with the disposition of surplus property items.

(2) The current approved rate and fee schedule is available at: surplus.utah.gov.

KEY: government purchasing, procurement rules, state surplus property, general procurement provisions
October 3, 2017 63A-2
Notice of Continuation July 8, 2019

R52. Agriculture and Food, Horse Racing Commission (Utah).
R52-7. Horse Racing.
R52-7-1. Authority.

Promulgated under authority of Section 4-38-104.

R52-7-2. Definitions.

The following definitions shall apply in these rules unless otherwise indicated.

1. "Act" means the Utah Horse Regulation Act.

2. "Added money" means all monies added to the fees paid by the horsemen into the purse for a race.

3. "Age" of a horse is reckoned as beginning on the first day of January in the year in which the horse is foaled.

4. "Also Eligible" pertains to (a) a number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to scratch time deadline; (b) the next preferred nonqualifier for the finals or consolation from a set of elimination trials which will become eligible in the event a finalist is scratched by the stewards for a rule violation or is otherwise eligible if written race conditions permit.

5. "Arrears" means money past due for entrance fees, jockey fees, or nomination or supplemental fees in nomination races, and therefore in default incidental to these Rules or the conditions of a race.

6. "Authorized Agent" means a person appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the Agent will act. Said instrument must be on file with the Commission and its authorized representatives.

7. "Bleeder" means a horse which during or following exercise or the race is observed to be shedding blood from one or both nostrils, or the mouth, or hemorrhaging in the lumen of the respiratory tract.

8. "Breeder" of a horse is the owner or lessee of its dam at the time of breeding.

9. "Closing" means the time published by the organization after which nominations or entries will not be accepted for a race.

10. "Commission" means the Utah Horse Racing Commission.

11. "Commissioner" means a member of the Commission.

12. "Conditions of a race" are the qualifications which determine a horse's eligibility to enter.

13. "Day" is a period of 24 hours beginning at midnight.

14. "Race day" is a day during which horse races are conducted.

15. "Declaration" means the act of withdrawing an entered horse from a race before the closing of overnight entries.

16. "Drug (Medication)" means a substance foreign to the normal physiology of the horse.

17. "Enclosure" means all areas of the property of an organization licensee to which admission can be obtained only by payment of an admission fee or upon presentation of proper credentials and all parking areas designed to serve the facility which are owned or leased by the organization licensee.

18. "Entry" means a horse made eligible to run in a race.

19. "Family" means a husband, wife and any dependent children.

20. "Field" means all horses competing in a race.

21. "Financial Interest" means an interest that could result in directly or indirectly receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a business entity, or as a result of salary, gratuity, or other compensation or remuneration from any person.

22. "Foreign Substances" are all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include but not be limited to all narcotics, stimulants, or depressants.

23. "Foul" means an action by any horse or jockey that hinders or interferes with another horse or jockey during the running of a race.

24. "Horse" means an equine of any breed and includes a stallion, gelding, mare, colt, filly, spayed mare or ridgeling.

25. "Horse Racing" means any type of horse racing, including Arabian, Appaloosa, Paint, Pinto, Quarter Horse, and Thoroughbred horse racing.

26. Horse Racing Types:

A. "Appaloosa Horse Racing" means the form of horse racing in which each participating horse is an Appaloosa horse registered with the Appaloosa Horse Club or any successor organization and mounted by a jockey.

B. "Arabian Horse Racing" means the form of horse racing in which each participating horse is an Arabian horse registered with the Arabian Horse Club Registry of America and approved by the Arabian Horse Racing Association of America or any successor organization, mounted by a jockey, and engaged in races on the flat over a distance of not less than one-quarter mile or more than four miles.

C. "Paint Horse Racing" means the form of horse racing in which each participating horse is a Paint horse registered with the American Paint Horse Association or any successor organization and mounted by a jockey.

D. "Pinto Horse Racing" means the form of horse racing in which each participating horse is a Pinto horse registered with the Pinto Horse Association of America, Inc., or any successor organization and mounted by a jockey.

E. "Quarter Horse Racing" means the form of horse racing where each participating horse is a Quarter Horse registered with the American Quarter Horse Association or any successor organization, mounted by a jockey, and engaged in a race over a distance of less than one-half mile.

F. "Thoroughbred Horse Racing" means the form of horse racing in which each participating horse is a Thoroughbred horse registered with the Jockey Club or any successor organization, mounted by a Jockey, and engaged in races on the flat.

27. "Inquiry" means the stewards immediate investigation into the running of a race which may result in the disqualification of one or more horses.

28. "Jockey" means the rider licensed to race.

29. "Jockey Agent" means a licensed authorized representative of a jockey.

30. "Lessee" means a licensed owner whose interest in a horse is by virtue of a completed Commission-approved lease form attached to the registration certificate and on file with the Commission.

31. "Lessor" means the owner of the horse that is leased.

32. "Maiden" means a horse that has never won a race recognized by the official race records of the particular horse's breed registry. A maiden which has been disqualified after finishing first is still a maiden.

33. "Minor" means any individual under 18 years of age.

34. "Nominator" means the person who nominated the horse as a possible contender in a race.

35. "Objection" means:

A. A written complaint made to the Stewards concerning a horse entered in a race and filed not later than two hours prior to the scheduled post time for the first race on the day which the questioned horse is entered;

B. A verbal claim of foul in a race lodged by the horse's jockey, trainer, owner, or the owners licensed Authorized

Agent before the race is declared official.

36. "Occupation License" means a requirement for any person acting in any capacity within the enclosure during the race meeting.

37. "Occupation Licensee" means a person who has obtained an occupation license.

38. "Utah Bred Horse" means a horse that is sired by a stallion standing in Utah.

39. "Organization License" means a requirement of any person desiring to conduct a race meeting within the state of Utah.

40. "Organization Licensee" means any person receiving an organization license.

41. "Owner" means any person who holds, in whole or in part, any rights, title, or interest in a horse, or any lessee of a horse who has been duly issued a currently valid owner's license as a person responsible for such horse.

42. "Person" means any individual, corporation, partnership, syndicate, another association or entity.

43. "Post Position" means the position in the starting gate assigned to the horse for the race.

44. "Post Time" means the advertised time for the arrival of the horses at the start of the race.

45. "Protest" means a written complaint, signed by the protester, against any horse which has started in a race and shall be made to the Stewards within 48 hours after the running of the race, except as noted in Subsection R52-7-10(8).

46. "Race Meeting" means the entire period of time not to exceed 20 calendar days separating any race days for which an organization license has been granted to a person by the Commission to hold horse racing.

47. "Allowance" means a race in which eligibility and/or the weight to be carried are based upon the horse's past performance over a specified time.

48. "Handicap" means a race in which the weights to be carried by the entered horses are assigned according to the Racing Secretary's evaluation of each horse's potential for the purpose of equalizing their respective chances of winning.

49. "Invitational" means a race in which the competing horses are selected by inviting their owners to enter specific horses.

50. "Match" means a race contest between two horses with prior consent by the Commission under conditions agreed to by the owners.

51. "Nomination" means a race in which the subscription to a payment schedule nominates and sustains the eligibility of a particular horse. Nominations must close at least 72 hours before the first post time of the day the race is originally scheduled to be run.

52. "Progeny" means a race restricted to the offspring of a specific stallion or stallions.

53. "Purse Race (Overnight)" means any race in which entries close less than 72 hours prior to its running.

54. "Schooling Race" means a preparatory race for entry qualification in official races which conform to requirements adopted by the Commission.

55. "Stakes" means a race which is eligible for stakes or "black-type" recognition by the particular breed registry.

56. "Trials" means a set of races in which eligible horses compete to determine the finalists for a purse in a nominated race.

57. "Restricted Area" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to, the barn area, paddock, test barn, Stewards Tower, race course, or any other area designated restricted by the organization licensee and/or the Commission. Signs giving notice of restricted access shall be prominently displayed at all entry points.

58. "Rules" means the rules herein prescribed and any amendments or additions.

59. "Scratch" means the act of withdrawing an entered horse from a race after the closing of overnight entries.

60. "Scratch Time" means the deadline set by the organization licensee for the withdrawing of entered horses.

61. "Starter" means the horse whose stall door of the starting gate opens in front of such horse at the time the starter (the Official) dispatches the horses.

62. "Subscription" means the act of nominating a horse to a nomination race.

63. "Week" means a period of seven days beginning at 12:01 a.m., Monday during which races are conducted.

R52-7-3. Commission Powers and Jurisdiction.

1. Description and Powers. The Utah Horse Racing Commission is an administrative body created by Section 4-38-3. The Commission consists of five members which are appointed by the governor, and whose powers and duties are prescribed by the legislature. The Commission appoints an executive director who is the administrative head of the agency, and the Commission determines the duties of the executive director. The Commission shall have supervision of all sanctioned race meetings held in the State of Utah, and all occupation and organization licensees in the State and all persons on the property of an organization licensee.

2. Jurisdiction. Without limitations by specific mention hereof, the stated purposes of the Rules and Regulations hereby promulgated are as follows:

A. To encourage agriculture and breeding of horses in this State; and

B. To maintain race meetings held in the State of the highest quality and free of any horse racing practices which are corrupt, incompetent, dishonest or unprincipled; and

C. To maintain the appearance as well as the fact of complete honesty and integrity of horse racing in this State; and

D. To generate public revenues.

E. Commission jurisdiction of a race meet commences one hour prior to post time and ends one hour following the last posted race.

3. Controlling Authority. The law, the rules, and the orders of the Commission supersede the conditions of a race meeting and govern Thoroughbred, Quarter Horse, Appaloosa, Arabian, Paint and Pinto racing, except in the event it can have no application to a specific type of racing. In the latter case, the Stewards may enforce rules or conditions of The Jockey Club for Thoroughbred racing, the American Quarter Horse Association for Quarter Horse racing; the Appaloosa Horse Club for Appaloosa racing; the Arabian Horse Racing Association of America for Arabian racing; the American Paint Horse Association for Paint racing; and the Pinto Horse Association of America, Inc., for Pinto racing; if such rules or conditions are not inconsistent with the Laws of the State of Utah and the Rules of the Commission.

4. Commission Meetings. The following provisions govern any meeting at which a voting majority of commission members appear at the anchor location, by telephone, or electronically pursuant to Utah Code Section 52-4-207:

(a) If enough commission members which constitute a voting majority intend to participate electronically or by telephone, public notices of the meeting shall be posted. In addition, the notice shall specify the anchor location where the members of the commission not participating electronically or by telephone will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be posted on the Public Notice Website. These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to the commission members at least 24 hours before the meeting. In addition, the notice shall describe how a commission member may participate in the meeting electronically or by telephone.

(d) When notice is given of the possibility of a member appearing electronically or by telephone, any commission member may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the commission. At the commencement of the meeting, or at such time as any commission member initially appears electronically or by telephone, the chair shall identify for the record all those who are appearing by telephone or electronically. Votes by members of the commission who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Agriculture and Food, 350 N Redwood Road, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

5. Punishment By The Commission. Violation of the Act and rules promulgated by the Commission, whether or not a penalty is fixed therein, is punishable in the discretion of the Commission by denial, revocation or suspension of any license; by fine; by exclusion from all racing enclosures under the jurisdiction of the Commission; or by any combination of these penalties. Fines imposed by the Commission shall not exceed $10,000 against individuals for each violation, any Rules or regulations promulgated by the Commission, or any Order of the Commission; or for any other action which, in the discretion of the Commission, is a detriment or impediment to horse racing, according to Subsection 4-38-9(2).

6. Extension For Compliance. If a licensee fails to perform an act or obtain required action from the Commission within the time prescribed therefore by these Rules, the Commission, at some subsequent time, may allow the performance of such act or may take the necessary action with the same effect as if the same were performed within the prescribed time.

7. Notice To Licensee. Whenever notice is required to be given by the Commission or the Stewards, such notice shall be given in writing by personal delivery to the person to be notified or by mailing, Certified Mail, Return Receipt Requested, such notice to the last known address furnished to the Commission; or may be given as is provided for service of process in a civil proceeding in the State of Utah and pursuant to the Administrative Procedures Act.

8. Location For Information Or Filing With Commission. When information is requested or a notice in any matter is required to be filed with the Commission, such notice shall be delivered to an authorized representative of the Commission at an office of the Commission on or before the filing deadline. Offices of the Commission are currently located at: State of Utah, Department of Agriculture and Food, 350 North Redwood Road, Salt Lake City, UT 84116.

9. Public Inspection Of Documents. All forms adopted by the Commission together with all Rules and other written statements of policy or interpretation; and all final orders, decisions, and opinions, formulated, adopted or used by the Commission in the discharge of its functions are available for public inspection at the above office.

10. Forms And Instruction. The following forms and instructions for their use have been adopted by the Commission:

Apprentice Jockey Certificate
Authorized Agent Agreement
Fingerprint Card
Identifier's Daily Report
Lease Agreement
Occupation Licensee Application(s)
Occupation License Renewal Application(s)
Open Claim Certificate
Organization's Daily Report
Organization Licensee Application
Petition for Declaratory Ruling
Petition for Promulgation, Amendment or Repeal of Rule
Petition in and before the Utah Horse Commission
Postmortem Examination Report
Stable Name, Corporation, Partnership or Syndicate Registration Form
Stewards' Daily Report
Stewards' Hearing Notice
Stewards' Hearing Reports
Subpoena (Steward and Commission)
Test Barn Diuretic Approval Form

11. Forms for substituting petitions for promulgating or repealing of rules, and for requests for declaratory ruling are available at the Utah State Department of Agriculture and Food.

R52-7-4. Racing Organization.

1. Allocation Of Racing Dates. The Commission shall allocate racing dates for the conduct of horse race meetings within this State for such time periods and at such racing locations as the Commission determines will best serve the interests of the people of the State of Utah in accordance with the Utah Horse Act. Upon a finding by the Commission that the allocation of racing dates for any year is completed, the racing dates so allocated shall be subject to reconsideration or amendment only for conditions unforeseen at the time of allocation.

2. Application For License And Days To Conduct A Horse Race Meeting. Every person who intends to conduct a horse race meeting shall file such application with the Commission no later than August 1 of the preceding calendar year. Any prospective applicant for license and days to conduct a horse race meeting failing to timely file the application for license may be disqualified and its application for license refused summarily by the Commission.

3. Commission May Demand Information. The Commission may require any racing organization or prospective racing organization to furnish the Commission with a detailed proposal and disclosures as to its proposed racing program, purse, program, financial projections, racing officials, principals or shareholders, plants, premises, facility, finances, lease arrangements, agreements, contracts, and such other information as the Commission may require to determine the eligibility and qualification of the organization to conduct a race meeting; all in addition to that required in the application form set forth in Subsection R52-7-4(4) and as required by Section 4-38-4.

4. Application For Organization License. Any person desiring to conduct a horse race meeting where the public is charged an admission fee shall apply to the Commission for an organization license. The application shall be made on a form prescribed and furnished by the Commission. The application shall contain the following information:

A. The dates on which and location where the applicant intends to conduct the race meeting.

B. The name and mailing address of the person making the application.

1. If the applicant is a corporation, a certified copy of the Articles of Incorporation and Bylaws; the names and mailing addresses of all stockholders who own at least 3% of the total stock issued by the corporation, officers, and directors; and the number of shares of stock owned by each.

2. If the applicant is a partnership, a copy of the partnership agreement, and the names and mailing addresses of all general and limited partners with a statement of their respective interest in the partnership.

C. Description of photographic equipment, video equipment, and copies of any proposed lease or purchase contract or service agreement in connection therewith.

D. Copies of any agreements with concessionaires or lessees, together with schedules of rates charged for performance of any service or for sale of any article within the enclosure, whether directly or through the concessionaire.

E. Schedule of admission price(s) to be charged.

F. Applicants must submit balance sheets and profit and loss statements for each of the three fiscal years immediately preceding the application, or for the period of organization if less than three years. If the applicant has not completed a full fiscal year since its organization, or if it acquires or is to acquire the majority of its assets from a predecessor within the current fiscal year, the financial information shall be given for the current fiscal year. All financial information shall be accompanied by an unqualified opinion of a Certified Public Accountant; or if the opinion is given with qualifications, the reasons for the qualifications must be stated.

G. A schedule of stall rent, entry fees, or any other charges to be made to the horsemen or public not mentioned above.

H. Any other information the Commission may require. For applicants requesting to conduct non pari-mutuel racing, the licensee fee shall not be less than $25.00.

A separate application upon a form prescribed and furnished by the Commission shall be filed for each race meeting which such person proposes to conduct. The application, if made by a person, shall be signed and verified under oath by the person; and if made by more than one person or by a partnership, shall be signed and verified under oath by at least two of the persons or members of the partnership; and if made by an association, a corporation, or any other entity, shall be signed by the President, attested to by the Secretary under the seal of such association or corporation, if it has a seal, and verified under oath by one of the signing officers.

No person shall own any silent or undisclosed interest in any entity requesting an organization license. No organization license shall be issued to any applicant that fails to comply with provisions of this Rule. No incomplete license application shall be considered by the Commission.

I. In considering the granting or denying of all organization's application for a license to conduct horse racing with the non pari-mutuel system of wagering, the following criteria, standards, and guides should be considered by the Commission:

1. Public Interest
a. Safety
b. Morals
c. Security
d. Municipal Comments
e. Revenues: State and Local
2. Track Location
a. Traffic Flow
b. Support Services (i.e., hotels, restaurants, etc.)
c. Labor Supply
d. Public Services (i.e., police, fire, etc.)
e. Proximity to Competition
3. Number of Tracks Running or Making Application
a. Size
b. Type of Racing
c. Days
4. Adequacy of Track Facilities
5. Experience in Racing of Applicant and Management
a. Length
b. Type
c. Success/Failure
6. Financial Qualifications of Applicant, Applicant's Partners, Officers, Associates, and Shareholders (To Include Contract Services)
a. Financial History
(1) Records
(2) Net Worth
7. Qualifications of Applicant, Applicant's Partners, Officers, Associates, and Shareholders (To Include Contract Services)
(1) Arrest Record
(2) Conviction Record
(3) Litigation Record (Civil/Criminal)
(4) Law Enforcement Intelligence
8. Official Attitude of Local Government Involved
9. Anticipated Effect Upon Breeding and Horse Industry in Utah
10. Effect on Saturation of Non pari-Mutuel Market
11. Anticipated Effect upon State's Economy
a. General Economy
(1) Tourism
(2) Employment
(3) Support Industries
b. Government Revenue
(1) Tax (Direct/Indirect)
(2) Income (Direct/Indirect)
12. Attitude of Local Community Involved
13. The Written Attitude of Horse Industry Associations
14. Experience and Credibility of Consultants, Advisors, and Professionals
a. Feasibility
b. Credibility and Integrity of Feasibility Study
15. Financial and Economic Integrity of Financial Plan
(1) Equity
a. Source
b. Amount
c. Position
d. Type
(2) Debt
a. Source
b. Amount
c. Terms
d. Repayment
(3) Equity to Debt Ratio
a. Integrity of Financing Plan
(1) Identity of Participants
(2) Role of Participants
(3) History of Participants
(4) Law Enforcement Intelligence
16. Apparent or Non-Apparent Hope of Financial Success

5. List Of Shareholders. Each organization shall, if a corporation or partnership, maintain a current list of shareholders and the number of shares held by each; and such list shall be available for inspection upon demand by the Commission or its representatives. The organization shall immediately inform the Commission of any change of corporate officers or directors, general or managing partners,

or of any change in shareholders; provided, however, that if the organization is a publicly-held entity, it shall disclose the names and addresses of shareholders who own 3% of the outstanding shares of the organization. The organization shall immediately notify the Commission of all stock options, tender offers, and any anticipated stock offerings. The Commission may refuse to issue a license to, or suspend the license of, any organization which fails to disclose the real name of any shareholders.

6. Denial Of License. The Commission may deny a license to conduct a horse racing meeting when in its judgment it determines the proposed meeting is not in the public interest, or fails to serve the purposes of the Utah Horse Act, or fails to meet any requirements of Utah State law or the Commission's rules. The Commission shall refuse to issue a license to any applicant who fails to provide the Commission with evidence of its ability to meet its estimated financial obligations for the conduct of the meeting.

7. Duty Of Licensed Organization. Each organization shall observe and enforce the rules of the Commission. The license is granted on the condition that the organization, its officials, its employees and its concessionaires shall obey all decisions and orders of the Commission. The organization shall not allow any wagering within the enclosure of the racing facility which might be construed as being in violation of the Laws of the State of Utah.

8. Conditions Of A Race Meeting. The organization may impose conditions for its race meeting as it may deem necessary; provided, however, that such conditions may not conflict with any requirements of Utah State Law or the Rules, Regulations and Orders of the Commission. Such conditions shall be published in the Condition Book or otherwise made available to all licensees participating in its race meeting. A copy of the conditions and nomination race book shall be published no later than 45 days prior to the commencement of the race meeting. A proof of such conditions and nomination race book shall be filed with the Commission no later than 45 days prior to printing. The conditions and nomination race book is subject to the approval of the Commission. The organization may impose requirements, qualifications, requisites, and track rules for its race meeting as it may deem necessary; provided such requirements, qualifications, and track rules do not conflict with Utah State Law or the Rules, Regulations, and Orders of the Commission. Such information shall be published in the Condition Book, posted on the organization's bulletin boards, or otherwise made available to all licensees participating at its race meeting.

All requirements, qualifications, requisites or track rules imposed by the organization require prior review and approval by the Commission, which reserves the right of final decision in all matters pertaining to the conditions of a race meeting.

9. Right Of Commission To Information. The organization may be asked to furnish the Commission, on forms approved by the Commission, a daily itemized report of the receipts of attendance, parking, concessions, commissions, and any other requested information. The organization shall also provide a corrected official program, completed race results charts approved by the Commission, and any other information the Commission may require. Such daily reports shall be filed with the Commission within 72 hours of the race day.

10. Duty To Compile Official Program. The organization shall compile an official program for each racing day which shall contain the names of the horses which are to run in each race together with their respective post positions, post time for first race, age, color, sex, breeding, jockey, trainer, owners or stable name, racing colors, weight carried, conditions of the race, the order in which each race shall be run, the distance to be run, the value of each race, a list of Racing Officials and track management personnel, and any other information the Commission may require. The Commission may direct the organization to publish in the program any other information and notices to the public as it deems necessary.

11. Duty To Maintain Racing Records. The organization shall maintain a complete record of all races of all authorized race meetings of the same type of racing being conducted by the organization, and such records shall be maintained and retained for a period of five years. This requirement may be met by race records of Triangle Publications, the American Quarter Horse Association, the Appaloosa Horse Club, the American Paint Horse Association, other breed registry associations' racing records department, or other racing publications approved by the Commission.

12. Horsemen's Bookkeeper. The organization shall employ a Horsemen's Bookkeeper who shall maintain records as the organization and Commission shall direct. The records shall include the name, address, social security or federal identification number, and the state or country of residence of each horse owner, trainer, or jockey participating at the race meeting who has funds due or on deposit in the horseman's account. The Horsemen's Bookkeeper shall keep the riding accounts of the jockeys and shall disburse the received fees to the proper claimants. It shall be the duty of the Horsemen's Bookkeeper to receive and disburse the purses of each race and all stakes, entrance money, jockey fees, and other monies that properly come into his possession, and make disbursements within 48 hours of receipt of notification from the testing laboratory that drug tests have cleared unless an appeal or protest has been filed with the Stewards or the Commission. The Horsemen's Bookkeeper may accept monies due belonging to other organizations or recognized meetings, provided prompt return is made to the organization to which the money is due; except upon written request, the Horsemen's Bookkeeper shall, within 30 days after the meeting, disburse all monies to the persons entitled to receive the same. The Horsemen's Bookkeeper shall maintain a file of all required statements of partnerships, syndicates, corporations; assignments of interest; lease agreements; and registrations of authorized agents. All records and monies of the Horsemen's Bookkeeper shall be kept separate and apart from any other of the organization and are subject to inspection by the Commission at any time.

13. Accounting Practices And Responsibility. The organization and its managing officers shall ensure that all purse monies, disbursements, and appropriate nomination race monies are available to make timely distribution in accordance with the Act, the Rules and Regulations of the Commission, the organization rules, and race conditions. Copies of all nomination payment race contracts, agreements, and conditions shall be submitted to the Commission and related reporting requirements fulfilled as specified by the Commission. Subject to approval of the Commission, the organization shall maintain on a current basis a bookkeeping and accounting program under the guidance of a Certified Public Accountant. The Commission may require periodic audits to determine that the organization has funds available to meet those distributions for the purposes required by the Act, the Rules and Regulations of the Commission, the conditions and nomination race program of the race meeting, and the obligations incurred in the daily operation of the race meeting. Annually, the organization shall file a copy of all tax returns, a balance sheet, and a profit and loss statement.

14. Electronic Photo Finish Device. All organizations shall install and maintain in good service an electronic photo

finish device for photographing the finishes of all races and recording the time of each horse in hundredths of a second, when applicable, to assist the placing judges and the Stewards in determining the finishing positions and time of the horses. Prior to first use, the electronic photo finish device must be approved by the Commission; and a calibration report must be filed with the Commission by January 1 of each year. A photograph of each finish shall be promptly posted for public view in at least one conspicuous place in the public enclosure.

15. Videotape Recording Of Races. All organizations shall install and operate a system to provide a videotape recording of each race so that such recording clearly shows the position and action of the horses and jockeys at close enough range to be easily discernible. A video monitor shall be located in the Stewards' Tower to assist in reviewing the running of the races. Prior to first use, the videotape recording system and location and placement of its equipment must be approved by the Commission. Every race other than a race run solely on a straight course may be recorded by use of at least two cameras to provide panoramic and head-on views of the race. Races run solely on the straight course shall be recorded by the use of at least one camera to provide a head-on view. Except with prior approval of the Commission, all organizations shall maintain an auxiliary videotape recording camera and player in case of breakdown and/or malfunction of a primary videotape recording camera or player.

16. Identification Of Photo Finish Photographs And Videotape Recordings. All photo finish photographs and video-tape recordings required by these Rules shall be identified by indicating thereon, the date, number of the race, and the name of the racetrack at which the race is held.

17. Altering Official Photographs Or Recordings. No person shall cut, mutilate, alter or change any photo finish photograph or videotape recording for the purpose of deceit or fraud of any type.

18. Preservation Of Official Photographs And Recordings. All organizations shall preserve all photographic negatives and videotape recordings of all races for at least 180 days after the close of their meeting. Upon request of the Commission, the organization shall furnish the Commission with a clear, positive print of any photograph of any race, or a kinescope print or copy of the videotape recording of any race.

19. Viewing Room Required. The organization shall maintain a viewing room for the purpose of screening the videotape recording of the races for viewing by Racing Officials, jockeys, trainers, owners, and other interested persons authorized by the Stewards.

20. Office Space For The Commission. The organization shall provide within the enclosure adequate office space for use by the Commission and its authorized representatives, and shall provide such necessary office furniture and utilities as may be required for the conduct of the Commission's business and the collection of the public revenues at such organization's meetings.

21. Duty To Receive Complaints. The organization shall maintain a place where written complaints or claims of violations (objections) of racetrack rules, regulations, and conditions; Commission Rules and Regulations; or Utah State Laws may be filed. A copy of any written complaint or claim filed with the organization shall be filed by the organization with the Commission or Commission representatives within 24 hours of receipt of the complaint or claim.

22. Bulletin Boards Required. The organization shall erect and maintain a glass enclosed bulletin board close to the Racing Secretary's Office in a place where access is granted to all licensees, upon which all official notices of the Commission shall be posted. The organization shall also erect and maintain a glass enclosed bulletin board in the grandstand area where access is granted to all race day patrons, upon which all official notices of the Commission shall be posted.

23. Communication Systems Required. The organization shall install and maintain in good service a telephonic communication system between the Stewards' stand, racing office, jockey room, paddock, testing barn, starting gate, video camera locations, and other designated places. The organization shall also install and maintain in good service a public address communication system for the purpose of announcing the racing program, the running of the races, and any public service notices, as well as maintaining communications with the barn area for the purpose of paddock calls and the paging of horsemen.

24. Ambulance Service. Subject to the approval of the Commission, the organization shall provide the services of an approved medical ambulance and its properly qualified attendants at all times during the running of the race program at its meeting and, except with prior permission of the Commission, during the hours the organization permits the use of its race course for training purposes. The organization shall also provide the service of a horse ambulance during the same hours. A means of communication shall be provided by the organization between a staffed observation point (Stewards' Tower and Clocker's Stand) for the race course and the place where the required ambulances and their attendants are posted for prompt response in the event of accident to any person or horse. In the event an emergency necessitates the departure of a required ambulance, the race course shall be closed until an approved ambulance is again available within the enclosure.

25. Safety Of Race Course And Premises. The organization shall take cognizance of any complaint regarding the safety or uniformity of its race course or premises, and shall maintain in safe condition the race course and all rails and other equipment required for the conduct of its races.

26. Starting Point Markers And Distance Poles. Permanent markers must be located at each starting point to be utilized in the organization's racing program. The starting point markers and distance poles must be of a size and in a position where they can be seen clearly from the stewards' stand. The starting point markers and distance poles shall be marked with the appropriate distance and be the following colors:

TABLE

1/16	poles	. . .	black and white horizontal stripes
1/8	poles	. . .	green and white horizontal stripes
1/4	poles	. . .	red and white horizontal stripes
220	yards	. . .	green and white horizontal stripes
250	yards	. . .	blue
300	yards	. . .	yellow
330	yards	. . .	black and white horizontal stripes
350	yards	. . .	red
400	yards	. . .	black
440	yards	. . .	red and white horizontal stripes
550	yards	. . .	black and white horizontal stripes
660	yards	. . .	green and white horizontal stripes
770	yards	. . .	black and white horizontal stripes
870	yards	. . .	blue and white horizontal stripes

27. Grade And Distance Survey. A survey by a licensed surveyor of the race course, including all starting chutes, indicating the grade and measurement of distances to be run must be filed with the Commission prior to the first race meeting.

28. Physical Requirements For Non pari-Mutuel Racing Facility. In order for an organization to be granted a license to conduct non pari-mutuel racing, the facility shall meet the following physical requirements:

A. A regulation track shall be a straightaway course of

440 yards in length. The straightaway shall connect with an oval not less than one-half mile in circumference; except that the width may vary according to the number of horses started in a field, but a minimum of twenty feet shall be allowed for the first two horses with an additional five feet for each added starter.

B. The inner and outer rails shall extend the entire length of the straightaway and around the connecting oval; it shall be at least thirty inches and not more than forty-two inches in height. A racetrack not approved by the Commission prior to January 1, 1993, shall otherwise have inner and outer rails of at least thirty-eight inches (38") and not more than forty-two inches in height. It shall be constructed of metal not less than two inches in diameter, wood not less than two inches in thickness and six inches in width, or other construction material approved by the Commission. Whatever construction material is used must provide for the safety of both horse and rider. It must be painted white and maintained at all times.

C. Stabling facilities should be adequate for the number of horses to be on hand for the meet. In no case will a track with less than 200 stalls be acceptable, without Utah Horse Commission approval.

D. Stands for Stewards and Timers shall be located exactly on the finish line and provide a commanding and uninterrupted view of the entire racing strip.

E. The paddock shall be spacious enough to provide adequate safety. The jockey's room shall be in or adjacent to the paddock enclosure and shall be equipped with separate but equal complete sanitation facilities including showers for both male and female riders. This area must be fenced to keep out unauthorized persons and provide maximum security and safety. The fence shall be at least four feet high of chain link, v-mesh or similar construction.

F. A Test Barn with a minimum of two stalls shall be provided for purpose of collecting urine specimens. The Test Barn and a walking ring large enough to accommodate several horses cooling out at the same time shall be completely enclosed by a fence at least eight feet high of chain link, v-mesh or similar construction. There shall be only one entrance into the Test Barn enclosure which shall remain locked or guarded at all times. Provisions shall be made in this area for an office to accommodate the needs of the Official Veterinarian and from which he can observe the stalls and the entrance into the Test Barn enclosure. The organization shall provide facilities for the immediate cooling and freezing of all urine specimens, and shall make provisions for the specimens to be shipped to the laboratory packed in dry ice.

G. A grandstand or bleachers shall be provided for the spectators and shall provide for the comfort and safety of the spectators. Facilities must include rest rooms and a public water supply.

29. Organization As The Insurer Of The Race Meeting. Approval of a race meeting by the Commission does not establish said Commission as the insurer or guarantor of the safety or physical condition of the organization's facilities or purse of any race. The organization does thereby agree to indemnify, save and hold harmless the Utah Horse Commission from any liability, if any, arising from unsafe conditions of track facilities or grandstand and default in payment of purses. The organization shall provide the Commission with a certificate of adequate liability insurance.

R52-7-5. Occupation Licensing and Registration.

1. Occupation Licenses. No person required to be licensed shall participate in a race meeting without their holding a valid license authorizing that participation. Licenses shall be obtained prior to the time such persons engage in their vocations upon such racetrack grounds at any time during the calendar year for which the organization license has been issued. Applicant will be required to provide one form of photo identification.

A. A person whose occupation requires acting in any capacity within any area of an enclosure shall pay the required fee and procure the appropriate license or licenses.

B. A person acting in any of the following capacities shall pay the required fee and procure the appropriate license or licenses: (A list of all required fees shall be available at the Utah Department of Agriculture and Food.)

1. Owner/Trainer Combination
2. Owner
3. Trainer
4. Assistant Trainer
5. Jockey
6. Veterinarian
7. Jockey Room Attendant
8. Paddock Attendant
9. Pony Rider
10. Concessionaire
11. Valet
12. Groom

C. A person whose license-identification badge is lost or destroyed shall procure a replacement license-identification badge and shall pay the required fee.

D. The date of payment of all required fees as recorded by the Commission shall be the effective date of issuance of a continuous occupation license. A person may have the option of a one or three year license. The license fee shall be the annual fee for each category in which the person is licensed, the fee for a three (3) year license shall be three (3) times the annual fee for each category in which the person is licensed. The license shall expire on December 31.

E. All license applicants may be required to provide two complete sets of fingerprints on forms provided by or acceptable to the Commission and pay the required fee for processing the fingerprint cards through State and Federal Law Enforcement Agencies. If the fingerprints are of a quality not acceptable for processing, the licensee may be required to be refingerprinted.

F. All applicants for occupation licenses must be a minimum of 16 years of age. However, this shall not preclude dependent children under the age of 16 from working for their parents or guardian if said parents or guardian are licensed as a trainer or assistant trainer and permission has been obtained from the organization licensee. A trainer or his authorized representative signing a Test Barn Sample Tag must be licensed and a minimum of 18 years of age.

2. Employment Of Unlicensed Person. No organization, owner, trainer or other licensee acting as an employer within the enclosure at an authorized race meeting shall employ or harbor within the enclosure any person required to be licensed by the Commission until such organization, owner, trainer, or other employer determines that such person required to be licensed has been issued a valid license by the Commission. No organization shall permit any owner, trainer, or jockey to own, train, or ride on its premises during a recognized race meeting unless such owner, trainer, or jockey has received a license to do so from the Commission. The organization or prospective employer may demand for inspection the license of any person participating or attempting to participate at its meeting, and the organization may demand for inspection the documents relating to any horse on its grounds.

3. Notice Of Termination. Any organization, owner, trainer, or other licensee acting as an employer within the enclosure at an authorized race meeting shall be responsible

for the immediate notification to the Commission and the organization conducting the race meeting of a termination of employment of a licensee. The employer shall make every effort to obtain the license badge from the employee and deliver the license badge to the Commission.

4. Application For License. An applicant for license shall apply in writing on the application forms furnished by the Commission.

5. License Identification Badge Requirements. The license identification badge may consist of the following information concerning the licensee:

A. Full Name

B. Permanent Address

C. License Capacity

D. Date of Issue

E. Passport-Type Color Photograph

F. Date of Birth

All license identification badges may be color coded as to capacity of occupation and eligibility for access to restricted areas. All license holders, except jockeys riding in a race, must wear a current identification badge while present in restricted areas of the enclosure or as otherwise specified in Subsection R52-7-5(1).

6. Honoring Official Credentials. Credentials issued by the Commission may be honored for admission at all gates and entrances and to all places within the enclosure. Automobiles with vehicle decals issued by the Commission to its members and employees shall be permitted ingress and egress at any point. Credentials issued by the National Association of State Racing Commissioners to its members, past members, and staff shall be honored by the organization for admission into the public enclosure when presented therefore by such persons.

7. License Subject To Conditions And Agreements.

A. Every license is subject to the conditions and agreements contained in the application therefore and to the Statutes and Rules.

B. Every license issued to a licensee by the Commission remains the property of the Commission.

C. Possession of a license does not, as such, confer any right upon the holder thereof to employment at or participation in a race.

D. The Commission may restrict, limit, place conditions on, or endorse for additional occupational classes, any license, R52-7-5(9).

8. Changes In Application Information. Each licensee or applicant for license shall file with the Commission his permanent and his current mailing address and shall report in writing to the Commission any and all changes in application information.

9. Grounds For Denial, Refusal, Suspension Or Revocation Of License. The Commission, in addition to any other valid ground or reason, may deny, refuse to issue, suspend or revoke an occupation license for any person:

A. Who has been convicted of a felony of this State, any other state, or the United States of America; or

B. Who has been convicted of violating any law regarding gambling or controlled dangerous substance of this State, any other state, or of the United States of America; or

C. Who is unqualified to perform the duties required of the applicant; or

D. Who fails to disclose or states falsely any information required in the application; or

E. Who has been found guilty of a violation of any provision of the Utah Horse Act or of the Rules and Regulations of the Commission; or

F. Whose license for any racing occupation or activity requiring a license has been or is currently suspended, revoked, refused or denied for just cause in any other competent racing jurisdiction; or

G. Who has been or is currently excluded from any racing enclosure by a competent racing jurisdiction.

10. Examinations. The Commission may require the applicant for any license to demonstrate his knowledge, qualifications, and proficiency for the license applied for by such examination as the Commission may direct.

11. Refusal Without Prejudice. A refusal to issue a license (as distinguished from a denial of a license) to an applicant by the Commission at any race meeting is without prejudice; and the applicant so refused may reapply for a license at any subsequent or other race meeting, or he may appeal such refusal to the Commission for hearing upon his qualifications and fitness for the license.

12. Hearing After Denial Of License. Any person who has had his license denied may petition the Commission to reopen the case and reconsider its decision upon a sufficient showing that there is now available evidence which could not, with the exercise of reasonable diligence, have been previously presented to the Commission. Any such petition must be filed with the Commission no later than 30 days after the effective date of the Commission's decision in the matter. Any person who has been denied a license by the Commission may not refile a similar application for license until one year from the effective date of the decision to deny the license.

13. Financial Responsibility Of Applicants. Applicants for license as horse owner or trainer must submit satisfactory evidence of their financial ability to care for and maintain the horses owned and/or trained by them when such evidence is requested by the Commission.

14. Physical Examination. The Commission or the Stewards may require that any jockey be examined at any time, and the Commission or the Stewards may refuse to allow any jockey to ride until he has successfully passed such examination.

15. Qualifications For Jockey. No person under 16 years of age shall be granted a jockey's license. A person who has never ridden in a race at a recognized meeting shall not be granted a license as jockey unless he has satisfactorily worked a horse from the starting gate in company, before the Stewards or their representatives. Upon the recommendation of the Stewards, the Commission may issue a jockey's license granting permission to such person for the purpose of riding in not more than four races to establish the qualifications and ability of such person for the license. Subsequently, the Stewards may recommend the granting of a jockey's license.

16. Jockey Agent. A jockey agent is the authorized representative of a jockey if he is registered with the Stewards and licensed by the Commission as the Jockey's representative. No jockey agent shall represent more than two jockeys at the same time.

17. Workers' Compensation Act Compliance. No person may be licensed as a trainer, owner, or in any other capacity in which such person acts as the employer of any other licensee at any authorized race meeting, unless his liability for Workers' Compensation has been secured in accordance with the Workers' Compensation Act of the State of Utah and until evidence of such security for liability is provided the Commission. Should any such required security for liability for Workers' Compensation be canceled or terminated, any license held by such person shall be automatically suspended and shall be grounds for revocation of the license. If a license applicant certifies that he has no employees that would subject him to liability for Workers' Compensation, he may be licensed, but only for the period he has no employees.

18. Program Trainer Prohibited. No licensed trainer, for the purpose of avoiding his responsibilities or insurance

requirements as set forth in these Rules, shall place any horse in the care or attendance of any other trainer.

19. Qualifications For License As Horse Owner. No person may be licensed as a horse owner who is not the owner of record of a properly registered race horse which he intends to race in Utah and which is in the care of a licensed trainer, or who does not have an interest in such race horse as a part owner or lessee, or who is not the responsible managing owner of a corporation, syndicate or partnership which is the legal owner of such horse.

20. Horse Ownership By Lease. Horses may be raced under lease provided a completed Utah Horse Commission, breed registry, approved pari-mutuel or other lease form acceptable to the Commission, is attached to the Registration Certificate and on file with the Commission. The lessor(s) and lessee must be licensed as horse owners. No lessor shall execute a lease for the purpose of avoiding insurance requirements.

21. Statements Of Corporation, Partnership, Syndicate Or Other Association Or Entity. All organizational documents of a corporation, partnership, syndicate or other association or entity, and the relative proportion of ownership interest, the terms of sales with contingencies, arrangements, or leases, shall be filed with the Horsemen's Bookkeeper of the organization and with the Commission. The above-said documents shall declare to whom winnings are payable, in whose names the horses shall be run, and the name of the licensed person who assumes all responsibilities as the owner. The part owner of any horse shall not assign his share or any part of it without the written consent of the other partners, and such consent shall be filed with the Horsemen's Bookkeeper and the Commission. A person or persons conducting racing operations as a corporation, partnership, syndicate or other association or entity shall register the information required by Rules in this Article and pay the required fee(s) for the appropriate entity.

22. Stable Name Registration. A person or persons electing to conduct racing operations by use of a stable name shall register the stable name and shall pay the required fee.

A. The applicant must disclose the identity or identities of all persons comprising the stable name.

B. Changes in identities must be reported immediately to and approval obtained from the Commission.

C. No person shall register more than one stable name at the same time nor use his real name for racing purposes so long as he has a registered stable name.

D. Any person who has registered under a stable name may cancel the stable name after he has given written notice to the Commission.

E. A stable name may be changed by registering a new stable name and by paying the required Fee.

F. No person shall register a stable name which has been registered by any other person with any organization conducting a recognized race meeting.

G. A stable name shall be clearly distinguishable from that of another registered stable name.

H. The stable name, and the name of the owner or managing owner, shall be published in the official program. If the stable name consists of more than one person, the official program will list the name of the managing owner along with the phrase "et al."

I. If a partnership, corporation, syndicate, or other association or entity is involved in the identity comprising a stable name, the rules covering a partnership, corporation, syndicate or other association or entity must be complied with and the usual fees paid therefore in addition to the fees for the registration of a stable name.

23. Ownership Licensing Required. The ownership licensing procedures required by the Commission must be completed prior to the horse starting in a race and shall include all registrations, statements and payment of fees.

24. Knowledge Of Rules. Every licensee, in order to maintain their qualifications for any license held by them, shall be familiar with and knowledgeable of the rules, including all amendments. Every licensee is presumed to know the rules.

25. Certain Prohibited Licenses. Commission-licensed jockeys, veterinarians, organizations' security personnel, vendors, and such other licensees designated by the stewards with approval of the Commission, shall not hold any other license. The Commission may refuse to issue a license to a person whose spouse holds a license and which, in the opinion of the Commission, would create a conflict of interest.

R52-7-6. Racing Officials and Commission Racing Personnel.

1. Racing Officials. The racing officials of a race meeting, unless otherwise ordered by the Commission, are as follows: the stewards, the associate judges, the paddock judge, the starter, the identifier/tattooer, and the racing secretary. No racing official may serve in that capacity during a race in which is entered a horse owned by them or by a member of their family or in which they have any financial interest except for the identifier/tattooer, and the racing secretary. Being the lessee or lessor of a horse shall be construed as having a financial interest.

2. Responsibility To The Commission. The racing officials shall be strictly responsible to the Commission for the performance of their respective duties, and they shall promptly report to the Commission or its stewards any violation of the rules of the Commission coming to their attention or of which they have knowledge. Any racing official who fails to exercise due diligence in the performance of his duties shall be relieved of his duties by the stewards and the matter referred to the Commission.

3. Racing Officials Subject To Approval. Every racing official is subject to prior approval by the Commission before being eligible to act as a racing official at the meeting. At the time of making application for an organization license, the organization shall nominate the racing officials other than the racing officials appointed by the Commission; and after issuance of license to the organization, there shall be no substitution of any racing official except with approval of the stewards or the Commission.

4. Racing Officials Appointed By The Commission. The Commission shall appoint the following racing officials for a race meeting: The board of three stewards and the identifier/tattooer. The Commission may appoint from the approved stewards list one steward to serve as state steward.

5. Racing Personnel Employed By The Commission. The Commission shall employ the services of the licensing person for a race meeting.

6. General Authority Of Stewards. The stewards have general authority and supervision over all licensees and other persons attendant on horses, and also over the enclosures of any recognized meeting. Stewards have the power to interpret the Rules and to decide all questions not specifically covered by them. The stewards shall have the power to determine all questions arising with reference to entries, eligibility and racing; and all entries, declarations and scratches shall be under the supervision of the stewards. The stewards shall be strictly responsible to the Commission for the conduct of the race meeting in every particular.

7. Vacancy Among Racing Officials. Where a vacancy occurs among the racing officials, the stewards shall fill the vacancy immediately. Such appointment is effective until the vacancy is filled in accordance with the rules.

8. Jurisdiction Of Stewards To Suspend Or Fine. The stewards' jurisdiction in any matter commences 72 hours before entries are taken for the first day of racing at the meeting and extends until 30 days after the close of such meeting. In the event a dispute or controversy arises during a race meeting which is not settled within the stewards' thirty-day jurisdiction, then the authority of the stewards may be extended by authority of the Commission for the period necessary to resolve the matter, or until the matter is referred or appealed to the Commission. The stewards may suspend for not more than one year per violation the license of anyone whom they have the authority to supervise; or they may impose a fine not to exceed $2,500 per violation; or they may exclude from all enclosures in this state; or they may suspend and fine and/or exclude. All such suspensions, fines, or exclusions shall be reported immediately to the Commission. The Stewards may suspend a horse from participating in races if the horse has been involved in violation(s) of the rules promulgated by the Commission or the provisions of the Utah Horse Act under the following circumstances:

A. A horse is a confirmed bleeder as determined by the official veterinarian, and the official veterinarian recommends to the stewards that the horse be suspended from participation.

B. A horse is involved with:

i. Any violation of medication laws and rules;

ii. Any suspension or revocation of an occupation license by the stewards or the Commission or any racing jurisdiction recognized by the Commission; or

iii. Any violation of prohibited devices, laws, and rules.

9. Referral To The Commission. The stewards may refer with or without recommendation any matter within their jurisdiction to the Commission.

10. Payment Of Fines. All fines imposed by the stewards or Commission shall be due and payable to the Commission within 72 hours after imposition, except when the imposition of such fine is ordered stayed by the stewards, the Commission, or a court having jurisdiction. However, when a fine and suspension is imposed by the stewards or Commission, the fine shall be due and payable at the time the suspension expires. Nonpayment of the fine when due and payable may result in immediate suspension pending payment of the fine.

11. Stewards' Reports And Records. The stewards shall maintain a record which shall contain a detailed, written account of all questions, disputes, protests, complaints, and objections brought to the attention of the stewards. The stewards shall prepare a daily report concerning their race day activities which shall include fouls and disqualifications, disciplinary hearings, fines and suspensions, conduct of races, interruptions and delays, and condition of racing facility. The stewards shall submit the signed original of their report and record to the Executive Director of the Commission within 72 hours of the race day.

12. Power To Order Examination Of Horse. The stewards shall have the power to have tested, or cause to be examined by a qualified person, any horse entered in a race, which has run in a race, or which is stabled within the enclosure; and may order the examination of any ownership papers, certificates, documents of eligibility, contracts or leases pertaining to any horse.

13. Calling Off Race. When, in the opinion of the stewards, a race(s) cannot be conducted in accordance with the rules of the Commission, they shall cancel and call off such race(s). In the event of mechanical failure or interference during the running of a race which affects the horses in such race, the Stewards may declare the race a "no contest." A race shall be declared "no contest" if no horse covers the course.

14. Substitution Of Jockey Or Trainer.

A. In the event a jockey who is named to ride a mount in a race is unable to fulfill his engagement and is excused by the stewards, the trainer of the horse may select a substitute jockey; or, if no substitute jockey is available, the stewards may scratch the horse from the race. However, the responsibility to provide a jockey for an entered horse remains with the trainer; and the scratching of said horse by the stewards shall not be grounds for the refund of any nomination, sustaining, penalty payments, or entry fees.

B. In the absence of the trainer of the horse, the stewards may place the horse in the temporary care of another trainer of their selection; however, such horse may not be entered or compete in a race without the approval of the owner and the substitute trainer. The substitute trainer must sign the entry card.

15. Stewards' List. The stewards may maintain a stewards' list of those horses which, in their opinion, are ineligible to be entered in any race because of poor or inconsistent performance due to the inability to maintain a straight course, or any other reason considered a hazard to the safety of the participants. Such horse shall be refused entry until it has demonstrated to the stewards or their representatives that it can race safely and can be removed from the stewards' list.

16. Duties Of The Starter. The starter shall have complete jurisdiction over the starting gate, the starting of horses, and the authority to give orders not in conflict with the rules as may be required to ensure all participants an equal opportunity to a fair start. The starter shall appoint his assistants; however, he shall not permit his assistants to handle or take charge of any horse in the starting gate without his expressed permission. In the event that organization starter assistants are unavailable to head a horse, the responsibility to provide qualified individuals to head and/or tail a horse in the starting gate shall rest with the trainer. The starter may establish qualification for and maintain a list of such qualified individuals approved by the stewards. No assistant starter or any individual handling a horse at the starting gate shall in any way impede, whether intentionally or otherwise, the start of the race; nor may an assistant starter or other individual, except the jockey handling the horse at the starting gate, apply a whip or other device in an attempt to load any horse in the starting gate. No one other than the jockey shall slap, boot, or otherwise attempt to dispatch a horse from the starting gate.

17. Starter's List. The starter may maintain a starter's list of all horses which, in his opinion, are ineligible to be entered in any race because of poor or inconsistent performance in the starting gate. Such horse shall be refused entry until it has demonstrated to the starter or his representatives that it has been satisfactorily schooled in the gates and can be removed from the starter's list. Such schooling shall be under the direct supervision of the starter or his representatives.

18. Duties Of The Paddock Judge. The paddock judge shall supervise the assembling of the horses scheduled to race, the saddling of horses in the paddock, the saddling equipment and changes thereof, the mounting of the jockeys, and their departure for the post. The paddock judge shall provide a report on saddling equipment to the Stewards at their request.

19. Duties Of Patrol Judges. The patrol judges, when utilized, shall be subject to the orders of the stewards and shall report to the stewards all facts occurring under their observation during the running of a race.

20. Duties Of Placing Judges And Timers. The placing judges, timers, and/or stewards shall occupy the judges' stand at the time the horses pass the finish line; and their duties

shall be to hand time, place the horses in the correct order of finish, and report the results. In case of a dead heat or a disagreement as to the correct order of finish, the decision of the stewards shall be final. In placing the horses at the finish, the position of the horses' noses only shall be considered the most forward point of progress.

21. Duties Of The Clerk Of Scales. The clerk of scales is responsible for the presence of all jockeys in the jockey's room at the appointed time and to verify that all jockeys have a current Utah jockey's license. The clerk of scales shall verify the correct weight of each jockey at the time of weighing out and when weighing in, and shall report any discrepancies to the stewards immediately. In addition, he or she shall be responsible for the security of the jockey's room and the conduct of the jockeys and their attendants. He or she shall promptly report to the stewards any infraction of the Rules with respect to weight, weighing, riding equipment, or conduct. He or she shall be responsible for accounting of all data required on the scale sheet and submit that data to the horsemen's bookkeeper at the end of each race day.

22. Duties Of The Racing Secretary. The racing secretary shall write and publish conditions of all races and distribute them to horsemen as far in advance of the closing of entries as possible. He or she shall be responsible for the safekeeping of registration certificates and the return of same to the trainers on request or at the conclusion of the race meeting. He or she shall record winning races on the form supplied by the breed registry, which shall remain attached to or part of the registration certificate. The racing secretary shall be responsible for the taking of entries, checking eligibility, closing of entries, selecting the races to be drawn, conducting the draw, posting the overnight sheet, compiling the official program, and discharging such other duties of their office as required by the rules or as directed by the Stewards.

23. Duties Of Associate Judge. An associate judge may perform any of the duties which are performed by any racing official at a meeting, provided such duties are assigned or delegated to them by the Commission or by the stewards presiding at that meeting.

24. Duties Of The Official Veterinarian. The official veterinarian must be a graduate veterinarian and licensed to practice in the State of Utah. He or she shall recommend to the stewards any horse that is deemed unsafe to be raced, or a horse that it would be inhumane to allow to race. He or she shall supervise the taking of all specimens for testing according to procedures approved by the Commission. He or she shall provide proper safeguards in the handling of all laboratory specimens to prevent tampering, confusion, or contamination. All specimens collected shall be sent in locked and sealed cases to the laboratory. He or she shall have the authority and jurisdiction to supervise the practicing licensed veterinarians within the enclosure. The official veterinarian shall report to the Commission the names of all horses humanely destroyed or which otherwise expire at the meeting, and the reasons therefore. The official veterinarian may place horses on a veterinarian's list, and may remove from the list those horses which, in their opinion, can satisfactorily compete in a race.

25. Veterinarian's List. The official veterinarian may maintain a list of all horses who, in their opinion, are incapable of safely performing in a race and are, therefore, ineligible to be entered or started in a race. Such horse may be removed from the Veterinarian's List when, in the opinion of the official veterinarian, the horse has satisfactorily recovered the capability of performing in a race. The reasons for placing a horse on the veterinarian's list shall include the shedding of blood from one or both nostrils following exercise or the performance in a race and the running of a temperature unnatural to the horse.

26. Duties Of The Identifier. The identifier shall identify all horses starting in a race. The identifier shall inspect documents of ownership, eligibility, registration, or breeding as may be necessary to ensure proper identification of each horse eligible to compete at a race meeting provide assistance to the stewards in that regard. The identifier shall immediately report to the paddock judge and the stewards any horse which is not properly identified or any irregularities reflected in the official identification records. The identifier shall report to the stewards and to the Commission on general racing practices observed, and perform such other duties as the Commission may require. The identifier shall report to the racing secretary before the close of the race day business.

R52-7-7. Entries and Declarations.

1. Control Over Entries And Declarations. All entries and declarations are under the supervision of the Stewards or their designee; and they, without notice, may refuse the entries any person or the transfer of entries.

2. Racing Secretary To Establish Conditions. The racing secretary may establish the conditions for any race, the allowances or handicaps to be established for specific races, the procedures for the acceptance of entries and declarations, and such other conditions as are necessary to provide and conduct the organization's race meeting. The racing secretary is responsible for the receipt of entries and declarations for all races. The racing secretary, employees of their department, or racing officials shall not disclose any pertinent information concerning entries which have been submitted until all entries are closed. After an entry to a race for which conditions have been published has been accepted by the racing secretary or their delegate, no condition of such race shall be changed, amended or altered, nor shall any new condition for such race be imposed.

3. Entries. No horse shall be entered in more than one race on the same day. No person shall enter or attempt to enter a horse for a race unless such entry is a bona fide entry made with the intention that such horse is to compete in the race for which entry is made except, if racing conditions permit, for entry back in finals or consolations involving physically disabled or dead qualifiers for purse payment purposes. Entries shall be in writing on the entry card provided by the organization and must be signed by the trainer or assistant trainer of the horse. Entries made by telephone are valid properly confirmed by the track when signing the entry card. No horse shall be allowed to start unless the entry card has been signed by the trainer or his assistant trainer.

4. Determining Eligibility. Determination of a horse's eligibility, penalty or penalties and the right to allowance or allowances for all races shall be from the date of the horse's last race unless the conditions specify otherwise. The trainer is responsible for the eligibility of his horse and to properly enter his horse in condition. In the event the records of the Racing Secretary or the appropriate breed registry do not reflect the horse's most recent starts, the trainer or owner shall accurately provide such information. If a horse is not eligible under the first condition of any race, he cannot be eligible under subsequent conditions. If the conditions specify nonwinners of a certain amount, it means that the horse has not won a race in which the winner's share was the specified amount or more. If the conditions specify nonearners of a stated amount, it means that the horse has not earned that stated amount in any total number of races regardless of the horse's placing.

5. Entries Survive With Transfer. All entries and rights of entry are valid and survive when a horse is sold with his engagements duly transferred. If a partnership agreement is

properly filed with the Horsemen's Bookkeeper, subscriptions, entries and rights of entry survive in the remaining partners. Unless written notice to the contrary is filed with the stewards, the entries, rights of entry, and engagements remain with the horse and are transferred therewith to the new owner. No entry or right of entry shall become void on the death of the nominator unless the conditions of the race state otherwise.

6. Horses Ineligible To Start In A Race. In addition to any other valid ground or reason, a horse is ineligible to start any race if:

A. Such horse is not registered by The Jockey Club if a Thoroughbred; the American Quarter Horse Association if a Quarter Horse; the Appaloosa Horse Club if an Appaloosa; the Arabian Horse Club Registry of America if an Arabian; the American Paint Horse Association if a Paint; the Pinto Horse Association of America, Inc., if a Pinto; or any successors to any of the foregoing or other registry recognized by the Commission.

B. The Certificate of Foal Registration, eligibility papers, or other registration issued by the official registry for such horse is not on file with the racing secretary one hour prior to post time for the race in which the horse is scheduled to race.

C. Such horse has been entered or raced at any recognized race meeting under any name or designation other than the name or designation duly assigned by and registered with the official registry.

D. The Win Certificate, Certificate of Foal Registration, eligibility papers or other registration issued by the official registry has been materially altered, erased, removed, or forged.

E. Such horse is ineligible to enter said race, is not duly entered for such race, or remains ineligible to time of starting.

F. The trainer of such horse has not completed the prescribed licensing procedures required by the Commission before entry and the ownership of such horse has not completed the prescribed licensing procedures prior to the horse starting or the horse is in the care of an unlicensed trainer.

G. Such horse is owned in whole or in part or trained by any person who is suspended or ineligible for a license or ineligible to participate under the rules of any Turf Governing Authority or Stud Book Registry.

H. Such horse is a suspended horse.

I. Such horse is on the stewards' list, starter's list, or the veterinarian's list.

J. Except with permission of the stewards and identifier, the identification markings of the horse do not agree with identification as set forth on the registration certificate to the extent that a correction is required from the appropriate breed registry.

K. A horse has not been lip tattooed by a Commission approved tattooer.

L. The entry of a horse is not in the name of his true owner.

M. The horse has drawn into the field or has started in a race on the same day.

N. Its age as determined by an examination of its teeth by the official veterinarian does not correspond to the age shown on its registration certificate, such determination by tooth examination to be made in accordance with the current "Official Guide for Determining the Age of the Horse" as adopted by the American Association of Equine Practitioners.

7. Horses Ineligible To Enter Or Start. Any horse ineligible to be entered for a race or ineligible to start in any race which is entered or competes in such race, may be scratched or disqualified; and the stewards may discipline any person responsible.

8. Registration Certificate To Reflect Correct Ownership. Every certificate of registration, eligibility certificate or lease agreement filed with the organization and its racing secretary to establish the eligibility of a horse to be entered for any race shall accurately reflect the correct and true ownership of such horse, and the name of the owner which is printed on the official program for such horse shall conform to the ownership as declared on the certificate of registration or eligibility certificate. A stable name may be registered for such owner or ownership with the Commission. In the event ownership is by syndicate, corporation, partnership or other association or entity, the name of the owner which is printed on the official program for such shall be the responsible managing owner, officer, or partner who assumes all responsibilities as the owner.

9. Alteration Or Forgery Of Certificate Of Registration. No person shall alter or forge any win sheet, certificate of registration, certificate of eligibility, or any other document of ownership or registration, no willfully forge or alter the signature of any person required on any such document or entry card.

10. Declarations And Scratches. Any trainer or assistant trainer of a horse which has been entered in a race who does not wish such horse to participate in the draw must declare his horse from the race prior to the close of entries. Any trainer or assistant trainer of a horse which has been drawn into or is also eligible for a race who does not wish such horse to start in the race, must scratch his horse from the race prior to the designated scratch time. The declaration or scratch of a horse from a race is irrevocable.

11. Deadline For Arrival Of Entered Horses. All horses scheduled to compete in a race must be present within the enclosure no later than 30 minutes prior to their scheduled race without stewards' approval. Horses not within the enclosure by their deadline may be scratched and the trainer subject to fine and/or suspension.

12. Refund Of Fees. If a horse is declared or scratched from a race, the owner of such horse shall not be entitled to a refund of any nomination, sustaining and penalty payments, entry fees, or organization charges paid or remaining due at the time of the declaration or scratch. In the event any race is not run, declared off, or canceled for any reason, the owners of such horses that remain eligible at the time the race is declared off or canceled shall be entitled to a complete refund of all the above payments and fees less monies specified in written race conditions for advertising and promotion.

13. Release Of Certificates. Any certificate of registration or document of ownership filed with the racing secretary to establish eligibility to enter a race shall be released only to the trainer of record of the horse. However, the trainer may authorize in a form provided by the racing secretary the release of the certificate to the owner named on the certificate or his authorized agent. Any disputes concerning the rights to the registration certificates shall be decided by the stewards.

14. Nomination Races. Prior to the closing of nominations, the organization shall file with the Commission a copy of the nomination blank and all advertisements for races to be run during a race meeting. For all races which nominations close no earlier than 72 hours before post time, the organization shall furnish the Commission and the owners of horses previously made eligible by compliance with the conditions of such race, with a list of all horses nominated and which remain eligible. The list shall be distributed within 15 days after the due date of each payment and shall include the horse's name, the owner's name and the total amount of payments and gross purse to date, including any added monies, applicable interest, supplementary payments, and deduction for advertising and administrative expenses. The

organization shall deposit all monies for a nomination race in an escrow account according to procedures approved by the Commission.

15. Limitations On Field And Number Of Races. No race with less than two horses entered and run, shall be approved by the UHRC. No more than 20 races may be run on a race day, except with permission of the Commission. A race day may be canceled if less than 75 horses have been entered on the day's program, with the exception of days on which trials or finals for a nomination race are scheduled.

16. Agreement Upon Entry. No entry shall be accepted in any race except upon the condition that all disputes, claims, and objections arising out of the racing or with respect to the interpretation of Commission and track rules or conditions of any race shall be decided by the Board of Stewards at the race meet; or, upon appeal, decided by the Commission.

17. Selection Of Entered Horses. The manner of selecting post positions of horses shall be determined by the stewards. The selection shall be by lot and shall be made by one of the stewards or their designee and a horseman, in public, at the close of entries. If the number of entries to any race is in excess of the number of horses which may, because of track limitations, be permitted to start in any one race, the race may be split; or four horses not drawing into the field may be placed on an also eligible list.

18. Preferred List Of Horses. The racing secretary may maintain a list of entered horses eliminated from starting by a surplus of entries, and these horses shall constitute a preferred list and have preference. The manner in which the preferred list shall be maintained and all rules governing such list shall be the responsibility of the Racing Secretary. Such rules must be submitted to the Commission 30 days prior to the commencement of the meet and are subject to approval by the Commission.

R52-7-8. Veterinarian Practices, Medication and Testing Procedures.

1. Veterinary Practices - Treatment Restricted. Within the time period of 24 hours prior to the post time for the first race of the week until four hours after the last race of the week, no person other than Utah licensed veterinarians or animal technicians under direct supervision of a licensed veterinarian who have obtained a license from the Commission shall administer to any horse within the enclosure any veterinary treatment or any medicine, medication, or other substance recognized as a medication, except for recognized feed supplements or oral tonics or substances approved by the Official Veterinarian.

2. Veterinarians Under Supervision Of Official Veterinarian. Veterinarians licensed by the Commission and practicing at an authorized meeting are under the supervision of the Official Veterinarian and the Stewards. The Official Veterinarian shall recommend to the Stewards or the Commission the discipline to be imposed upon a veterinarian who violates the Rules, and he or she may sit with the Stewards in any hearing before the Stewards concerning such discipline or violation.

3. Veterinarian Report. Every veterinarian who treats any horse within the enclosure for any contagious or communicable disease shall immediately report to the official veterinarian in writing on a form approved by the Commission. The form shall include the name and location of the horse treated, the name of the trainer, the time of treatment, the probable diagnosis, and the medication administered. Each practicing veterinarian shall be responsible for maintaining treatment records on all horses to which they administer treatment during a given race meeting. These records shall be available to the Commission upon subpoena when required. Any such record and any report of treatment as described above is confidential; and its content shall not be disclosed except in a proceeding before the stewards or the Commission, or in the exercise of the Commission's jurisdiction.

4. Drugs Or Medication. Except as authorized by the provisions of this Article, no drug or medication shall be administered to any horse prior to or during any race. Presence of any drug or its metabolites or analogs, or any substance foreign to the natural horse found in the testing sample of a horse participating in a Commission-sanctioned race which are outside of the approved drug threshold levels set forth by California Horse Racing Board (CHRB) Rule No. 1844 (Effective 02/14/12), Authorized Medication, with sections (h)(2),(e)(9) and (f) exempted, hereby incorporated by reference. shall result in disqualification by the Stewards. Accordingly clenbuterol will be treated the same as all other drugs that are not specifically authorized. If the testing laboratory detects clenbuterol or its metabolites or analogs under the laboratory's standard operating procedures, the finding will be reported as a violation. When a horse is disqualified because of an infraction of this Rule, the owner or owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned. (See Drugs and Medications Exceptions, Section R67-7-13.)

5. Racing Soundness Examination. Each horse entered to race may be subject to a veterinary examination by the official veterinarian or his authorized representative for racing soundness and health on race day.

6. Positive Lab Reports. A finding by a licensed laboratory that a test sample taken from a horse contains a drug or its metabolites or analog, or any substance foreign to the natural horse shall be prima facie evidence that such has been administered to the horse either internally or externally in violation of these rules. It is presumed that the sample of urine, saliva, blood or other acceptable specimen tested by the approved laboratory to which it is sent is taken from the horse in question; its integrity is preserved; that all procedures of same collection and preservation, transfer to the laboratory, and analyses of the sample are correct and accurate; and that the report received from the laboratory pertains to the sample taken from the horse in question and correctly reflects the condition of the horse during the race in which he was entered, with the burden on the trainer, assistant trainer or other responsible party to prove otherwise at any hearing in regard to the matter conducted by the stewards or the Commission.

7. Intent Of Medication Rules. It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs, medication, and substances foreign to the natural horse.

8. Power To Have Tested. As a safeguard against the use of drugs, medication, and substances foreign to the natural horse, a urine or other acceptable sample shall be taken under the direction of the official veterinarian from the winner of every race and from such other horses as the stewards or the Commission may designate.

9. Pre-Race Testing. The stewards may require any horse entered to race to submit to a blood or other pre-race test, and no horse is eligible to start in a race until the owner or trainer complies with the required testing procedure.

10. Equipment For Official Testing. Organizations shall provide the equipment, necessary supplies and services prescribed by the Commission and the official veterinarian for the taking of or administration of blood, urine, saliva or other tests.

11. Taking Of Samples. Blood, urine, saliva or other

samples shall be taken under the direction of the official veterinarian or persons appointed or assigned by the official veterinarian for taking samples. All samples shall be taken in a detention area approved by the Commission, unless the Official Veterinarian approves otherwise. The taking of any test samples shall be witnessed, confirmed or acknowledged by the trainer of the horse being tested or his authorized representative or employee, and may be witnessed by the owner, trainer, or other licensed person designated by them. Samples shall be sent to racing laboratories approved and designated by the Commission, in such manner as the Commission or its designee may direct. All required samples shall be in the custody of the official veterinarian, his/her assistants or other persons approved by the official veterinarian from the time they are taken until they are delivered for shipment to the testing laboratory. No person shall tamper with, adulterate, add to, break the seal of, remove or otherwise attempt to so alter or violate any sample required to be taken by this Article, except for the addition of preservatives or substances necessarily added by the Commission-approved laboratory for preservation of the sample or in the process of analysis.

The Commission has the authority to direct the approved laboratory to retain and preserve samples for future analysis.

The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered in violation of these Rules to the horse earning such purse money.

12. Laboratories Approved By The Commission. Only laboratories approved by the Commission may be used in obtaining analysis reports on urine, or other specimens, taken from the winners or other designated horses of each race meeting. The Commission and the Board of Stewards shall receive reports directly from the laboratory.

13. Split Samples. As determined by the official veterinarian, when sample quantity permits, each test sample shall be divided into two portions so that one portion shall be used for the initial testing for unknown substances. If the Trainer or owner so requests in writing to the stewards within 48 hours of notice of positive lab report on the test sample of his horse, the second sample shall be sent for further testing to a drug testing laboratory designated and approved by the commission. Nothing in this rule shall prevent the commission or executive director from ordering first use of both sample portions for testing purposes. The results of said split sampling may not prevent the disqualification of the horse as per R52-7-8-4 and R52-7-8-6. All costs for transportation and testing of the second sample portion shall be the responsibility of the requesting person. The official veterinarian shall have overall supervision and responsibility for the freezing, storage and safeguarding of the second sample portion.

14. Facilitating The Taking Of Urine Samples. When a horse has been in the test barn more than 1-1/2 hours, a diuretic may be administered by the Official Veterinarian for the purpose of facilitating the collection of a urine sample with permission of the stewards and the trainer or the trainer's authorized test barn representative. The cost of administration of the diuretic is the responsibility of the trainer. Prior to the administration of a diuretic, a blood sample may be taken from the horse.

15. Postmortem Examination. Every horse which dies or suffers a breakdown on the racetrack in training or in competition within any enclosure licensed by the Commission and is destroyed, may undergo, at a time and place acceptable to the official veterinarian, a postmortem examination to the extent reasonably necessary to determine the injury or sickness which resulted in euthanasia or natural death. Any other horse which expires within any enclosure may be required by the official veterinarian to undergo a postmortem examination.

A. The postmortem examination required under this rule will be conducted by a licensed veterinarian employed by the owner or his trainer in consultation with the official veterinarian, who may be present at such postmortem examination.

B. Test samples may be obtained from the carcass upon which the postmortem examination is conducted and shall be sent to a laboratory approved by the Commission for testing for foreign substances or their metabolites and natural substances at abnormal levels. When practical, samples shall be procured prior to euthanasia.

C. The owner of the deceased horse shall make payment of any charges due the veterinarian employed by him to conduct the postmortem examination.

D. A record of such postmortem shall be filed with the official veterinarian by the owner's veterinarian within 72 hours of the death and shall be submitted on a form supplied by the Commission.

E. Each owner and trainer accepts the responsibility for the postmortem examination provided herein as a requisite for maintaining the occupation license issued by the Commission.

R52-7-9. Running the Race.

1. Jockeys To Report. Every jockey engaged to ride in a race shall report to the jockey room at least one hour before post time of the first race and shall weigh out at the appointed time unless excused by the stewards. After reporting, a jockey shall not leave the jockey room until all of their riding engagements have been fulfilled and/or unless excused by the stewards.

2. Entrance To Jockey Room Prohibited. Except with permission of the stewards or the Commission, no person shall be permitted entrance into the jockey room from one hour before post time for the first race until after the last race other than jockeys, their attendants, racing officials and security officers on duty, and organization employees performing required duties.

3. Weighing Out. All jockeys taking part in a race must be weighed out by the Clerk of Scales no more than one hour preceding the time designated for the race. Any overweight in excess of one pound shall be declared by the jockey to the Clerk of Scales, who shall report such overweight and any change in jockeys to the Stewards for immediate public announcement. A jockey's weight includes the riding costume, racing saddle and pad; but shall not include the jockey's safety helmet, whip, the horse's bridle or other regularly approved racing tack. A jockey must be neat in appearance and must wear a conventional riding costume.

4. Unruly Horses In The Paddock. If a horse is so unruly in the saddling paddock that the identifier cannot read the tattoo number and properly identify the horse; or if the trainer or their assistant is uncooperative in the effort to identify the horse, then the horse may be scratched by order of the stewards.

5. Use Of Equipment. No bridle shall weigh more than two pounds, nor shall any whip weigh more than one pound or be more than 31 inches in length. No whip shall be used unless it shall have affixed to the end thereof a leather "popper." All whips are subject to inspection and approval by the stewards. Blinkers are not to be placed on the horse until after the horse has been identified by the official identifier, except with permission of the stewards.

6. Prohibited Use Of Equipment. Jockeys are prohibited from whipping a horse excessively, brutally, or upon the head, except when necessary to control the horse.

No mechanical or electrical devices or appliances other then the ordinary whip shall be possessed by any individual or used on any horse at any time a race meeting, whether in a race or otherwise.

7. Responsibility For Weight. The jockey, trainer and owner shall be responsible for the weight carried by the horse after the jockey has been weighed out for the race by the clerk of scales. The trainer or owner may substitute a jockey when the engaged jockey reports an overweight in excess of two pounds.

8. Safety Equipment Required. All persons, when mounted on a race horse within the enclosure or riding in a race, shall wear a properly fastened safety helmet and flak jacket. The Commission or the stewards may require any other person to wear such helmet and jacket when mounted on a horse within the enclosure. All safety helmets and flak jackets so required are subject to approval of the stewards or Commission.

9. Display Of Colors And Post Position Numbers. In a race, each horse shall carry a conspicuous saddle cloth number, and the jockey shall wear racing colors consisting of long sleeves and a numbered helmet cover corresponding to the number of the horse which are furnished by the organization licensee.

10. Deposit Of Jockey Fee. The minimum jockey mount fee for a losing mount in the race must be on deposit with the horsemen's bookkeeper, prior to the time for weighing out, and failure to have such minimum fee on deposit is cause for disciplinary action and cause for the stewards to scratch the horse for which such fee is to be deposited. The organization assumes the obligation to pay the jockey fee when earned by the engaged jockey. The jockey fee shall be considered earned when the jockey is weighed out by the clerk of scales, unless, in the opinion of the stewards, such jockey capable of riding elect to take themselves off the mount without proper cause.

11. Requirements For Horse, Trainer, And Jockey. Every horse must be in the paddock at the time appointed by the stewards before post time for their race. Every horse must be saddled in the paddock stall designated by the paddock judge unless special permission is granted by the stewards to saddle elsewhere. Each trainer or their assistant trainer having the care and custody of such horse shall be present in the paddock to supervise the saddling of the horse and shall give such instructions as may be necessary to assure the best performance of the horse. Every jockey participating in a race shall give their best effort in order to facilitate the best performance of their horse.

12. Failure To Fulfill Jockey Engagements. No jockey engaged for a certain race or for a specified time may fail or refuse to abide by his or her agreement unless excused by the stewards.

13. Control And Parade Of Horses On The Track. The horses are under the control of the starter from the time they enter the track until dispatched at the start of the race. All horses with jockey mounted shall parade and warm up carrying their weight and wearing their equipment from the paddock to the starting gate, as well as to the finish line. Any horse failing to do so may be scratched by the stewards. After passing the stands at least once, the horses may break formation and warm up until directed to proceed to the starting gate. In the event a jockey is injured during the parade to post or at the starting gate and must be replaced, the horse shall be returned to the paddock and resaddled with the replacement jockey's equipment. Such horse must carry the replacement jockey to the starting gate.

14. Start Of The Race. When the horses have reached the starting gate, they shall be placed in their starting gate stalls in the order stipulated by the starter. Except in cases of emergency, every horse shall be started by the starter from a starting gate approved by the Commission. The starter shall see that the horses are placed in their proper positions without unnecessary delay. Causes for any delay in the start shall immediately be reported to the stewards. If, when the starter dispatches the field, the doors at the front of the starting gate stall should not open properly due to a mechanical failure of malfunction of the starting gate, the stewards may declare such horse to be a nonstarter. Should a horse which is not previously scratched not be in the starting gate stall thereby causing such horse to be left when the field is dispatched by the starter, such horse shall be declared a nonstarter by the stewards.

15. Leaving The Race Course. Should a horse leave the course while moving from the paddock to starting gate, he shall return to the course at the nearest practical point to that at which he left the course, and shall complete his parade to the starting gate from the point at which he left the course. However, should such horse leave the course to the extent that he is out of the direct line of sight of the stewards, or if such horse cannot be returned to the course within a reasonable amount of time, the stewards shall scratch the horse. Any horse which leaves the course or loses its jockey during the running of a race shall be disqualified and may be placed last, or the horse may be unplaced.

16. Riding Rules. In a straightaway race, every horse must maintain position as nearly as possible in the lane in which he starts. If a horse is ridden, drifts, or swerves out of their lane in such a manner that he interferes with or impedes another horse, it is a foul. Every jockey shall be responsible for making his best effort to control and guide his mount in such a way as not to cause a foul. The stewards shall take cognizance of riding which results in a foul, irrespective of whether an objection is lodged; and if in the opinion of the stewards a foul is committed as a result of a jockey not making his best effort to control and guide their mount to avoid a foul, whether intentionally or through carelessness or incompetence, such jockey may be penalized at the discretion of the stewards.

17. Stewards To Determine Fouls And Extent Of Disqualification. The stewards shall determine the extent of interference in cases of fouls or riding infractions. They may disqualify the offending horse and place it behind such other horses as in their judgment it interfered with, or they may place it last. The stewards may determine that a horse shall be unplaced.

18. Careless Riding. A jockey shall not ride carelessly or willfully so as to permit his or her mount to interfere with or impede any other horse in the race. A jockey shall not willfully strike at another horse or jockey so as to impede, interfere with, or injure the other horse or jockey. If a jockey rides in a manner contrary to this rule, the horse may be disqualified and/or the jockey may be fined and/or suspended, or otherwise disciplined.

19. Ramifications Of A Disqualification. When a horse is disqualified by the stewards, every horse in the race owned wholly or in part by the same owner, or trained by the same trainer, may be disqualified. When a horse is disqualified for interference in a time trial race, it shall receive the time of the horse it is placed behind plus 0.01 of a second penalty, or more exact measurement if photo finish equipment permits, and shall be eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

20. Dead Heat. When a race results in a dead heat, the heat shall not be run off. The purse distribution due the horses involved in the dead heat shall be divided equally between them. All prizes or trophies for which a duplicate is not awardable shall be drawn for by lot.

21. Returning To The Finish After The Race. After the

race, the jockey shall return their horse to the finish and before dismounting, salute the stewards. No person shall assist a jockey in removing from their horse the equipment that is to be included in the jockey's weight except by permission of the stewards. No person shall throw any covering over any horse at the place of dismounting until the jockey has removed the equipment that is to be included in his weight.

22. Objection - Inquiry Concerning Interference. Before the race has been declared official, a jockey, trainer or their assistant trainer, owner or their authorized agent of the horse, who has reasonable grounds to believe that their horse was interfered with or impeded or otherwise hindered during the running of a race, or that any riding rule was violated by any jockey or horse during the running of the race, may immediately make a claim of interference or foul with the stewards or their delegate. The stewards shall thereupon hold an inquiry into the running of the race; however, the stewards may upon their own motion conduct an inquiry into the running of a race. Any claim of foul, objection, and/or inquiry shall be immediately announced to the public.

23. Official Order Of Finish. When satisfied that the order of finish is correct, that all jockeys unless excused have been properly weighed in, and that the race has been properly run in accordance with the rules of the Commission, the Stewards shall declare that the order of finish is official; and it shall be announced to the public, confirmed, and the official order of finish posted for the race.

24. Time Trial Qualifiers. When two or more time trial contestants have the same qualifying time, to a degree of .001 of a second, or more exact measurement if photo finish equipment permits, for fewer positions in the finals or consolation necessary for all contestants, then a draw by lot will be conducted in accordance with Subsection R52-7-7(17). However, no contestant may draw into a finals or consolation instead of a contestant which out finished such contestant. When scheduled races are trial heats for futurities or stakes races electronically timed from the starting gates, no organization licensee shall move the starting gates or allow the starting gates to be moved until all trial heats are complete, except in an emergency as determined by the stewards.

R52-7-10. Objections and Protests; Hearing and Appeals.

1. Stewards To Make Inquiry Or Investigation. The stewards shall make diligent inquiry or investigation into any complaint, objection or protest made either upon their own motion, by any Racing Official, or by any other person empowered by this Article to make such complaint, protest or objection.

2. Objections. Objections to the participation of a horse entered an any race shall be made to the stewards in writing and signed by the objector. Except for claim of foul or interference, an objection to a horse entered in a race shall be made not later than two hours prior to the scheduled post time for the first race on the day which the questioned horse is entered. Any such objection shall set forth the specific reason or grounds for the objection in such detail so as to establish probable cause for the objection. The stewards upon their own motion may consider an objection until such time as the horse becomes a starter. An objection concerning claim of foul in a race may be lodged verbally to the stewards before the race results are declared official.

3. Grounds For Objections. An objection to a horse which is entered in a race shall be made on the following grounds or reasons:

A. A misstatement, error or omission in the entry under which a horse is to run.

B. That the horse which is entered to run is not the horse it is represented to be at the time of entry, or that the age is erroneously given.

C. That the horse is not qualified to enter under the conditions specified for the race, or that the allowances are improperly claimed or not entitled the horse, or that the weight to be carried is incorrect under the conditions of the race.

D. That the horse is owned in whole or in part, or leased by a person ineligible to participate in racing or otherwise ineligible to run a race as provided in these Rules.

E. That reasonable grounds exist whereby a horse was interfered with or impeded or otherwise hindered by another horse or jockey during the running of a race.

4. Horse Subject To Objection. The stewards may scratch from the race any horse which is the subject of an objection if they have reasonable cause to believe that the objection is valid.

5. Protests. A protest against any horse which has started in a race shall be made to the stewards in writing, signed by the protestor, within 48 hours of the race, except as noted in Subsection R52-7-10(8). Any such protest shall set forth the specific reason or reasons for the protest in such detail as to establish probable cause for protest. The stewards upon their own motion may consider a protest at any time.

6. Grounds For Protest. A protest may be made upon the following grounds:

A. Any ground for objection set forth in R52-1-10(3).

B. That the order of finish as officially determined by the stewards was incorrect due to oversight or errors in the numbers designated to the horses which started in the race.

C. That a jockey, trainer or owner of a horse which started in the race was ineligible to participate in racing as provided in these rules.

D. That the weight carried by a horse was improper by reason of fraud or willful misconduct.

E. That an unfair advantage was gained in violation of the rules.

7. Persons Empowered To File Objection Or Protest. A jockey, trainer, owner or authorized agent of the horse which is entered or is a starter in a race is empowered to file an objection or protest against any other horse in such race upon the grounds set forth in this Article for objections and protests.

8. No Limitation On Time To File When Fraud Alleged. Notwithstanding any other provision in this Article, the time limitation on the filing of protests shall not apply in any case in which fraud or willful misconduct is alleged, provided that the stewards are satisfied that the allegations are bona fide and susceptible to verification.

9. Frivolous Or Inaccurate Objection Or Protest. No person shall knowingly file a frivolous, inaccurate, false, or untruthful objection or protest; nor shall any person present his objection or protest to the stewards in a disrespectful or undignified manner.

10. Horse To Be Disqualified On Valid Protest. If a protest against a horse which has run in a race is declared valid, that horse may be disqualified. A horse so disqualified which was a starter in the said race, may be placed last in the order of finish or may be unplaced. The stewards or the Commission may order any purse, award or prize for any race withheld from distribution pending the determination of the protest(s). In the event any purse, award or prize has been distributed to a person on behalf of a horse which by protest or other reason is disqualified or determined not to be entitled to such purse, award or prize, the stewards or the Commission may order such purse, award or prize returned and redistributed to the rightful person. Any person who fails to comply with an order to return any purse, award or prize previously distributed shall be suspended until its return.

11. Notification Of And Representation At Hearing. Adequate notice of hearing shall be given to every summoned person in accordance with the procedures set forth in Subsection R52-7-3(6). Every person alleged to have committed a rule violation or who is called to testify before the stewards is entitled at the persons expense to have counsel present evidence and witnesses on his behalf and to cross-examine other witnesses at the hearing.

12. Testimony And Evidence At Hearing. Every person called to a hearing before the stewards for a rule violation shall be allowed to present testimony, produce witnesses, cross-examine witnesses, and present documentary evidence in accordance with the rules of privilege recognized by law.

13. Duty Of Disclosure. It is the duty and obligation of every licensee to make full disclosure at a hearing before the Commission or before the stewards of any knowledge he or she possesses of a violation of any racing law or of the rules of the Commission. No person may refuse to testify at any hearing on any relevant matter except in the proper exercise of a legal privilege, nor shall any person testify falsely.

14. Failure To Appear. Any licensee or summoned person who fails to appear before the stewards or the Commission after they have been ordered personally or in writing to do so, may be suspended pending appearance before the stewards or the Commission. Nonappearance of a summoned person after adequate notice may be construed as a waiver of right to be present at a hearing.

15. Record Of Hearing. All hearings before the stewards or Commission shall be recorded. That portion at a hearing constituting deliberations in executive session need not be recorded. A written transcript or a copy of the tape recording shall be made available to any person alleged to have committed a violation of the Act or the rules upon written request and payment of appropriate reimbursement cost(s) for transcription or reproduction.

16. Vote On Steward's Decision. A majority vote shall decide any question to which the authority of the stewards extends. If a vote is not unanimous, the dissent steward shall provide a written record to the Commission of the reasons for such dissent within 72 hours of the vote.

17. Rulings By The Stewards. Any ruling or order issued by the stewards shall specify the full name of the licensee or person subject to the ruling or order; most recent address on file with the Commission; date of birth; social security number; statement of the offense charged including any rule number; date of ruling; fine and/or suspension imposed or other action taken; changes in the order of finish and purse distribution in a race, when appropriate; and any other information deemed necessary by the stewards or the Commission. Any member of a Board of Stewards may, after consultation with and by mutual agreement of the other stewards, issue an Order or Notice signed by one steward on behalf of the Board of Stewards. Subsequently, an Order containing all three stewards' signatures shall be made part of the official record.

18. Summary Suspension Of Occupation Licensee. If the stewards or the Commission find that the public health, safety, or welfare require emergency action and incorporates such finding to that effect in any Order, summary suspension may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly initiated and held as provided in Subsection R52-7-10(19).

19. Duration Of Suspension Or Revocation. Unless execution of an order of suspension or revocation is stayed by the Commission or a court of competent jurisdiction, a person's occupation license, suspended or revoked, shall remain suspended or revoked until the final determination has been made pursuant to the provisions of Section R52-7-5.

20. Grounds For Appeal From Decision Of The Stewards. Any decision of the stewards, except decisions regarding disqualifications for interference during the running of a race, may be appealed to the Commission; and such decision may be overruled if it is found by a preponderance of evidence that:

A. The stewards mistakenly interpreted the law; or

B. The Appellant produces new evidence of a convincing nature which, if found to be true, would require the overruling of the decision; or

C. The best interests of racing and the State may be better served.

21. Appeal From Decision Of The Stewards. The Commission shall review hearings of any case referred to the Commission by the stewards or appealed to the Commission from the decisions of the stewards except as otherwise provided in this Article. Upon every appealable decision of the stewards, the person subject to the decision or Order shall be made aware of his right to an appeal before the Commission and the necessary procedures thereof. Appeals shall be made no later than 72 hours or the third calendar day from the date of the rendering of the decision of the stewards unless the Commission for good cause extends the time for filing not to exceed 30 days from said rendering date. The appeal shall be in writing, signed by the appellant; shall contain his full name, present mailing address, and present phone number; and shall set forth the facts and any new evidence the appellant believes to be grounds for an appeal before the Commission. Action on such a hearing request must commence by the Commission within 30 days of the filing of the appeal. An appeal shall not affect a decision of the stewards until the appeal has been sustained or dismissed or a stay order issued.

22. Appointment Of Hearing Examiners. When directed by the Commission, any qualified person(s) may sit as a hearing examiner(s) for the taking of evidence in any matter pending before the Commission. Any such hearing examiner shall report to the Commission Findings of Fact and Conclusions of Law, and the Commission shall determine the matter as if such evidence had been presented to the full Commission.

23. Hearings On Agreement. Persons aggrieved as of the result of a stewards' ruling in a preliminary or trial race may request a hearing before the executive director of the Commission to review same. If all interested parties waive the right to receive ten day notice of hearing, such a hearing may be heard on a day certain within seven days after the preliminary or trial race in question. All such appeals shall be heard on days set by the executive director of the Commission or anyone acting in his stead.

24. Temporary Stay Order. The Executive Director may, upon consultation with the direction of a minimum of three Commissioners, issue or deny a temporary stay order to stay execution of any ruling, order or decision of the stewards except stewards' decisions regarding disqualifications for interference during the running of a race. Any application for a temporary stay shall be in writing, signed by the appellant; shall contain his full name, present mailing address, and present phone number; shall set forth the facts and any evidence to justify the issuance of the stay; and shall be filed with the Office of the Commission as specified in Subsection R52-7-3(7). The granting of a temporary stay order shall carry no presumption that the stayed decision of the stewards is or may be invalid, and a temporary stay order may be dissolved at any time by further order of the executive director upon consultation with and the direction of a minimum of three Commissioners.

25. Appearance At Hearing Upon Appeal. The Commission shall notify the Appellant and the stewards of the date, time and location of its hearing in the matter upon

appeal. The burden shall be on the appellant to provide the facts necessary to sustain the appeal.

26. Complaints Against Officials. Any complaint against a racing official other than a steward shall be made to the stewards in writing and signed by the complainant. All such complaints shall be reported to the Commission by the stewards, together with a report of the action taken or the recommendation of the stewards. Complaints against any stewards shall be made in writing to the executive director of the Commission and signed by the complainant.

27. Rulings On Admissibility And Evidence. In all hearings, the chairperson, chief steward or such other person as may be designated, shall make rulings on admissibility and introduction of evidence. Such a ruling shall prevail; except when a Commission member or a steward requests a poll of the panel, and the ruling overturned by majority vote.

R52-7-11. General Conduct.

1. Conditions Of Meeting Binding Upon Licensees. The Commission, recognizing the necessity for an organization to comply with the requirements of its license and to fulfill its obligation to the public and the State of Utah with the best possible uninterrupted services in the comparatively short licensed period, herein provides that all organizations, officials, horsemen, owners, trainers, jockeys, grooms, farriers, organization employees, and all licensees who have accepted directly or indirectly, with reasonable advance notice, the conditions defined by these rules under which said organization engages and plans to conduct such race meeting, shall be bound thereby.

2. Trainer Responsibility. The trainer is presumed to know the "Rules of Racing" and is responsible for the condition, soundness, and eligibility of the horses he enters in a race. Should the chemical analysis, urine or otherwise, taken from a horse under his supervision show the presence of any drug or medication of any kind or substance, whether drug or otherwise, regardless of the time it may have been administered, it shall be taken as prima facie evidence that the same was administered by or with the knowledge of the trainer or person or persons under his supervision having care or custody of such horse. At the discretion of the stewards or Commission, the trainer and all other persons shown to have had care or custody of such horse may be fined or suspended or both. Under the provisions of this rule, the trainer is also responsible for any puncture mark on any horse he enters in a race, found by the stewards upon recommendation of the official veterinarian to evidence injection by syringe. If the trainer cannot be present on race day, he shall designate an assistant trainer. Such designation shall be made prior to time of entry, unless otherwise approved by the stewards. Failure to fully disclose the actual trainer of a horse participating in an approved race shall be grounds to disqualify the horse, and subject the actual trainer to possible disciplinary action by the stewards or the Commission. Designation of an assistant trainer shall not relieve the trainer's absolute responsibility for the conditions and eligibility of the horse, but shall place the assistant trainer under such absolute responsibility also. Willful failure on the part of the trainer to be present at, or refusal to allow the taking of any specimen, or any act or threat to prevent or otherwise interfere therewith shall be cause for disqualification of the horse involved; and the matter shall be referred to the stewards for further action.

3. Altering Sex Of Horse. Any alteration to the sex of a horse from the sex as recorded on the Certificate of Foal Registration or other official registration Certificate of such horse shall be immediately reported by the trainer to the racing secretary and the official horse identifier if such horse is registered to race at any race meeting.

4. Official Workouts And Schooling Races. No trainer shall permit a horse in his charge to be taken on to the track for training or a workout except during hours designated by the organization. A trainer desiring to engage a horse in a workout or schooling race shall, prior to such workout or race, identify the horse by registered name and tattoo number when requested to do so by the stewards or their authorized representative.

5. Intoxication. No licensee, employee of the organization or its concessionaires, shall be under the influence of intoxicating liquor, the combined influence of intoxicating liquor and any controlled dangerous substance, or under the influence of any narcotic or other drug while within the enclosure. No person shall in any manner or at any time disturb the peace or make themselves obnoxious on the enclosure of an organization.

6. Firearms. No person shall possess any firearm within the enclosure unless he is a fully qualified peace officer as defined in the laws of the State of Utah, or is acting in accordance with Title 53, Chapter 5, Part 7, Concealed Weapons Act and Title 76, chapter 10, Part 5, Utah Code. A person carrying a concealed weapon may be asked to show a valid, current concealed weapons permit before being allowed to enter the facility.

7. Financial Responsibility. No licensee shall willfully and deliberately fail or refuse to pay any monies when due for any service, supplies or fees connected with his operations as a licensee; nor shall he falsely deny any such amount due or the validity of the complaint thereof with the purpose of hindering or delaying or defrauding the person to whom such indebtedness is due. A commission authorized license may be suspended pending settlement of the financial obligation. Any financial responsibility complaint against a licensee shall be in writing, signed by the complainant, and accompanied by documentation of the services, supplies or fees alleged to be due, or by a judgment from a court.

8. Checks. No licensee shall write, issue, make or present a bad check in payment for any license fee, fine, nomination or entry fee or other fees, or for any service or supplies. The fact that such check is returned to the payee by the bank as refused is a ground for suspension pending satisfactory redemption of the returned check.

9. Gratuity To Starter Or Assistant Starter. No person shall offer or give money or other gratuity to any starter or assistant starter, nor shall any starter or assistant starter receive money or other compensation, gratuity or reward, in connection with the running of any race or races except compensation received from an organization for official duties.

10. Possession Of Contraband. No person other than a veterinarian or an animal technician licensed by the Commission shall have in his possession within the enclosure during sanctioned meetings any prohibited substance, or any hypodermic syringe or hypodermic needle or similar instrument which may be used for injection except as provided in Subsection R52-7-8(1). No person shall have in his or her possession within the enclosure during any recognized meeting any device other than the ordinary whip which can be used for the purpose of stimulating or depressing the horse or affecting its speed at any time. The stewards may permit the possession of drugs or appliances by a licensee for personal medical needs under such conditions as the stewards may impose.

11. Bribes. No person shall give, or offer or promise to give, or attempt to give or offer any money, bribe or thing of value to any owner, trainer, jockey, agent, or any other person participating in the conduct of a race meeting in any capacity, with the intention, understanding or agreement that such owner, trainer, jockey, agent or other person shall not use his best efforts to win a race or so conduct himself in such race

that any other participant in such race shall be assisted or enabled to win such race; nor shall any trainer, jockey, owner, agent or other person participating at any race meeting accept, offer to accept, or agree to accept any money, bribe or thing of value with the intention, understanding or agreement that he will not use his best efforts to win a race or to so conduct himself that any other horse or horses entered in such race shall thereby be assisted or enabled to win such race.

12. Trainer's Duty To Ensure Licensed Participation. No trainer shall have in his custody within the enclosure of any race meeting any horse owned in whole or in part by any person who is not licensed as a horse owner by the Commission unless such owner has filed an application for license as a horse owner with the Commission and the same is pending before the Commission; nor shall any trainer have in his employ within the enclosure any groom, stable employee, stable agent, or other person required to be licensed, unless such person has a valid license. All changes of commissioned licensed personnel shall be reported immediately to the Commission.

13. Conduct Detrimental To Horse Racing. No licensee shall engage in any conduct prohibited by law and by the rules of the Commission, nor shall any licensee engage in any conduct which by its nature is unsportsmanlike or detrimental to the best interest of horse racing.

14. Denial Of Access To Private Property. Nothing contained in these rules shall be deemed, expressly or implicitly, to prevent an organization from exercising the right to deny access to or to remove any person from the organization's premises or property for just cause.

15. Tricks/Schemes. No person shall falsify, conceal, or cover up by trick, scheme, or device a material fact; or make any false, fictitious, or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry regarding the prior racing record, pedigree, identity, or ownership of a registered animal in any matter related to the breeding, buying selling, or racing of such animal.

16. Prearranging The Outcome Of A Race. No licensed or unlicensed person may attempt or conspire to prearrange the outcome of a race.

R52-7-12. Fire Prevention and Security.

1. Security Control. Every organization conducting a race meeting shall maintain security controls over its premises, and such security controls are subject to the approval of the Commission.

2. Identification Required. No person shall be admitted to a restricted area within the enclosure without a license, visitor's pass, or other identification issued by the Commission or the organization on his person. Whenever deemed advisable, the stewards or the organization may require the visible display of the identification as a badge. No person shall use the license or credential issued to another, nor shall any person give or loan his license or credential to any other person.

3. Organization Credentials. The racing organization shall establish a system or method of issuing credentials or passes to restrict access to its restricted areas or to ensure that all participants at its meeting are licensed as required by this Article; provided, however, that no such system or methods may exclude any investigator or employee of the Commission or any peace officer when on duty; nor shall any person be excluded solely on the basis of sex, color, creed, or national origin or ancestry.

4. Organization To Prevent Unauthorized Access To Restricted Areas. Unless granted exemption by the Commission, every organization shall prevent access to and shall remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such restricted area is unauthorized. Nothing herein shall be construed to exclude members of the Commission and any staff members of the Commission in the conduct of official duties.

5. Examination Of Personal Effects. The Commission, its authorized officers or agents may enter the stables, rooms, or other places within the premises of a recognized meeting to inspect and examine the personal effects and property of any licensee or other person in or about or permitted access to any restricted area; and each licensee in accepting his license, and each person entering such restricted area does thereby consent thereto.

6. Obedience To Security Officers And Public Safety Officers. No licensee shall willfully ignore or refuse to obey any order issued by the stewards; the Commission; or any security officer of the organization; or any public officer of any police, fire or law enforcement agency when such order is issued or given in the performance of duty for the purpose of controlling any hazardous situation or occurrence. No person shall interfere with public safety officers, security officers or any racing official in the performance of their duties.

R52-7-13. Drugs and Medication Exceptions and Illegal Practices.

1. Horses Tested. The winner of every race and such other horses as the stewards or commission veterinarian may designate shall be escorted by the veterinarian assistant after the race to the testing enclosure for examination by the authorized representative of the Commission and the taking of specimens shall be by the commission veterinarian or his assistant.

2. Trainer Present at Testing. The trainer, or his authorized representative, must be present in the testing enclosure when a urine or other specimen is taken from a horse, the sample tag attached to the specimen shall be signed by the trainer or his representative, as witness of taking of the specimen. Willful failure to be present at or a refusal to allow the taking of the specimen, or any act or threat to impede or prevent or otherwise interfere therewith, shall subject the person or persons doing so to immediate suspension and fine by the stewards and the matter shall be referred to the Commission for such further penalty as may be determined.

3. Specimens Delivered to Laboratory. All specimens taken by or under the direction of the commission veterinarian, or other authorized representative of the Commission, shall be delivered to the laboratory approved by the Commission for official analysis. Each specimen shall be marked by number and date and may also bear such information as may be essential to its proper analysis; but the identity of the horse from the specimen was taken or the identity of its owner, trainer, jockey or stable shall not be revealed to the laboratory. The container of specimen shall be sealed as soon as the specimen is placed therein and shall bear the name of the Commission.

4. Medication. The commission veterinarian, the Commission or any member of the Board of Stewards may take samples of any medicines or other materials suspected of containing improper medication, drugs or chemicals which would affect the racing conditions of a horse in a race and which may be found in stables or elsewhere on race track grounds or in the possession of such tracks or any person connected with racing and the same shall be delivered to the laboratory designated by the Commission.

5. The Only Non-Steroidal Anti-Inflammatory Drug Permitted. Phenylbutazone shall be administered to the horse no later than 24 hours prior to the time the horse is scheduled

to race.

6. Phenylbutazone Levels Permitted and Penalty. No urine sample taken from a horse shall exceed 165 micrograms of phenylbutazone or its metabolites per milliliter of urine or shall not exceed 5 micrograms per milliliter of blood plasma. On a first violation period at phenylbutazone concentrations above 5 ug/ml but below 10 ug/ml plasma or serum: a minimum fine of $250.00; at concentrations above 10 ug/ml plasma: a fine of up to $500.00.

On a second violation within a 12 month period at phenylbutazone concentrations above 5 ug/ml but below 10 ug/ml plasma or serum: a minimum fine of $500.00; at concentrations above 10 ug/ml plasma: a fine of up to $1,000.00.

On a third or subsequent violation within a 12-month period: a fine of $1,000.00, a suspension of 30 days, and loss of purse.

7. Administered under Direction of Commission Licensed Veterinarian. Phenylbutazone must be administered under the direction of a commission licensed veterinarian.

8. List Provided. Horses which are on phenylbutazone shall not be indicated on the daily racing programs or any other publications except that a list of horses on phenylbutazone will be kept by the stewards.

9. Lasix Treatment. Any horse which exhibits symptoms of Epistaxis and/or respiratory tract hemorrhage is eligible for placement on the bleeder list and for treatment on race days with the approved medication to prevent or limit bleeding during racing.

10. Bleeders Listing. To be placed on the bleeders list, a horse must be found to have, during or immediately following a race or workout, shed free blood from one or both nostrils or bled internally in the respiratory tract. A Commission licensed veterinarian, following his or her personal examination of a horse, or after consulting with the horses' private veterinarian, shall be allowed to certify a horse as a bleeder. A universal bleeders certificate is required.

11. License Required. In any and all cases, private veterinarians must be licensed with the Utah Horse Racing Commission as a veterinarian in order to administer Lasix.

12. Horse Removed From Bleeders List. A Commission licensed veterinarian may remove a horse from the bleeders list, provided a request is made in writing and it is the recommendation of the veterinarian of the horse, or after an examination by the veterinarian, it is determined that the horse is not a bleeder or is no longer eligible for the bleeders list.

13. Treatment Procedure. Horses on the bleeders list must be treated at least four hours prior to post time with the bleeder medication furosemide, (i.e. Lasix). No other treatment is permitted for bleeder treatment. Bleeder medication must be administered by a licensed veterinarian or trainer in the manner approved by the official veterinarian, using dosages pursuant to CHRB Rule No. 1845, section (e), (Effective 5/27/05), Authorized Bleeder Medication, which is hereby incorporated by reference. Trainers are required to have Lasix forms completed by the veterinarian, the Lasix form must be returned to the test barn personnel within ten minutes of the time of administration of Lasix. The form shall include the date, time and amount of Lasix administered and the signature of the veterinarian. Upon receipt of the Lasix form, the test barn personnel shall log in the date and time of receipt. If the time of receipt exceeds the ten minute grace period, the test barn personnel shall notify the stewards, and the horse shall be scratched by the stewards for the day's racing.

14. Lasix Levels Permitted and Penalty. Any horse whose post race blood tests contains a level in excess of the levels set forth in CHRB Rule No. 1845, sections (b)-(c), (Effective 5/27/05), Authorized Bleeder Medication, hereby incorporated by reference, will be said to be positive for Lasix overage and in violation of Utah Horse Racing Rules and Regulations.

A. A finding of a chemist of furosemide (Lasix) exceeding the allowable test levels given above shall be considered prima facia evidence that the medication was administered to the horse and carried in the body of the horse while participating in the race.

B. In these cases, a fine and/or suspension will be levied to such horse trainer under the trainer responsibility rule and the horse will be disqualified from the race.

15. Horses Designated. The horses' trainer or designated agent is responsible to enter horses correctly indicating the prescribed medication for the horse. Horses approved for Lasix medication will be designated on the overnight and the daily program with a Lasix or "L". A list of horses approved for and using Lasix medication will be maintained by the stewards.

16. Bleeder Disqualification. Any horse that bleeds a second time in Utah shall not be able to race for a period of 30 days from the date of the second bleeding offense. Any horse that bleeds for a third time shall be suspended from racing for a period of one year from the date of the third offense. Any horse bleeding for the fourth time will be given a lifetime suspension from racing.

17. Disqualification of Owner or Trainer. A horse owner or trainer found to have committed illegal practices under this chapter or found to have administered any non-approved medication substances in violation of the rules in this chapter, shall be deemed disqualified and denied, or shall promptly return, any portion of the purse or sweepstakes or trophy awarded in the affected race, and shall be distributed as in the case of a disqualification. If the affected race is a qualifying race for a subsequent race and if a horse shall be so disqualified, the eligibility of the other horses which ran in the affected race, and which have started in the subsequent race before announcement of such disqualification shall not in any way be affected.

18. Hypodermic Instruments Prohibited. Except by specific written permission of the presiding steward, no person within the grounds of the racing association where the horses are lodged or kept shall have possession of, upon the premises which he occupies or has the right to occupy or in any of his personal property or effects, any hypodermic instrument, hypodermic syringes or hypodermic needle which may be used for injection into any horse of any medication prohibited by this rule. Every racing association is required to use all reasonable efforts to prevent the violation of this rule.

19. Search Provisions. Every racing association, the Commission or the stewards shall have the right to enter, search and inspect the buildings, stables, rooms and other places where horses which are eligible to race are kept, or where property and effects of the licensee are kept within the grounds of the association. Any licensee accepting a license shall be deemed to have consented to such search and to the seizure of any non-approved or prohibited materials, chemicals, drugs or devices and anything apparently intended to be used in connection therewith.

20. Daily Medication Reports. All practicing veterinarians must submit daily to the commission veterinarian a medication report form furnished by the Commission containing the following:

A. Name, age, sex and breed of the horse.

B. The permitted drug used (Bute or Lasix).

C. The time administered.

D. The route of the administration.

E. The report must be dated and signed by the

veterinarian so administering the medication. Any such report is confidential and its contents shall not be disclosed except in a proceeding before the stewards or the Commission or in the exercise of the Commission's jurisdiction.

21. Prima Facia Evidence. If the stewards find that any non-approved medication, for which the purpose of definition shall include any drug, chemical, narcotic, anesthetic, or analgesic has been administered to a horse in such a manner that it is present in a pre-race or post-race test sample, such presence shall constitute prima facia evidence that the horse has been illegally medicated.

22. Trainer Responsibility. Under all circumstances, the horse of record trainer shall be responsible for the horse he trains.

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R58. Agriculture and Food, Animal Industry.
R58-18. Elk Farming.
R58-18-1. Authority.

Regulations governing elk farming promulgated under authority of 4-39-106.

R58-18-2. Definitions.

In addition to the definitions found in Sections 4-1-9, 4-7-103, 4-24-2, 4-32-105, and 4-39-102, the following terms are defined for purposes of this rule:

(1) "Adjacent Herd" means a herd of Cervidae occupying premises that border an affected herd, including herds separated by fences, roads or streams, herds occupying a premises where Chronic Wasting Disease (CWD) was previously diagnosed, and herds that share the same license as the affected or source herd, even if separate records are maintained and no commingling has taken place.

(2) "Affected herd" means a herd of Cervidae where an animal has been diagnosed with CWD and confirmed by means of an approved test, within the previous 5 years.

(3) "Animal identification" means a device or means of individual animal identification.

(4) "Approved test" means approved tests for CWD surveillance which shall be those laboratory or diagnostic tests accepted nationally by USDA and approved by the State Veterinarian.

(5) "Commingled", "commingling" means that animals are commingled if they have direct contact with each other, have less than 10 feet of physical separation, or share equipment, pasture, feed, or water sources/watershed. Animals are considered to have commingled if they have had any such contact with a CWD positive animal or contaminated premises within the last 5 years.

(6) "CWD-exposed animal" means an animal that is part of a CWD-positive herd, or that has been exposed to a CWD-positive animal or contaminated premises within the previous 5 years.

(7) "CWD-exposed herd" means a herd in which a CWD-positive animal has resided for any period of time within 5 years prior to that animal's diagnosis as CWD-positive.

(8) "CWD Herd Certification Program" means the Chronic Wasting Disease Herd Certification Program.

(9) "CWD-positive animal" means an animal that has had a diagnosis of CWD confirmed by means of an official CWD test.

(10) "CWD-positive herd" means a herd in which a CWD positive animal resided at the time it was diagnosed and which has not been released from quarantine.

(11) "CWD-suspect animal" means an animal for which has been determined that laboratory evidence or clinical signs suggest a diagnosis of CWD.

(12) "CWD-suspect herd" means a herd in which a CWD suspect animal resided and which has not been released from quarantine.

(13) "Destination Herd" means the intended herd of residence, which will be occupied by the animal which is proposed for importation.

(14) "Domestic elk" as used in this chapter, in addition to 4-39-102, means any elk which has been born inside of, and has spent its entire life within captivity.

(15) "Elk" as used in this chapter means North American Wapiti or Cervus Elaphus nelsoni.

(16) "Herd of Origin" means the herd, which an imported animal has resided in, or does reside in, prior to importation.

(17) "Official slaughter facility" means a place where the slaughter of livestock occurs that is under the authority of the state or federal government and receives state or federal inspection.

(18) "Quarantine Facility" means a confined area where selected elk can be secured, contained and isolated from all other elk and livestock.

(19) "Raised" as used in the act means any possession of domestic elk for any purpose other than hunting.

(20) "Secure Enclosure" means a perimeter fence or barrier that is so constructed as to prevent domestic elk from escaping into the wild or the ingress of native wildlife into the facility.

(21) "Separate location" as used in Subsection 4-39-203(5) means any facility that may be separated by two distinct perimeter fences, not more than 10 miles apart, owned by the same person.

(22) "Trace Back Herd/Source Herd" means a herd of Cervidae where an animal affected with CWD has formerly resided.

(23) "Trace Forward Herd" means a herd of Cervidae which has received exposed animals that originated from a CWD positve herd within 5 years prior to the diagnosis of CWD in the positive herd or from the identified date of entry of CWD into the positive herd.

R58-18-3. Application and Licensing Process.

(1) Each applicant for a license shall submit a signed, complete, accurate and legible application on a Department issued form.

(2) In addition to the application, a general plot plan should be submitted showing the location of the proposed farm in conjunction with roads, towns, etc. in the immediate area.

(3) A facility number shall be assigned to an elk farm at the time a completed application is received by the Department.

(4) A complete facility inspection and approval shall be conducted prior to the issuing of a license or entry of elk to any facility. This inspection shall be made by an approved Department of Agriculture and Food employee and Division of Wildlife Resources employee. It shall be the responsibility of the applicant to request this inspection at least three working days in advance.

(5) Upon receipt of an application, inspection and approval of the facility, completion of the facility approval form, and receipt of the license fee, a license will be issued.

(6) All licenses expire on July 1st in the year following the year of issuance.

(7) Elk may enter into the facility only after a license is issued by the Department and received by the applicant.

R58-18-4. License Renewal.

(1) Each elk farm must make renewal application to the Department on the prescribed form no later than April 30th indicating its desire to continue as an elk farm. This application shall be accompanied by the required fee. Any license renewal application received after April 30th.

(2) Any application received after July 1st is delinquent and any animals on the premises will be quarantined until due process of law against the current owner has occurred. This may result in any or all of the following:

(a)revocation of the license;

(b) loss of the facility number;

(c) closure of the facility; or

(d) removal of the elk from the premises.

(3) Prior to renewal of the license, the facility will again be inspected by a Utah Department of Agriculture and Food employee.

(a) The employee will document that all fencing and facility requirements are met.

(b) The licensee shall provide a copy of the complete

inventory sheet of live animals to the inspector at the time of inspection.

(c) The employee will perform a physical inventory count of all elk on the premises.

(i) The individual animal identification numbers shall match with the inventory records received from the owner or manager of the elk facility and those maintained by the department.

(d) The employee will perform a visual general health check of all animals.

(e) Every year, the employee will perform an inventory of all elk by matching individual animal identification with the inventory records received from the owner/manager of the elk facility.

(f) The physical inventory and bookkeeping inventory must have at least a 95% match

R58-18-5. Facilities.

(1) All perimeter fences and gates shall meet the minimum standard as defined in Section 4-39-201.

(a) The perimeter fences and gates shall be constructed to prevent the movement of cervids, both captive and wild, into or out of the facility.

(2) Internal handling facilities shall be capable of humanely restraining an individual animal for the applying or reading of any animal identification, the taking of blood or tissue samples, or conducting other required testing by an inspector or veterinarian.

(a) Any such restraint shall be properly constructed to protect inspection personnel while handling the animals.

(b) Minimum requirements include a working pen, an alley way and a restraining chute.

(3) The licensee shall provide an isolation or quarantine holding facility which is adequate to contain the animals and provide proper feed, water and other care necessary for the physical well being of the animal(s) for the period of time necessary to separate the animal from other animals on the farm.

(4) Each location of a licensed facility with separate perimeter fences must have its own separate loading facility.

R58-18-6. Records.

(1) Licensed elk farms shall maintain accurate and legible office records showing the inventory of all elk on the facility.

(2) The inventory record of each animal shall include:

(a) Name and address of agent(s) which the elk was purchased from,

(b) Official identification number (tamper-resistant ear tag or USDA metal tag) and the secondary identification number,

(c) Age,

(d) Sex,

(e) Date of purchase or birth,

(f) Date of death or change of ownership (name of new owner and address should be recorded and retained), and

(g) Certificate of Veterinary Inspection if purchased out of state.

(3) The inventory sheet may be one that is either provided by the Department or may be a personal design of similar format.

(4) Any animal born on the property or transported into a facility must be added to the inventory sheet within seven days.

(5) Any elk purchased must be shown on the inventory sheet within 30 days after acquisition, including source.

(6) A death record of all elk 12 months of age and over that die; or that are otherwise harvested, slaughtered, killed, or destroyed shall be submitted to the Department within 48 hours after the discovery of the death of the animal.

R58-18-7. Genetic Purity.

(1) All elk entering Utah, except those going directly to slaughter, must have written evidence of genetic purity.

(2) Written evidence of genetic purity will include one of the following:

(a) Test charts from an approved lab that have run either a:

(i) Blood genetic purity test or

(ii) DNA genetic purity test.

(b) Registration papers from the North American Elk Breeders Association.

(c) Herd purity certification papers issued by another state agency.

(3) Genetic purity records must be kept on file and presented to the inspector at the time elk are brought into the state. process.

(4) Any elk identified as having red deer genetic factor shall be destroyed, or immediately removed from the state.

R58-18-8. Acquisition of or Slaughter of Elk.

(1) Only domesticated elk will be allowed to enter and be kept on any elk farm in Utah.

(2) All new elk brought into a facility shall be held in a quarantine facility until a livestock inspector has inspected the animal(s) to verify that all health, identification and genetic purity requirements have been met. New animals may not co-mingle with any elk already on the premises until this verification is completed by the livestock inspector.

(3) All elk presented for slaughter at an official slaughter facility, that have come from an out of state source, must arrive on a day when no Utah raised elk or elk carcasses are present at the plant.

(4) Individual elk identification must be maintained throughout slaughter and processing until such time that CWD test results have been returned from the laboratory.

(5) Out of state elk shall be tested for Brucellosis at the time of slaughter.

R58-18-9. Identification.

(1) All elk shall have two forms of identification attached to each animal.

(2) Each animal shall be permanently identified with a tamper-resistant electronic identification tag (RFID) or USDA metal tag.

(3) If the identification method chosen to use is the RFID tag, a reader must be made available, by the owner, to the inspector at the time of any inspection to verify electronic identification number. The RFID tag shall be placed in the right ear.

(4) Each newly purchased elk will not need to be re-tagged using the RFID tag if they already have this type of identification.

(5) Any purchased elk not already identified shall have the RFID tag applied within 30 days after arriving on the premises.

(6) All calves shall have the RFID tag applied within 15 days after weaning or in no case later than January 31st or before leaving the premises where they were born.

(7) In addition to the RFID tag an additional form of identification either a metal tag with a number unique to the farm, or a visible dangle ear tag within 15 days after weaning or in no case later than January 31st or before leaving the premises where they were born or within 30 days after arriving on the premises.

R58-18-10. Inspections.

(1) All facilities must be inspected within 60 days

before a license or the renewal of an existing license is issued. It is the responsibility of the applicant to arrange for an appointment with the Department for such inspection, giving the Department ample time to respond to such a request.

(2) All elk must be inspected for inventory purposes within 60 days before a license renewal can be issued.

(3) All elk must be inspected when any change of ownership, movement out of state, leaving the facility, or slaughter occurs except as indicated in (f) below.

(a) It is the responsibility of the licensee to arrange for any inspection with the local state livestock inspector.

(b) A minimum of 48 hours advance notice shall be given to the inspector.

(c) For the inspection, the licensee or his representative shall make available such records as will certify ownership, genetic purity, and animal health.

(d) All elk to be inspected shall be properly contained in facilities adequate to confine each individual animal for proper inspection.

(e) Animals shall be inspected before being loaded or moved outside the facility.

(f) Animals moving from one perimeter fence to another within the facility or from a licensed facility to another licensed facility owned by the same person within the state may move directly from one site to another site without a brand inspection, but must be accompanied with a copy of the facility license.

(4) Any elk purchased or brought into the facility from an out-of-state source shall be inspected upon arrival at a licensed farm before being released into an area inhabited by other elk. All requirements of R58-18-10(3) above shall apply to the inspection of such animals.

(5) A Utah Brand Inspection Certificate shall accompany any shipment of elk which are to be moved from a Utah elk farm.

(a) Shed antlers are excluded from needing an inspection.

(6) Proof of ownership and proper health papers shall accompany all interstate movement of elk to a Utah destination.

(7) Proof of ownership may include:

(a) A brand inspection certificate issued by another state.

(b) A purchase invoice from a licensed public livestock market showing individual animal identification.

(c) Court orders.

(d) Registration papers showing individual animal identification.

(e) A duly executed bill (notarized) of sale.

R58-18-11. Health Rules.

(1) Prior to the importation of elk, whether by live animals, gametes, eggs, sperm or other genetic material into the State of Utah, the importing party must obtain an import permit from the Utah State Veterinarian's office.

(a) An import permit number shall be issued only if the destination is licensed as an elk farm by the Utah Department of Agriculture and Food or an official slaughter facility.

(b) The import permit number for Utah shall be obtained by the local veterinarian conducting the official health inspection by contacting the Utah Department of Agriculture and Food.

(2) All elk imported into Utah must be examined by an accredited veterinarian prior to importation and must be accompanied by a valid Certificate of Veterinary Inspection, health certificate, certifying a disease free status.

(a) Minimum specific disease testing results or health statements must be included on the Certificate of Veterinary Inspection. Minimum disease testing requirement may be waived on elk traveling directly to an official slaughter facility.

(b) A negative tuberculosis test must be completed within 60 days prior to entry into the state. A retest is also optional at the discretion of the State Veterinarian.

(c) If animals do not originate from a tuberculosis accredited, qualified or monitored herd, they may be imported only if accompanied by a certificate stating that such domestic cervidae have been classified negative to two official tuberculosis tests that were conducted not less than 90 days apart, that the second test was conducted within 60 days prior to the date of movement. The test eligible age is six months or older, or less than six months of age if not accompanied by a negative testing dam.

(d) All elk being imported shall test negative for brucellosis if six months of age or older, by at least two types of official USDA brucellosis tests.

(e) The Certificate of Veterinary Inspection must also include the following signed statement: "To the best of my knowledge the elk listed herein are not infected with Johne's Disease (Paratuberculosis), CWD or Malignant Catarrhal Fever and have never been east of the 100 degree meridian."

(f) The Certificate of Veterinary Inspection shall also contain the name and address of the shipper and receiver, the number, sex, age and any individual identification on each animal.

(3) Additional disease testing may be required at the discretion of the State Veterinarian prior to importation or when there is reason to believe other disease(s), or parasites, or that some other health concerns are present.

(4) Imported or existing elk may be required to be quarantined at an elk farm when the State Veterinarian determines the need for and the length of such quarantine.

(5) Any movement of elk outside a licensed elk farm shall comply with standards as provided in the document entitled: "Uniform Methods and Rules (UM and R)", as approved and published by the USDA. The documents, entitled: "Tuberculosis Eradication in Cervidae, Uniform Methods and Rules", the May 15, 1994 edition, and "Brucellosis Cervidae, Uniform Methods and Rules", the September 30, 2003 edition as published by the USDA, are hereby incorporated by reference into this rule. These are the standards for tuberculosis and brucellosis eradication in domestic cervidae.

(6) Treatment of all elk for internal and external parasites is required within 30 days prior to entry, except elk going directly to slaughter.

(7) All elk imported into Utah must originate from a state or province, which requires that all suspected or confirmed cases of (CWD), be reported to the State Veterinarian or regulatory authority. The state or province of origin must have the authority to quarantine source herds and herds affected with or exposed to CWD.

(8) Based on the State Veterinarian's approval, all elk imported into Utah shall originate from states, which have implemented a Program for Surveillance, Control, and Eradication of CWD in Domestic Elk.

(a) All elk imported to Utah must originate from herds that have been participating in a verified CWD surveillance program for a minimum of 5 years.

(b) Animals will be accepted for movement only if epidemiology based on vertical and horizontal transmission is in place.

(9) No elk originating from a CWD affected herd, trace back herd/source herd, trace forward herd, adjacent herd, or from an area considered to be endemic to CWD, may be imported to Utah.

(10) Elk semen, eggs, or gametes require a Certificate of Veterinary Inspection verifying the individual source animal

has genetic purity and certifying that it has never resided on a premises where CWD has been identified or traced. An import permit obtained by the issuing veterinarian must be listed on the Certificate of Veterinary Inspection.

R58-18-12. CWD Surveillance and Investigation.

(1) The owner, veterinarian, or inspector of any elk which is suspected or confirmed to be affected with CWD in Utah is required to report that finding to the State Veterinarian immediately upon finding.

(2) The State Veterinarian will promptly investigate all animals reported as CWD-exposed, CWD-suspect, or CWD-positive animals, including but not limited to:

(a) Conduct an epidemiologic investigation of CWD-positive, CWD-exposed, and CWD-suspect herds that includes the designation of suspect and exposed animals and that identifies animals to be traced;

(b) Conduct tracebacks of CWD-positive animals and traceouts of CWD-exposed animals and report any out-of-State traces to the appropriate State promptly after receipt of notification of a CWD-positive animal; and

(c) Conduct tracebacks based on slaughter or other sampling promptly after receipt of notification of a CWD-positive animal at slaughter.

(d) With the approval of the Commissioner of Agriculture, the State Veterinarian will place the facility under quarantine and any trace-back or trace-forward facility as needed.

(e) Any elk over 12 months of age that dies or is otherwise slaughtered or destroyed from a CWD-positive, CWD-exposed, and CWD-suspect herd shall have the brain stem (obex portion of the medulla) and medial retropharyngeal lymph nodes collected for testing for CWD by an official test.

(i) The samples shall be collected by an accredited veterinarian, or an approved laboratory, person trained and approved by the State Veterinarian.

(ii) Carcasses and tissues from these animals will be either secured by a state or federally inspected slaughter establishment until testing is completed.

(iii) Carcasses and tissues from animals testing positive must be disposed of by incineration or other means approved by the State Veterinarian.

(3) Each elk farm, licensed in Utah, shall be required to submit the brain stem (obex portion of the medulla) and medial retropharyngeal lymph nodes of any elk over 12 months of age that dies or is otherwise slaughtered or destroyed, for testing for CWD by an official test. The samples shall be collected by an accredited veterinarian, an approved laboratory, or person trained and approved by the State Veterinarian. Farms owning 20 or more elk maybe allowed up to a 10% error rate on samples per year; farms owning less than 20 elk will not have an acceptable error rate.

(4) Each hunting park, licensed in Utah, shall be required to submit the brain stem (obex portion of the medulla) and medial retropharyngeal lymph nodes of all elk over 12 months of age that die, or that are otherwise harvested, slaughtered, killed, or destroyed, for testing for CWD with an official test. The samples shall be collected by an accredited veterinarian, approved laboratory, or person trained and approved by the State Veterinarian. Hunting parks maybe allowed up to a 10% error rate on samples per year with consideration taken when elk are shot in an area of the elk that causes an unacceptable sample.

(5) The CWD surveillance samples from elk residing on licensed elk farms and elk hunting parks shall be collected and preserved in formalin within 48 hours following the death of the animal, and submitted within 7 days to a laboratory approved by the State Veterinarian. Training of approved personnel shall include collection, storing, handling, shipping, and identification of specimens for submission.

(6) Laboratory fees and expenses incurred for collection and shipping of samples shall be the responsibility of the participating elk farm or hunting park.

(7) The designation and disposition of CWD exposed, positive, or suspect animals or herds in Utah shall be determined by the State Veterinarian.

R58-18-13. CWD Herd Certification Status.

(1) Initial and subsequent status.

(a) When a herd is first enrolled in the CWD Herd Certification Program, it will be placed in First Year status, except that; if the herd is comprised solely of animals obtained from herds already enrolled in the Program, the newly enrolled herd will have the same status as the lowest status of any herd that provided animals for the new herd.

(b) If the herd continues to meet the requirements of the CWD Herd Certification Program, each consecutive year, on the anniversary of the enrollment date the herd status will be upgraded by 1 year, i.e., Second Year status, Third Year status, Fourth Year status, and Fifth Year status.

(c) One year from the date a herd is placed in Fifth Year status, the herd status will be changed to "Certified" and the herd will remain in "Certified" status as long as it is enrolled in the program, provided its status is not lost or suspended in accordance with this section.

(2) Loss or suspension of herd status.

(a) If a herd is designated a CWD-positive herd or a CWD-exposed herd, it will immediately lose its program status and may only re-enroll after entering into an approved herd plan.

(b) If a herd is designated a CWD-suspect herd, a trace back herd, or a trace forward herd, it will immediately be placed in Suspended status pending an epidemiologic investigation.

(i) If the epidemiologic investigation determines that the herd was not commingled with a CWD-positive animal, the herd will be reinstated to its former program status, and the time spent in Suspended status will count toward its promotion to the next herd status level or maintenance of certified status.

(ii) If the epidemiologic investigation determines that the herd was commingled with a CWD-positive animal, the herd will lose its program status and will be designated a CWD-exposed herd.

(iii) If the epidemiological investigation is unable to make a determination regarding the exposure of the herd, because the necessary animal or animals are no longer available for testing (i.e., a trace animal from a known positive herd died and was not tested) or for other reasons, the herd status will continue as Suspended unless and until a herd plan is developed for the herd.

(iv) If a herd plan is developed and implemented, the herd will be reinstated to its former program status, and the time spent in Suspended status will count toward its promotion to the next herd status level; Except that, if the epidemiological investigation finds that the owner of the herd has not fully complied with program requirements for animal identification, animal testing, and recordkeeping, the herd will be reinstated into the CWD Herd Certification Program at the First Year status level, with a new enrollment date set at the date the herd entered into Suspended status.

(v) Any herd reinstated after being placed in Suspended status must then comply with the requirements of the herd plan as well as the requirements of the CWD Herd Certification Program. The herd plan will require testing of all animals that die in the herd for any reason, regardless of the age of the animal, may require movement restrictions for

animals in the herd based on epidemiologic evidence regarding the risk posed by the animals in question, and may include other requirements found necessary to control the risk of spreading CWD.

(c) If the Department determines that animals from a herd enrolled in the program have commingled with animals from a herd with a lower program status, the herd with the higher program status will be reduced to the status of the herd with which its animals commingled.

(3) Cancellation of enrollment by the Department.

(a) The Department may cancel the enrollment of an enrolled herd by giving written notice to the herd owner.

(b) In the event of such cancellation, the herd owner may not reapply to enroll in the CWD Herd Certification Program for 5 years from the effective date of the cancellation.

(c) The Department may cancel enrollment after determining that the herd owner failed to comply with any requirements of this section. Before enrollment is canceled, the Department will inform the herd owner of the reasons for the proposed cancellation in writing.

(d) Herd owners may appeal cancellation of enrollment, loss, or suspension of herd status by writing to the Commissioner of Agriculture within 10 days after being informed of the reasons for the proposed action.

(i) The appeal must include all of the facts and reasons upon which the herd owner relies to show that the reasons for the proposed action are incorrect or do not support the action.

(ii) The Commissioner of Agriculture will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision.

(iii) If there is a conflict as to any material fact, a hearing will be held to resolve the conflict.

(iv) The cancellation of enrollment, loss, or suspension of herd status shall become effective pending final determination in the proceeding if the Commissioner of Agriculture determines that such action is necessary to prevent the possible spread of CWD.

(A) Such action shall become effective upon oral or written notification, whichever is earlier, to the herd owner.

(B) In the event of oral notification, written confirmation shall be given as promptly as circumstances allow.

(v) This cancellation of enrollment or loss or suspension of herd status shall continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Commissioner of Agriculture.

(4) Herd status of animals added to herds.

(a) A herd may add animals from herds with the same or a higher herd status in the CWD Herd Certification Program with no negative impact on the certification status of the receiving herd.

(b) If animals are acquired from a herd with a lower herd status, the receiving herd reverts to the program status of the sending herd.

(c) If a herd participating in the CWD Herd Certification Program acquires animals from a nonparticipating herd, the receiving herd reverts to First Year status with a new enrollment date of the date of acquisition of the animal.

R58-18-14. Herd Plan.

(1) A written herd plan will be developed by the State Veterinarian with input from the herd owner, USDA, and other affected parties.

(2) The herd plan sets out the steps to be taken to eradicate CWD from a CWD positive herd, to control the risk of CWD in a CWD-exposed or CWD-suspect herd, or to prevent introduction of CWD into another herd.

(3) A herd plan will require:

(a) specified means of identification for each animal in the herd;

(b) regular examination of animals in the herd by a veterinarian for signs of disease;

(c) reporting to a State or USDA representative of any signs of central nervous system disease in herd animals;

(d) maintaining records of the acquisition and disposition of all animals entering or leaving the herd, including the date of acquisition or removal, name and address of the person from whom the animal was acquired or to whom it was disposed and cause of death, if the animal died while in the herd.

(4) A herd plan may also contain additional requirements to prevent or control the possible spread of CWD, depending on the particular condition of the herd and its premises, including but not limited to:

(a) specifying the time for which a premises must not contain cervids after CWD positive, exposed, or suspect animals are removed from the premises;

(b) fencing requirements;

(c) depopulation or selective culling of animals;

(d) restrictions on sharing and movement of possibly contaminated livestock equipment;

(e) cleaning and disinfection requirements, or other bio-security requirements.

(5) The State Veterinarian must approve all movement of cervids onto or off of the facility.

(a) Movement restriction of cervids will remain in place until requirements of the plan have been met.

(6) The State Veterinarian may review and revise a herd plan at any time in response to changes in the situation of the herd or premises or improvements in understanding of the nature of CWD epidemiology or techniques to prevent its spread.

R58-18-15. Grounds for Denial, Suspension, or Revocation of Licenses for Domestic Elk Facilities.

(1) A license to operate a domestic elk facility may be denied, suspended, or revoked by the Department for any of the following reasons:

(a) Incomplete application or incorrect application information;

(b) Incorrect records or failure to maintain required records;

(c) Not presenting animals for identification at the request of the Department;

(d) Failure to notify Department of movement of elk onto or off of the facility;

(e) Failure to identify elk as required;

(f) Movement of imported elk onto facility without obtaining a Certificate of Veterinary Inspection which has an import permit number obtained from the Department;

(g) Importing animals that are prohibited or controlled as listed in rule R657-3;

(h) Failure to notify the Department concerning an escape of an animal from a domestic elk facility;

(g) Failure to maintain a perimeter fence that prevents escape of domestic elk or ingress of wild cervids into the facility;

(i) Failure to notify the Division of Wildlife Resources that there are wild cervids inside a domestic elk farm or hunting park;

(j) Failure to participate with the Utah Department of Agriculture and Food and the Utah Division of Wildlife Resources in a cooperative wild cervid removal program;

(k) Failure to have inventories match with at least a 95% match;

(l) Failure to submit the acceptable rate of CWD test samples;

(m) Failure to have the minimum proper equipment necessary to safely and humanely handle animals in the facility; or

(l) Inhumane handling or neglect of animals on the facility as determined by the Department.

(2) Once the Department has notified the operator of a domestic elk facility of the denial, suspension, or revocation of a license to operate a domestic elk facility, the operator has 15 calendar days to request an appeal with the Commissioner of Agriculture.

(3) An operator of a domestic elk facility that has had their license revoked shall remove all elk from the facility within 30 calendar days by:

(a) Sending all elk to an inspected facility for slaughter; or

(b) Selling elk to another facility;

(4) Any elk remaining on the facility at the end of 30 days will be sold by the Department during a special sale conducted for that purpose.

KEY: chronic wasting disease, elk, inspections
July 22, 2019 4-39-106
Notice of Continuation January 12, 2017

R58. Agriculture and Food, Animal Industry.
R58-20. Domesticated Elk Hunting Parks.
R58-20-1. Authority and Purpose.

In accordance with the Domesticated Elk Act, and the provisions of Section 4-39-106, Utah Code, this rule specifies:

(a) procedures for obtaining domesticated elk facility licenses,

(b) requirements for operating those facilities,

(c) standards for disposal/removal of animals within those facilities,

(d) health standards and requirements in such facilities;

(e) issuance of domesticated elk hunting permits;

(f) exchange of domesticated elk hunting permits; and

(g) refund of domesticated elk hunting permits.

R58-20-2. Definitions.

In addition to terms used in Section 4-39-102, and R58-18-2:

(1) "Division" means the Division of Animal Industry, in the Utah Department of Agriculture and Food.

(2) "Domestic elk" means any elk which is born inside of, and has spent its entire life in captivity, and is the offspring of domestic elk.

(3) "Elk farm" means a place where domestic elk are raised, bred and sold within the practice of normal or typical ranching operations.

(4) "Hunting Park" means a place where domestic elk are harvested through normal or typical hunting methods.

(5) "Isolation Facility" means a confined area where selected elk can be secured, contained and isolated from all other elk or livestock.

(6) "Secure Enclosure" means a perimeter fence or barrier that is constructed and maintained in accordance with Section 4-39-201 and will prevent domestic elk from escaping into the wild or the ingress of big game wildlife into the facility.

R58-20-3. Application and Licensing Process.

(1) Pursuant to Section 4-39-203, Utah Code, the owner of each facility that is involved in the hunting of domestic elk must first fill out and complete a separate elk hunting park application which shall be submitted to the Division for approval.

(2) In addition to the application, a general plot plan should be submitted showing the location of the proposed hunting park in conjunction with roads, town, etc. in the immediate area.

(3) A facility number shall be assigned to an elk hunting park at the time a completed application is received at the Department of Agriculture and Food building.

(4) A complete facility inspection and approval shall be conducted prior to the issuing of a license or entry of elk to any facility. This inspection shall be made by an approved Department of Agriculture and Food employee and Division of Wildlife Resources employee. It shall be the responsibility of the applicant to request this inspection at least 72 hours in advance.

(5) Upon receipt of an application, inspection and approval of the facility, completion of the facility approval form, and receipt of the license fee, a license will be issued.

(6) All licenses for hunting parks expire on July 1 in the year following the year of issuance.

(7) No domestic elk shall be allowed to enter a hunting park until a license is issued by the division and received by the applicant.

R58-20-4. License Renewal.

(1) All laws found in Section 4-39-205 and rules found in R58-18-4 pursuant to the renewal of elk farms are applicable to elk hunting parks.

R58-20-5. Facilities.

(1) Fencing requirements established by Section 4-39-201 of the Utah Code are applicable to both domestic elk farms and hunting parks.

(2) A hunting park for domesticated elk may be no smaller than 600 fenced contiguous acres, with sufficient trees, rocks, hills and natural habitat, etc. to provide cover for the animals. Hunting park owners intending to operate facilities larger than 5,000 acres must obtain prior written approval of the Elk Advisory Council, following studies, reviews or assessments, etc., which the Council may deem necessary to undertake, in order to make an informed decision.

(3) There shall be notices posted on the outside fence and spaced a minimum of every 100 yards, to notify the public that the land area is a private hunting park.

(4) Each location of a licensed facility with separate perimeter fences must have its own separate loading facility.

(5) To be licensed, the park must include a handling and isolation facility which can be accessed and operated with reasonable ease for identification and disease control purposes. An exception to this rule may be granted in cases where there is a licensed farm owned by the same individual within 50 miles of the hunting park which can be accessed in a reasonably short period of time.

R58-20-6. Records.

(1) All laws and rules set forth in Sections 4-39-206 and R58-18-6 apply to hunting parks.

R58-20-7. Genetic Purity.

(1) All laws and rules found in Sections 4-39-301 and R58-18-7 pursuant to genetic purity are applicable to hunting parks.

R58-20-8. Acquisition of Elk.

(1) All laws and rules found in Sections 4-39-302, 4-39-303, R58-18-8 and R58-18-11 pursuant to importation or acquisition of domestic elk are applicable to hunting parks.

R58-20-9. Identification.

(1) All laws and regulations provided in Sections 4-39-304 and R58-18-9 governing individual animal identification are applicable in hunting parks.

R58-20-10. Inspections.

(1) All hunting park facilities must be inspected yearly within 60 days before a license or the renewal of an existing license is issued. It is the responsibility of the applicant to arrange for an appointment with the department for such inspection, giving the department ample time to respond to such a request.

(2) All elk must be inspected for inventory purposes within a reasonable timely period before a license renewal can be issued.

(a) All elk must be removed from hunting grounds by harvest or recapture by December 31 of each year to ensure conclusive inventory.

(3) All live domestic elk must be brand inspected prior to entering or leaving the park.

(4) Any elk purchased or brought into the facility from an out-of-state source shall be inspected upon arrival at a licensed hunting park before being released into an area inhabited by other domestic elk.

(5) A Utah Brand Inspection Certificate shall accompany any shipment of live elk into or out of the hunting

park including those which move from facility to facility within Utah.

(6) A Domestic Elk Harvest Permit must be filled out by the park owner at the time of harvest. One copy of the permit shall be sent to the division office, one copy shall go to the hunter and one copy shall be kept on file at the facility. Validated tags must be attached to the carcass and the antlers prior to leaving the park and remain affixed during transportation to residence, meat processor, taxidermist, etc.

(7) Pursuant to Section 4-39-207, agricultural inspectors may, at any reasonable time during regular business hours, have free and unimpeded access to inspect all facilities, animals and records where domestic elk are kept.

R58-20-11. Health Rules.

(1) All laws and rules found in Sections 4-39-107, R58-18-11 and R58-18-12 pursuant to animal health are applicable to hunting parks.

R58-20-12. Meat.

(1) The selling of domestic elk meat obtained from a licensed hunting park will not be allowed and:

(a) Must be consumed by either the hunter or park owner or their immediate family members, regular employees or guests, or the meat shall be:

(b) Donated as a charitable food item in compliance with Section 4-34-103 of the Utah Agriculture Code.

R58-20-13. Dissolution of an Elk Hunting Park.

(1) Before an elk hunting park can be dissolved all elk must be removed from the premises.

(2) Any abandoned elk will be removed by the Utah Department of Agriculture and Food using lethal means.

(a) Carcasses will be disposed of by either disposal in an approved landfill, incineration, or donated as a charitable food item in compliance with Section 4-34-103 of the Utah Agriculture Code.

(b) Costs for removal of abandoned elk will be charged to the owner of the elk hunting park.

R58-20-14. Liability.

(1) All laws found in Section 4-39-401 concerning the escape of domesticated elk are applicable to hunting parks.

(2) A hunting park owner shall remove all wild big game animals prior to enclosing the park. If wild big game animals are found within the park after it has been licensed, the owner shall notify the Division of Wildlife Resources within 48 hours. A cooperative removal program may be designed by the parties involved to remove the animals.

(3) No person(s) may hunt domestic elk in an approved park without first being issued written permission to do so from the owner. The approval document shall be in the hunter's possession during hunting times. Hunting hours will be from 1/2 hour before sunrise to 1/2 hour after sunset.

(4) In accordance with the state's governmental immunity act, as found in Section 63G-7-101, et seq., the granting of a hunting park license or the imposing of a requirement to gain an owner's permission does not attach any liability to the state for any accident, mishap or injury that occurs on, adjacent to, or in connection with the hunting park.

R58-20-15. Obtaining Domesticated Elk Harvest Permits.

(1) An owner of a licensed domesticated elk hunting park may purchase domesticated elk harvest permits beginning July 1st.

(2) Application for the domesticated elk harvest permits shall be made on forms approved by the Department.

(3) Payment for harvest permits shall be received prior to issuance of any harvest permits.

R58-20-16. Harvest Permit Terms.

(1) Harvest season for domesticated elk begins on August 1st and ends December 31st.

(2) Permits are only valid for the hunting season for which they are issued.

R58-20-17. Exchanges of Harvest Permits.

(1) An owner of a licensed domesticated hunting park may exchange a harvest permit issued to a hunter without paying an additional fee for a permit provided:

(a) a signed affidavit by the owner of the hunting park stating that a domesticated elk was not harvested by the person listed on the permit: and

(b) all unused copies of the permit are returned to the department before the replacement permit may be issued.

R58-20-18. Refunds.

(1) A refund may be issued to the owner of a domesticated elk hunting park if a domesticated elk harvest provided the owner of the facility:

(a) submits an application for refund prior to May 1st; and

(b) the harvest permit is returned unused.

KEY: elk, hunting permits, hunting parks, inspections
July 22, 2019 4-39-106
Notice of Continuation January 7, 2019

R64. Agriculture and Food, Conservation Commission.
R64-1. Agriculture Resource Development Loans (ARDL).
R64-1-1. Authority and Purpose.

Pursuant to Section 4-18-105, this rule establishes general operating practices by which the Agriculture Resource Development Loan (ARDL) program shall function.

R64-1-2. Definitions.

(1) "Commission" means the Utah Conservation Commission created by Section 4-18-4, which directs and implements the Agriculture Resource Development Loan program throughout the State of Utah, chaired by the Commissioner of the Utah Department of Agriculture and Food.

(2) "ZEC" means a zone executive committee representing several conservation districts in a geographic area consisting of one member from each of the conservation districts in that zone to coordinate ARDL activities.

(3) "CD Board" means a conservation district board consisting of five elected supervisors within each conservation district created by Section 4-18-105, to coordinate ARDL activities at the district level.

(4) "ARDL Program Coordinator or Loan Administrator" means the staff administrator of the ARDL program employed by the Department of Agriculture and Food.

(5) "Technical Assistance" or "Technical Assistance Agency" means such individuals or group of individuals, including administrative services, who may be requested by an applicant client to provide specialized input for proposed projects.

(6) "Executive Committee" means a committee, made up of the commission chair and at least two other members selected from and approved by the commission, who approve applications for presentation to the commission.

(7) "Application" means a project proposal which is prepared by an individual seeking ARDL funds through the process established by the commission and in accordance with Section 4-18-105.

(8) "Resource Improvement and Management Plan" means a plan providing a schedule of operations, implementation and cost estimates, and other pertinent information prepared by a technical assistant, or technical assistance agency, which has been approved by the commission.

R64-1-3. Administration of Agriculture Resource Development Fund.

(1) The objectives of the ARDL program are to conserve agricultural resources of the state, increase agriculture yields and efficiency for croplands, orchards, pastures, range and livestock, maintain and improve water quality, conserve and improve wildlife habitat, prevent flooding, conserve or develop on-farm energy resources, mitigate damages to agriculture as a result of flooding, drought, or other natural disasters, and provide and maintain protection of a crop or animal resource. The commission shall annually allocate funds appropriated for projects that further these objectives.

(2) Applicant clients shall submit finalized project proposals to the loan administrator through the conservation districts for review. Applications shall be reviewed for funding by the executive committee if they exceed loan limits established by policy. Applicant clients shall comply with district, zone and commission application procedures, which are available at the district level. Applicant clients shall be investigated for credit and security as may be required by the commission including repayment capability, past and current financial holdings, fiscal obligations, and debt history. When requests are expected to exceed available funds, projects shall be rated and prioritized according to levels of quality of improvement(s) sought. Rating and approval information from ZEC committees and CD boards shall be duly considered.

(3) Loan contracts will be awarded upon receipt of executed documents, generally consisting of promissory notes and other documents that are agreed to and signed by the borrower to perfect liens on required security.

(4) When proposed projects include technical issues that are sufficiently complex, loan and technical assistance fees may be charged to clients. Some projects may require supervision by commission designated personnel.

(5) Contracts with applicant clients shall be based on repayment ability or defined collateral. Contracts shall include schedules for loan repayment according to the agreed upon interest rates and related fiscal conditions. The loan administrator may acquire appraisals and estimates of collateral values, and is authorized to obtain security or collateral in order to meet the provisions of the contract until agreed upon amounts have been collected.

(6) Projects for which funds are loaned shall be inspected and certified by commission designated personnel for compliance with contractual provisions.

(7) Under direction of the commission the loan administrator shall manage the program; interpret guidelines, administer record-keeping operations, research financial collateral security information, process and service contracts associated with program functions, recommend loan approvals to the commission, analyze resource improvement and management plans, and administer loan servicing/collection activities.

KEY: loans
October 8, 2014 4-18-105
Notice of Continuation July 23, 2019

R68. Agriculture and Food, Plant Industry.
R68-1. Utah Bee Inspection Act Governing Inspection of Bees.
R68-1-1. Authority.

Promulgated under the authority of Section 4-11-103.

R68-1-2. Registration.

1) Every owner or person coming into possession of one or more colonies of bees within the State of Utah shall register with the Department of Agriculture and Food in accordance with the provisions in Section 4-11-104.

2) The Utah Department of Agriculture and Food may waive the registration fee for youth non-profit groups using hives for educational purposes.

R68-1-3. Apiary Identification.

1) Each apiary location shall be identified by a sign showing the owner's registration number issued by the Utah Department of Agriculture and Food, unless the apiary is located on property owned by the beekeeper.

2) The registration number shall be at least one inch in height, easily readable and displayed in a conspicuous location in the apiary; or similar identification conspicuously displayed on one or more hive bodies within the apiary. Any apiary not so identified shall be considered abandoned and shall be subject to seizure and destruction as provided for in Section 4-11-114.

R68-1-4. Assistance in Locating Apiaries.

1) All beekeepers shall personally assist the department or county bee inspectors in locating their apiaries, or provide accurate and detailed information as to location of all bee hives under their control or possession.

2) Bee inspectors shall make a good faith effort to contact the beekeeper prior to an inspection.

R68-1-5. Salvage Operations.

1) All salvage operations with respect to wax, hives and appliances from diseased colonies shall be performed in a tightly screened enclosure using the following procedure:

a) frames and comb held for at least 30 minutes in boiling water (212 degrees F) before any wax is removed;

b) after removal from the boiling water the frames are destroyed or boiled for a minimum of 20 minutes in a solution of lye water containing no less than 10 pounds of lye (Sodium Hydroxide) for each 100 gal. of water; and

c) hive bodies, supers, covers and bottom boards are thoroughly scorched or boiled for a minimum of 20 minutes in the lye water solution.

KEY: beekeeping
November 23, 2015 **4-11-103**
Notice of Continuation August 24, 2015

R68. Agriculture and Food, Plant Industry.
R68-28. Cannabis Processing.
R68-28-1. Authority and Purpose.

1) Pursuant to sections 4-41a-103(5), 4-41a-302(3)(b)(ii), 4-41a-404(3), 4-41a-405(2)(b)(iv), 4-41a-701(3), 4-41a-801(1), and 4-2-103(1)(i), this rule establishes the application process, qualifications and requirements to obtain and maintain a cannabis processing license.

R68-28-2. Definitions.

1) "Applicant" means any person or business entity who applies for a cannabis processing facility license.

2a) "Cannabis" means any part of a marijuana plant;

b) "cannabis" does not mean, for the purposes of this rule, industrial hemp.

3) "Batch" means a quantity of:

a) cannabis extract produced on a particular date and time, following clean up until the next clean up during which lots of cannabis are used;

b) cannabis product produced on a particular date and time, following clean up until the next clean up during which cannabis extract is used; or

c) cannabis flower packaged on a particular date and time, following clean up until the next clean up during which lots of cannabis are being used.

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

5) "Cannabis cultivation facility" means a person that:

a) possesses cannabis;

b) grows or intends to grow cannabis; and

c) sells or intends to sell cannabis to a cannabis cultivation facility or to a cannabis processing facility.

6) "Cannabis processing facility" means a person that:

a) acquires or intends to acquire cannabis from a cannabis production establishment or a holder of an industrial hemp processor license under title 4 chapter 41, Hemp and Cannabidiol Act;

b) possesses cannabis with the intent to manufacture a cannabis product;

c) manufactures or intends to manufacture a cannabis product from unprocessed cannabis or a cannabis extract; and

d) sells or intends to sell a cannabis product to a medical cannabis pharmacy or the state central fill medical cannabis pharmacy.

7) "Cannabis processing facility agent" means an individual who:

a) is an employee of a cannabis processing facility; and

b) holds a valid cannabis production establishment agent registration card.

8) "Cannabis production establishment agent registration card" means a registration card that the department issues that:

a) authorizes an individual to act as a cannabis production establishment agent; and

b) designates the type of cannabis production establishment for which an individual is authorized to act as an agent.

9) "Lot" means the quantity of:

a) flower produced on a particular date and time, following clean up until the next clean up during which the same materials are used; or

b) trim, leaves or other plant matter from cannabis plants produced on a particular date and time, following clean up until the next clean up.

R68-28-3. Cannabis Processing Facility License.

1) A Tier 1 cannabis processing facility license allows the licensee to receive cannabis from a licensed cannabis cultivation facility or to accept THC or THC byproduct from a Utah licensed cannabis processing facility or industrial hemp processor.

2) A Tier 1 cannabis processing facility license allows the licensee to process, manufacture, dry, cure, package, and label cannabis and cannabis products for sale or transfer to another cannabis processing facility, a medical cannabis pharmacy, or the state central fill medical cannabis pharmacy.

3) A Tier 2 cannabis processing facility license allows the licensee to receive cannabis from a licensed cannabis cultivation facility or a cannabis processing facility.

4) A Tier 2 cannabis processing facility allows for the licensee to package and label cannabis and cannabis products for sale or transfer to another cannabis processing facility, a medical cannabis pharmacy, or the state central fill medical cannabis pharmacy.

5) A complete application shall include the required fee, statements, forms, diagrams, operation plans, and other applicable documents required in the application packet to be accepted and processed by the department.

6) Prior to approving an application, the department may contact the applicant and request additional supporting documentation or information.

7) Prior to issuing a license, the department shall inspect the proposed premises to determine if the applicant complies with state laws and rules.

8) Each cannabis processing facility license shall expire on December 31st.

9) An application for renewals shall be submitted to the department by December 1st.

10) If the renewal application is not submitted by December 31st the licensee may not continue to operate.

11) A license may not be sold or transferred.

R68-28-4. Cannabis Processing Facility Requirements.

1) A cannabis processing facility operating plan shall contain a blue print of the facility containing the following information:

a) the square footage of the areas where cannabis is to be extracted;

b) the square footage of the areas where cannabis or cannabis products are to be packaged and labeled;

c) the square footage of the areas where cannabis products are manufactured;

d) the square footage of the area where cannabis products are packaged or labeled;

e) the square footage and location of storerooms for cannabis awaiting extraction;

f) the square footage and location of storerooms for cannabis awaiting further manufacturing;

g) the area where finished cannabis and cannabis products are stored;

h) the location of toilet facilities and hand washing facilities;

i) the location of a break room and location of personal belonging lockers;

j) the location of the areas to be used for loading and unloading of cannabis and cannabis products; and

k) the total square footage of the overall cannabis processing facility.

2) A cannabis processing facility shall process, manufacture, package, and label cannabis and cannabis products in accordance with 21 CFR 111, "Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operation for Dietary Supplements".

3) A cannabis processing facility shall have written emergency procedures to be followed in case of:

a) fire;

b) chemical spill; or

c) other emergency at the facility.

4) A cannabis processing facility shall have a written plan to handle potential recall and destruction of cannabis due to contamination.

5) A cannabis processing facility shall use a standardized scale which is registered with the department when cannabis is:

a) packaged for sale by weight;

b) bought and sold by weight; or

c) weighed for entry into the inventory control system.

6) A cannabis processing facility shall compartmentalize all areas in the facility based on function and shall limit access between compartments.

7) A cannabis processing facility shall limit access to the compartments to the appropriate agents.

8) A cannabis processing facility creating cannabis extract shall develop standard operating procedures.

R68-28-5. Cannabis Extraction Requirements.

1) A cannabis processing facility shall ensure hydrocarbons n-butane, isobutane, propane, or heptane are of at least ninety-nine percent purity.

2) A cannabis processing facility shall use a professional grade closed loop extraction system designed to recover the solvents, work in an environment with proper ventilation, and control all sources of ignition where a flammable atmosphere is or may be present.

3) A cannabis processing facility using carbon dioxide (CO_2) gas extraction system shall use a professional grade closed loop CO_2 gas extraction system where every vessel is rated to a minimum of six hundred pounds per square inch and CO_2 shall be at least ninety-nine percent purity.

4) Closed loop systems for hydrocarbon or CO_2 extraction systems shall be commercially manufactured and bear a permanently affixed and visible serial number.

5) A cannabis processing facility using a closed loop system shall, upon request, provide the department with certification from a licensed engineer stating the system is:

a) safe for its intended use;

b) commercially manufactured, and

c) built to codes of recognized and generally accepted good engineering practices, such as:

i) the American Society of Mechanical Engineers (ASME);

ii) American National Standards Institute (ANSI);

iii) Underwriters Laboratories (UL); or

iv) The American Society for Testing and Materials (ASTM).

6) The certification document shall contain the signature and stamp of a professional engineer and the serial number of the extraction unit being certified.

7) A cannabis processing facility may use food grade glycerin, ethanol, and propylene glycol solvents to create extracts.

8) A cannabis processing facility shall remove all ethanol from the extract in a manner to recapture the solvent and ensure that it is not vented into the atmosphere.

9) A cannabis processing facility may use heat, screens, presses, steam distillation, ice water, and other mechanical methods which do not employ solvents or gases.

10) A cannabis establishment agent using solvents or gases in a closed loop system shall be fully trained on how to use the system and have direct access to applicable material safety data sheets.

11) Parts per million for one gram of finished extract cannot exceed residual solvent or gas levels provided in Utah Admin. Code R68-29.

R68-28-6. Security Requirements.

1) At a minimum, each cannabis processing facility shall have a security alarm system on all perimeter entry points and perimeter windows.

2) At a minimum, a licensed cannabis processing facility shall have complete video surveillance system:

a) with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog, and

b) that retains footage for at least 45 days.

3) All cameras shall be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas.

4) Controlled areas included:

a) all entrances and exits, or ingress and egress vantage points;

b) all areas where cannabis or cannabis products are stored,

c) all areas where cannabis or cannabis products are extracted,

d) all areas where cannabis or cannabis products are manufactured, packaged, or labeled; and

e) all areas where cannabis waste is being moved, processed, stored or destroyed.

5) All cameras shall record continuously.

6) For locally stored footage, the surveillance system storage device shall be secured in the facility in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

7) For footage stored on a remote server, access shall be restricted to protect from employee tampering.

8) Any gate or entry point must be lighted in low-light conditions sufficient to record activity occurring.

9) All visitors to a cannabis processing facility shall be required to have a properly displayed identification badge issued by the facility at all times while on the premises of the facility.

10) All visitors shall be escorted by a cannabis processing facility agent at all times while in the facility.

11) A cannabis processing facility shall keep and maintain a visitors log showing:

a) the full name of each visitor entering the facility;

b) the badge number issued;

c) the time of arrival;

d) the time of departure, and

e) the purpose of the visit.

12) The cannabis processing facility shall keep the visitors log for a minimum of a year.

13) The cannabis processing facility shall make the visitor log shall available to the department upon request.

R68-28-7. Inventory Control.

1) Every batch or lot of cannabis, cannabis extract, cannabis product, test sample, or cannabis waste shall have a unique identifier in the inventory control system.

2) Every batch or lot of cannabis, cannabis extract, cannabis product, sample, or cannabis waste shall be traceable to the lot used as the base material from a cannabis cultivation facility.

3) Unique identification numbers may not be reused.

4) Each batch or lot of cannabis, cannabis extract, cannabis product, test sample, or cannabis waste that has been issued a unique identification number shall have a physical tag placed on it with the unique identification number.

5) The tag shall be legible and placed in a position that can be clearly read and shall be kept free from dirt and debris.

6) The following shall be reconciled in the inventory control system at the close of business each day:

a) date and time cannabis, cannabis extract, or cannabis product is being transported to a cannabis production establishment, medical cannabis pharmacy, or the state central fill medical cannabis pharmacy;

b) all samples used for testing and the test results;
c) a complete inventory of cannabis, cannabis extract cannabis product, trim, or other plant material;
d) cannabis product by unit count;
e) weight per unit of product;
f) weight and disposal of cannabis waste materials;
g) the identity of who disposed of the cannabis waste and the location of the waste receptacles; and
h) theft or loss or suspected theft or loss of cannabis, cannabis extract, or cannabis product.

7) A receiving cannabis processing facility shall document in the inventory tracking system any cannabis, cannabis extract, or cannabis product received, and any difference between the quality specified in the transport and the quantities received.

8) A cannabis processing facility shall immediately upon receipt of THC extract from a licensed industrial hemp processor enter the following information into the inventory control system:
a) the amount of THC extract received;
b) the name, address, and licensing number of the industrial hemp processor;
c) the weight per unit of product received; and
d) the assigned unique identification number.

R68-28-8. Cannabis Processing Facility Agents.

1) A cannabis processing facility shall apply to the department for a cannabis establishment agent on a form provided by the department.

2) An application is not considered complete until the background check has been completed and the facility has paid the registration fee.

3) The cannabis processing facility agent registration card shall contain:
a) the agent's full name;
b) the name of the cannabis processing establishment;
c) the job title or position of the agent; and
d) a photograph of the agent.

4) A cannabis processing facility is responsible to ensure that all agents have received:
a) the department approved training as specified in Utah Code 4-41a-301; and
b) any task specific training as outlined in the operating plan submitted to the department.

5) A cannabis processing facility agent shall have a properly displayed identification badge which has been issued by the department at all times while on the facility premises or while engaged in the transportation of cannabis.

6) All cannabis production establishment agents shall have their state issued identification card in their possession to certify the information on their badge is correct.

7) An agent's identification badge shall be returned to the department immediately upon termination of their employment with the cannabis processing facility.

R68-28-9. Minimum Storage and Handling Requirements.

1) A cannabis processing facility shall have separate storage for cannabis, cannabis extract, or cannabis products that are outdated, damaged, deteriorated, misbranded, or adulterated, or whose containers or packaging have been opened or breached until the cannabis, cannabis extract, or cannabis products are destroyed.

2) All cannabis, cannabis extract, and cannabis products shall be stored at least six inches off the ground.

3) Storage areas shall:
a) be maintained in a clean and orderly condition; and
b) be free from infestation by insects, rodents, birds, or vermin.

4) A cannabis processing facility shall store all cannabis, cannabis extract, or cannabis products in process in a manner so as to prevent diversion, theft, or loss.

5) A cannabis processing facility shall make cannabis, cannabis extract, or cannabis product accessible only to the minimum number of specifically authorized employees essential for efficient operation and shall return the cannabis or cannabis extract to its secure location immediately after completion of the process or at the end of the scheduled business day.

6) If a manufacturing process cannot be completed at the end of a working day, the processor shall securely lock the processing area or tanks, vessels, bins, or bulk containers containing cannabis inside an area or room that affords adequate security.

R68-28-10. Product Appearance and Flavor.

1) A cannabis processing facility may not produce a cannabis product that is designed to mimic a candy product.

2) A cannabis processing facility may not produce a product that includes a candy-like flavor or another flavor the facility knows or should know appeals to children.

3) A cannabis processing facility may use only the following artificial flavors:
a) apple;
b) banana;
c) cherry;
d) grape;
e) lemon;
f) mint;
g) orange;
h) raspberry;
i) strawberry;
j) vanilla; or
k) watermelon.

4) Cannabis or cannabis product may retain the natural flavor provided the flavor is not candy-like or another flavor the facility knows or should know appeals to children.

5) A cannabis processing facility may not shape a cannabis product in any way to appeal to children.

R68-28-11. Packaging of Cannabis and Cannabis Product.

1) A cannabis processing facility shall package cannabis or cannabis products in accordance with this rule and Utah Code 4-41a-602 prior to transportation to a medical cannabis pharmacy or the state central fill medical cannabis pharmacy.

2) Cannabis and cannabis product shall be packaged in child-resistant packaging in accordance with 16 C.F.R. Section 1700.

3) Any container or packaging containing cannabis or cannabis product shall protect the product from contamination and shall not impart any toxic or deleterious substance to the cannabis or cannabis product.

R68-28-12. Labeling of Cannabis and Cannabis Product.

1) The text used on all labeling shall be printed in at least 10-point font and may not be in italics.

2) A cannabis processing facility shall label all cannabis and cannabis product before it sells the cannabis or cannabis product to a medical cannabis pharmacy or the state central fill medical cannabis pharmacy.

3) The label shall be securely affixed to the package and be in legible English.

4) A label for cannabis flower shall include the following information in the order as listed:
a) the name of the cannabis cultivation facility followed by the name of cannabis processing facility with the cannabis processing establishment licensing number;
b) the lot number;

c) the date of harvest;
d) the date of final testing;
e) the batch number;
f) the date on which the product was packaged;
g) the cannabinoid profile, potency levels, and terpenoid profile as determined by the independent testing laboratory,
h) the expiration date; and
i) the quantity of cannabis being sold.

5) THC potency levels for cannabis flower shall be total potential THC and not include any other calculated level of THC.

6) A label for cannabis products shall include the following information in the order listed:

a) the name of the cannabis processing facility and licensing number;
b) the batch number;
c) the date of production;
d) the date of the final testing;
e) the date on which the product was packaged;
f) the cannabinoid profile, potency level; and terpenoid profile as determined by the independent testing laboratory;
g) the expiration date;
h) the total amount of THC measured in milligrams;
i) a list of all ingredients and all major food allergens as identified in 21 U.S.C. 343;
j) the net weight of the product; and
k) a disclosure of the type of extraction process used and any solvent, gas, or other chemical used in the extraction process or any other compound added to the concentrated cannabis.

7) All cannabis or cannabis product labels shall contain the following warning: "WARNING: Cannabis has intoxicating effects and may be addictive. Do not operate a vehicle or machinery under its influence. KEEP OUT OF REACH OF CHILDREN. This product is for medical use only. Use only as directed by a qualified medical provider."

8) A cannabis processing facility may include a small logo or brand name at the end of the label.

9) No other information , illustrations, or depiction shall appear on the label.

R68-28-13. Transportation.

1) A printed transport manifest shall accompany every transport of cannabis.

2) The manifest shall contain the following information:

a) the cannabis production establishment address and license number of the departure location;
b) physical address and license number of the receiving location;
c) strain name, quantities by weight, and unique identification numbers of each cannabis material to be transported;
d) date and time of departure;
e) estimated date and time of arrival; and
f) name and signature of each agent accompanying the cannabis.

3) The transport manifest may not be voided or changed after departing from the original cannabis production establishment.

4) A copy of the transport manifest shall be given to the receiving cannabis processing establishment, independent laboratory, medical cannabis pharmacy, or state central fill medical cannabis pharmacy.

5) The receiving cannabis processing facility, independent laboratory, medical cannabis pharmacy, or state central fill medical cannabis pharmacy shall ensure that the cannabis material received is as described in the transport manifest and shall record the amounts received for each strain into the inventory control system.

6) The receiving cannabis processing facility, independent laboratory, medical cannabis pharmacy, or state central fill medical cannabis pharmacy shall document at time of receipt any differences between the quantity specified in the transport manifest and the quantities received in the inventory control system.

7) During transportation, cannabis shall be:
a) shielded from the public view;
b) secured; and
c) temperature controlled if perishable.

8) A cannabis cultivation facility shall contact the department within 24 hours if a vehicle transporting cannabis is involved in an accident that involves product loss.

9) Only the registered agents of the cannabis processing facility may occupy a transporting vehicle.

R68-28-14. Recall Protocol.

1) The department may initiate a recall of cannabis or cannabis products if :

a) evidence exists that pesticides not approved by the department are present on or in the cannabis or cannabis products;
b) evidence exists that residual solvents are present on or in cannabis or cannabis products;
c) evidence exists that harmful contaminants are present on or in cannabis or cannabis products; or
d) the department believes or has reason to believe the cannabis or cannabis products are unfit for human consumption.

2) A cannabis processing facility's recall plan shall include, at a minimum:

a) designation of at least one member of the staff who serves as the recall coordinator;
b) procedures for identifying and isolating product to prevent or minimize distribution to patients;
c) procedures to retrieve and destroy product; and
d) a communications plan to notify those affected by the recall.

3) The cannabis processing facility must track the total amount of affected cannabis or cannabis product and the amount of affected cannabis or cannabis product returned to the facility as part of the recall.

4) The cannabis processing facility shall coordinate the destruction of the cannabis or cannabis product with the department and allow the department to oversee the destruction of the affected product.

5) The department shall periodically check on the progress of the recall until the department declares an end to the recall.

6) A cannabis cultivation facility shall notify the department before initiating a voluntary recall.

R68-28-15. Cannabis Waste Disposal.

1) Solid and liquid wastes generated during cannabis cultivation shall be stored, managed, and disposed of in accordance with applicable state laws and regulations.

2) Wastewater generated during the cannabis production and processing shall be disposed of in compliance with applicable state laws and regulations.

3) Cannabis waste generated from the cannabis plant, trim, and leaves is not considered hazardous waste unless it has been treated or contaminated with a solvent, or pesticide.

4) All cannabis waste shall be rendered unusable prior to leaving the cannabis processing facility.

5) Cannabis waste, which is not designated as hazardous, shall be rendered unusable by grinding and incorporating the cannabis waste with other ground materials so the resulting mixture is at least fifty percent non-cannabis waste by volume or other methods approved by the

department before implementation.

6) Materials used to grind and incorporate with cannabis fall into two categories:

a) compostable; or

b) non-compostable.

7) Compostable waste is cannabis waste to be disposed of as compost or in another organic waste method mixed with:

a) food waste;

b) yard waste; or

c) vegetable based grease or oils.

8) Non-compostable waste is cannabis waste to be disposed of in a landfill or another disposal method, such as incineration, mixed with:

a) paper waste;

b) cardboard waste;

c) plastic waste; or

d) soil.

9) Cannabis waste includes:

a) cannabis plant waste including roots, stalks, leaves, and stems;

b) excess cannabis or cannabis products from any quality assurance testing;

c) cannabis or cannabis products that fail to meet testing requirements; and

d) cannabis or cannabis products subject to a recall.

R68-28-16. Change in Operation Plans.

1) A cannabis processing facility shall submit a notice, on a form provided by the department, prior to making any changes to:

a) ownership or financial backing of the facility;

b) the facility's name;

c) a change in location;

d) any modification, remodeling, expansion, reduction or physical, non-cosmetic alteration of a facility; or

e) change to the number of production lines.

2) A cannabis processing facility may not implement changes to the approved operation plan without department approval.

3) The department shall respond to the request for changes within 15 business days.

4) The department shall approve of requested changes unless approval would lead to a violation of the applicable laws and rules of the state.

5) The department shall specify reason for the denial of approval for a change to the operation plan.

R68-28-17. Renewals.

1) A cannabis processing facility shall submit a notice of intent to renew and the licensing fee to the department by December 31st.

2) If the licensing fee and intent to renew are not submitted December 31st the licensee may not continue to operate.

3) The department may take into consideration violations issued in determining license renewals.

R68-28-18. Violation Categories.

1) Public Safety Violations: $3,000- $5,000 per violation. This category is for violations which present a direct threat to public health or safety including, but not limited to:

a) cannabis sold to an unlicensed source;

b) cannabis purchased from an unlicensed source;

c) refusal to allow inspection;

d) failure to comply with testing requirements;

e) a test result for high pesticide residue in the cannabis produced or cannabis product;

f) a test result for high residual solvents, heavy metal, microbials, molds, or other harmful contaminants;

g) failure to maintain required cleanliness and sanitation standards;

h) unauthorized personnel on the premises;

i) permitting criminal conduct on the premises;

j) possessing, manufacturing, or distributing cannabis products which the person knows or should know appeal to children; or

k) engaging in or permitting a violation of the Utah Code 4-41a which amounts to a public safety violation as described in this subsection.

2) Regulatory Violations: $1,000-$5,000 per violation. This category is for violations involving this rule and other applicable state rules including, but not limited to:

a) failure to maintain alarm and security systems;

b) failure to keep and maintain records;

c) failure to maintain traceability;

d) failure to follow transportation requirements;

e) failure to follow the waste and disposal requirements;

f) engaging in or permitting a violation of Utah Code 4-41a or this rule which amounts to a regulatory violation as described in this subsection; or

g) failure to maintain standardized scales.

3) Licensing Violations: $500- $5,000 per violation. This category is for violations involving licensing requirements including, but not limited to:

a) an unauthorized change to the operating plan;

b) failure to notify the department of changes to the operating plan;

c) failure to notify the department of changes to financial or voting interests of greater than 2%;

d) failure to follow the operating plan as approved by the department;

e) engaging in or permitting a violation of this rule or Utah Code 4-41a which amounts to a licensing violation as described in this subsection; or

f) failure to respond to violations.

4) The department shall calculate penalties based on the level of violation and the adverse effect or potential adverse effect at the time of the incidents giving rise to the violation.

5) The department may enhance or reduce the penalty based on the seriousness of the violation.

KEY: cannaibs processing, cannabis production establishment

July 22, 2019

4-41a-103(5)
4-41a-404(3)
4-41a-701(3)
4-41a-302(3)(b)(ii)
4-2-103(1)(i)
4-41a-405(2)(b)(iv)
4-41a-801(1)

R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rule.
R156-55a-101. Title.

This rule shall be known as the "Utah Construction Trades Licensing Act Rule".

R156-55a-102. Definitions.

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

(1) "AARST-NRPP" means the National Radon Proficiency Program.

(2) "Construction trades instructor", as used in Subsection 58-55-301(2)(t) is clarified to mean the education facility which is issued the license as a construction trades instructor. It does not mean individuals employed by the facility who may teach classes.

(3) "Construction trades instruction facility" means the facility which is granted the license as a construction trades instructor as specified in Subsection 58-55-301(2)(t) and as clarified in R156-55a-102(2).

(4) "Employee", as used in Subsections 58-55-102(13) and 58-55-102(18), means a person providing labor services in the construction trades who works for a licensed contractor, or the substantial equivalent of a licensed contractor as determined by the Division, for compensation who has federal and state taxes withheld and workers' compensation and unemployment insurance provided by the person's employer.

(5) "Incidental", as used in Subsection 58-55-102(45), means work which:

(a) can be safely and competently performed by a specialty contractor;

(b) arises from, and is directly related to, work performed in the licensed specialty classification;

(c) does not exceed 10 percent of the overall contract; and

(d) does not include performance of any electrical or plumbing work.

(6) "Maintenance" means the repair, replacement and refinishing of any component of an existing structure; but, does not include alteration or modification to the existing weight-bearing structural components.

(7) "Mechanical", as used in Subsections 58-55-102(22) and 58-55-102(35), means the work which may be performed by a S350 HVAC Contractor under Section R156-55a-301.

(8) "NABCEP" means the North American Board of Certified Energy Practitioners.

(9) "NASCLA" means the National Association of State Contractors Licensing Agencies.

(10) "NRSB" means the National Radon Safety Board.

(11) "Personal property" means, as it relates to Title 58, Chapter 56, factory built housing and modular construction, a structure which is titled by the Motor Vehicles Division, state of Utah, and taxed as personal property.

(12) "Qualifier", as used in Title 58, Chapter 55 and this rule, means the individual who demonstrates competence for a contractor or construction trades instruction facility license by satisfying the requirements to obtain the contractor or construction trades instruction facility license.

(13) "RMGA" means the Rocky Mountain Gas Association.

(14) "School" means a Utah school district, technical college, or accredited college.

R156-55a-103. Authority.

This rule is adopted by the Division under the authority of Subsections 58-1-106(1)(a) and 58-55-103(1)(b)(i) to enable the Division to administer Title 58, Chapter 55.

R156-55a-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.

R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person engaged in work included in Subsections R156-55a-301(7) and (8) is exempt from licensure in accordance with Subsection 58-55-305(1)(i).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

E100 - General Engineering Contractor. A contractor licensed to perform work as defined in Subsection 58-55-102(24).

B100 - General Building Contractor. A contractor licensed to perform work as defined in Subsection 58-55-102(22). The scope of practice includes the scope of practice of every specialty contractor in Subsection R156-55a-301(2) except:

(a) activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NABCEP; and

(b) activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor, unless:

(i) the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NRSB or the AARST-NRPP; or

(ii) the work is limited to installation of passive radon gas controls on new construction in accordance with Appendix F of the International Residential Code.

B200 - Modular Unit Installation Contractor. Set up or installation of modular units as defined in Subsection 15A-1-302(8) and constructed in accordance with Section 15A-1-304. The scope of practice:

(a) includes construction of the permanent or temporary foundations, placement of the modular unit on a permanent or temporary foundation, securing the units together, if required, and securing the modular units to the foundations; and

(b) excludes installation of factory built housing and connection of required utilities.

R100 - Residential and Small Commercial Contractor. A contractor licensed to perform work as defined in Subsection 58-55-102(35). The scope of practice does not include:

(a) activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor, unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NABCEP; and

(b) activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor, unless:

(i) the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NRSB or the AARST-NRPP; or

(ii) the work is limited to installation of passive radon gas controls on new construction in accordance with Appendix F of the International Residential Code.

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind

with the restriction that:

(a) no change is made to the bearing portions of the existing structure, including footings, foundation, and weight bearing walls; and

(b) the entire project is less than $50,000 in total cost, including materials and labor.

R200 - Factory Built Housing Contractor. Disconnection, setup, installation, or removal of manufactured housing on a temporary or permanent basis. The scope of work:

(a) includes placing the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connecting the utilities from the near proximity, such as a meter, to the manufactured housing unit, and construction of foundations of less than four feet six inches in height;

(b) excludes preparation or finishing, excavation of the ground in the area where a foundation is to be constructed, back filling, and grading around the foundation, construction of foundations of more than four feet six inches in height, and construction of utility services from the utility source to and including the meter or meters if required or if not required to the near proximity of the manufactured housing unit from which they are connected to the unit.

E200 - General Electrical Contractor. A contractor licensed to perform work as defined in Subsection 58-55-102(23). The scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NRSB or the AARST-NRPP.

E201 - Residential Electrical Contractor. A contractor licensed to perform work as defined in Subsection 58-55-102(37). The scope of practice does not include activities described in this subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NRSB or the AARST-NRPP.

S202 - Solar Photovoltaic Contractor. Fabrication, construction, installation, and replacement of photovoltaic modules and related components, subject to the following:

(a) An S202 Solar Photovoltaic Contractor shall hold a current certificate issued by NABCEP.

(b) Wiring, connections and wire methods as governed in the National Electrical Code and Subsection R156-55b-102(1) shall only be performed by an E200 General Electrical Contractor or E201 Residential Electrical Contractor.

(c) S202 - Solar Photovoltaic Contractor licensure is not required to install standalone solar systems that do not tie into premises wiring or into the electrical utility, such as signage or street or parking lighting.

(d) An S202 Solar Photovoltaic Contractor may subcontract with an E200 General Electrical Contractor or E201 Residential Electrical Contractor for their projects.

P200 - General Plumbing Contractor. A contractor licensed to perform work as defined in Subsection 58-55-102(25). The scope of practice:

(a) includes the furnishing of materials, fixtures, and labor to extend service from a building out to the main water, sewer, or gas pipeline; and

(b) does not include activities described under specialty classification S354-Radon Mitigation Contractor, unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NRSB or the AARST-NRPP.

P201 - Residential Plumbing Contractor. A contractor licensed to perform work as defined in Subsection 58-55-102(42). The Residential Plumbing Contractor scope of practice does not include activities described in this subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NRSB or the AARST-NRPP.

S220 - Carpentry and Flooring Contractor. The scope of practice includes the construction, fabrication, installation, placing, tying, welding. or repair:

(a) using wood, wood products, metal, metal products, metal studs, vinyl materials, plastic, fiberglass, countertops, cabinets, millwork, garage doors, doors, tub liners, wall systems, partitions, or other wood/plastic/metal composites as is by custom and usage accepted in the building industry as carpentry for structural, non-structural, and finish purposes;

(b) metal or steel structures and sheet metal, including metal cornices, marquees, metal soffits, flashings, skylights, and skydomes;

(c) metal structural studs and bearing walls, reinforcing bars, erecting shapes, plates of any profile, perimeter cross-section that are used in structures, including riveting, welding, and rigging;

(d) incidental concrete work and footings, grading, and surface preparation related to any Carpentry and Flooring Contractor scope of work;

(e) laminate, tile, cement, wood, synthetic wood, or similar flooring product, including prefinished and unfinished material, sanding, staining and finishing of new and existing flooring, the underlayment, and subfloors; and

(f) mechanical insulation of pipes, ducts, or conduits.

S230 - Masonry, Siding, Stucco, Glass, and Rain Gutter Contractor. The scope of practice includes the construction fabrication, and installation of:

(a) siding, stucco, stucco to lathe, plaster, glass, glass substitutes, glass-holding members, rain gutters, drains, roof flashings, gravel stops, and metal ridges;

(b) natural or synthetic stone, onyx, ceramic, granite, onice, corian, brick, block, forms, brick substitutes, clay, concrete blocks, terra-cotta, marble, tile, gypsum tile, glass block, clay tile, copings, plastic refractories, and castables;

(c) shower pans.

S260 - Asphalt and Concrete Contractor. Fabrication, construction, mixing, batching, injecting, spraying, resurfacing, sealing, and/or installation of asphalt, asphalt overlay, chip seal, fog seal, slurry seal, concrete, gunnite, grouting, coatings, sealant, and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms, shoring material, placing and erection of bars for reinforcing and application of plaster and other cement-related products. The scope of practice includes:

(a) excavation, grading, compacting, and laying of fill or base-related thereto;

(b) painting or coating the surfaces, including striping, directional, and other types of symbols or letters;

(c) fabrication, construction, and/or installation of forms and shoring material.

S270 - Drywall, Paint, and Plastering Contractor. The scope of practice includes the construction, installation, fabrication, and application of:

(a) drywall, gypsum, wallboard panels and assemblies, lightweight metal and non-bearing wall partitions, ceiling tile and panels, and the grid system required for placement.

(b) insulating media in buildings and structures for the purpose of temperature control, sound control, fireproofing, mechanical insulation of pipes, ducts, or conduits; and

(c) stucco, stucco to lathe, plaster, and other surfaces; and

(d) paints, varnishes, shellacs, stains, waxes and other coatings or pigments.

S280 - Roofing Contractor. Application and installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of the above which use and custom has established as usable for, or which are now used as, water-proof, weatherproof, or watertight seal or membranes for roofs and surfaces; and roof conversion; non-electrical skylights; and electrical skylights provided that the electrical connection is performed by a licensed electrical contractor. The scope of practice includes installation of any insulating media in buildings and structures for the sole purpose of temperature control, sound control, fireproofing, and mechanical insulation of pipes, ducts, or conduits. Incidental work includes the installation of roof clamp ring to the roof drain.

S310 - Foundation, Excavation, and Demolition Contractor. The scope of practice includes:

(a) moving of the earth's surface or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, or combination thereof as they are generally practiced in the construction trade; and

(b) excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter, or repair piers, piles, footings, and foundations placed in the earth's subsurface to prevent structural settling and to provide an adequate capacity to sustain or transmit the structural load to the soil or rock below; and

(c) raising, cribbing, underpinning, moving, and removal of a building, structure, or matter appurtenant or incidental to any building or structure.

S330 - Landscape and Recreation Contractor: This scope of practice includes the following construction, fabrication, and installation:

(a) grading and preparing land for architectural, horticultural, or decorative treatment;

(b) arrangement, and planting of gardens, lawns, shrubs, vines, bushes, trees, or other decorative vegetation;

(c) swimming pools, prefabricated pools, spas, decorative pools, tanks, fountains, sprinkler systems, water distribution systems for artificial watering or irrigation, for systems not connected to the culinary water system, or, if water delivery for the system is connected to the culinary water system and separated from the culinary water system by a backflow prevention device, the contractor may connect the system to the backflow prevention device, if the backflow prevention device is installed by an actively licensed plumber;

(d) metal fireboxes, fireplaces, and wood or coal-burning stoves, including the installation of venting and exhaust systems, provided the individual performing the installation is RMGA-certified;

(e) retaining walls except retaining walls which are intended to hold vehicles, structures, equipment or other non-natural fill materials within the area located within a 45 degree angle from the base of the retaining wall to the level of where the additional weight bearing vehicles, structures, equipment or other non-natural fill materials are located;

(f) patios, patio areas, and decking, including the deck structure and substructure;

(g) hothouses, greenhouses, walks, and garden lighting of class two or class three power-limited circuits as defined in the National Electrical Code;

(h) fences, guardrails, handrails, and barriers;

(i) sports and athletic courts and fields including football fields, tennis courts, racquetball courts, handball courts, basketball courts, running tracks, playgrounds, or any similar court or field; this includes poles, standards, surface painting or coatings, floors, floor subsurface, wall surface, perimeter walls, perimeter fencing, or other equipment; and

(j) incidental concrete or asphalt work related to any Landscape and Recreation Contractor scope of practice.

(k) This classification does not include any electrical or plumbing trade work, but an S330 Landscape and Recreation Contractor may subcontract with a plumbing and electrical contractor for their projects.

S350 - HVAC Contractor. Fabrication and installation of complete warm air heating, air conditioning and ventilating systems. This scope of practice includes installation of refrigeration equipment, including built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto. The scope of practice does not include activities described under S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the NRSB or the AARST-NRPP. An HVAC Contractor may hire or subcontract an RMGA-certified licensed contractor for any gas-related work. The scope of practice does not include electrical trade work.

S354 - Radon Mitigation Contractor. Layout, fabrication, and installation of a radon mitigation system. Work performed under this classification shall be performed under the immediate supervision of an employee who holds a current certificate issued by the NRSB or the AARST-NRPP. The scope of practice does not include:

(a) work on heat recovery ventilation or makeup air components that must be performed by an HVAC Contractor; or

(b) electrical trade work that must be performed by an Electrical Contractor.

S370 - Fire Suppression Systems Contractor. Layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. When a potable sanitary water supply system is used as the source of supply, connection to the water system must be accomplished by a licensed plumbing contractor. Excluded from this classification are persons engaged in the installation of fire suppression systems in hoods above cooking appliances.

S410 - Boiler, Pipeline, Waste Water, and Water Conditioner Contractor. The scope of practice includes the fabrication, construction, and installation of:

(a) pipes, conduit, or cables for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, slurries, other substances, data or communications, geo-thermal systems, or solar thermal systems up to where the system interfaces with any other plumbing system;

(b) installation of above and below ground petroleum and petro-chemical storage tanks, piping, dispensing equipment, monitoring equipment, and associated petroleum and petro-chemical equipment including excavation, backfilling, concrete and asphalt;

(c) insulation of pipes, ducts, and conduits;

(d) excavation, cabling, horizontal boring, grading, trenching, and backfilling necessary for construction of any work related to the Boiler, Pipeline, Waste Water, and Water Conditioner Contractor scope of practice;

(e) fire-tube and water-tube power boilers and hot water heating boilers, including all fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and all other devices, apparatus, and equipment related thereto in a system not connected to the culinary water system. If water delivery for the system is connected to the culinary water system and separated from the culinary water system by a backflow prevention device, a S410 Boiler, Pipeline, Waste Water, and Water Conditioner Contractor may connect the system to the

backflow prevention device, but the device must be installed by an actively licensed plumber;

(f) water conditioning equipment and only such pipe and fittings as are necessary for connecting the water conditioning equipment to the water supply system within the premises;

(g) sewer, sewer lines, sewage disposal, septic tank, and drainage including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto; and

(h) incidental cement or asphalt work related to the Boiler, Pipeline, Waste Water, and Water Conditioner Contractor scope of practice.

S440 - Sign Installation Contractor. Installation of electrical or non-electrical signs and graphic displays which require installation permits or permission as issued by state or local governmental jurisdictions, subject to the following:

(a) "Signs and graphic displays" includes signs of all types, both lighted and unlighted, permanent highway marker signs, illuminated awnings, electronic message centers, sculptures or graphic representations including logos and trademarks intended to identify or advertise the user or product, building trim or lighting with neon or decorative fixtures, and any other animated, moving or stationary device used for advertising or identification purposes.

(b) "Non-electrical signs and graphics displays" means outdoor advertising signs that do not have electrical lighting or other electrical requirements, and that are fabricated, installed, and erected in accordance with professionally engineered specifications.

(c) Signs and graphic displays must be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code;

(d) The scope of practice does not include electrical trade work, but an S440 Sign Installation Contractor may subcontract with an electrical contractor for their projects.

S510 - Elevator Contractor. Erecting, constructing, installing, altering, servicing, repairing or maintaining an elevator.

S700 - Limited Scope License Contractor.

(a) A limited scope license is a license that confines the scope of the allowable contracting work to a specialized area of construction, which the Division grants on a case-by-case basis.

(b) When applying for a limited scope license, an applicant, if requested, shall submit to the Division the following:

(i) a detailed statement of the type and scope of contracting work that the applicant proposes to perform and an explanation why the scope of practice is not included in any other current classification; and

(ii) any brochures, catalogs, photographs, diagrams, or other material to further clarify the scope of the work that the applicant proposes to perform.

(3)(a) A specialty license contractor, as defined in Subsection 58-55-102(45), shall be confined to the field and scope of work as outlined by the Division.

(b) A specialty license contractor may subcontract with a specialty license contractor that holds the same classification as the hiring contractor.

(4)(a) A licensee may hold up to three specialty license classifications, in addition to any general contractor classifications, except that an R101 Residential and Small Commercial Non-Structural Remodeling and Repair contractor may not have any other specialty classifications.

(b) A licensee may change classifications at any time by surrendering a license, and by applying for any license for which the licensee is qualified and as permitted by law.

(c) To qualify for licensure, an applicant for renewal or reinstatement shall surrender or replace the applicant's contractor classifications as needed to comply with Subsection (4)(a).

(5) Effective July 22, 2019:

(a) Contractor licenses that have the following contractor classifications shall be converted to the corresponding classifications in Table 1:

TABLE 1

Current Classification	Converted To
P202	S410
P204	S410
P205	S410
P206	S410
P207	S410
P203	S330
E202	S202
S221, S222	S220
S231	S230
S240	S230
S250	S270
S261, S262, S263	S260
S272, S273	S270
S290, S291, S292, S293, S294	S230
S300	S270
S320, S321, S322, S323	S220
S340	S220
S351, S352, S353	S350
S360	S350
S380	S330
S390	S410
S400	S260
S420, S421	S330
S430	S330
S441	S440
S450	S410
S460	S310
S470	S410
S480	S310
S490	S220
S491	S220
S500	S330
S600	S230
I101	E100
I102	B100
I103	E200
I104	P200
I105	S350

(6) The scope of practice for the following primary classifications includes the scope of practice stated in the descriptions for the following subsclassifications and a licensee with the following primary classification may subcontract with a licensee with an included subclassification:

TABLE 2

Primary Classification	Included subclassifications
E200	E201, S202
P200	P201
S350	S354
S420	S421
S440	S441
S490	S491

(7) The following activities are determined to not significantly impact the public health, safety and welfare and therefore do not require a contractors license:

(a) sandblasting;

(b) pumping services;

(c) tree stump or tree removal;

(d) installation within a building of communication cables including phone and cable television;

(e) installation of class two or class three power-limited circuits as defined in the National Electrical Code;

(f) construction of utility sheds, gazebos, or other similar items which are personal property and not attached to:

(i) a residential or commercial building; or

(ii) a foundation;
(g) building and window washing, including power washing;
(h) central vacuum systems installation;
(i) concrete cutting;
(j) interior decorating;
(k) wall paper hanging;
(l) drapery and blind installation;
(m) welding on personal property which is not attached;
(n) chimney sweepers other than repairing masonry;
(o) carpet and vinyl floor installation;
(p) artificial turf installation;
(q) general cleanup of a construction site which does not include demolition or excavation;
(r) installation or removal of weather-stripping but does not include moisture vapor barriers;
(s) fabrication, installation, or removal of mirrors; and
(t) construction, installation, or removal of awnings and canopies, including attached or detached;
(u) pallet racking or metal shelving, whether attached or detached to the structure; and
(v) seismic strapping for pipes, appliances, and water heaters.
(8) The following activities are those determined to not significantly impact the public health, safety and welfare beyond the regulations by other agencies and therefore do not require a contractors license:
(a) lead removal regulated by the Department of Environmental Quality;
(b) asbestos removal regulated by the Department of Environmental Quality; and
(c) fire alarm installation regulated by the Fire Marshal.

R156-55a-302a. Qualifications for Licensure - Examinations.
(1) In accordance with Subsection 58-55-302(1)(c), no examination is required for the qualifier of an applicant for licensure as a contractor except for the Utah Contractor Business and Law Examination for the classifications listed in Subsection 58-55-302(1)(c)(ii).
(2) An applicant who fails an examination may retake the failed examination as follows:
(a) no sooner than 30 days following any failure, up to three failures; and
(b) no sooner than six months following any failure thereafter.

R156-55a-302b. Qualifications for Licensure - Experience Requirements.
(1) "Experience in the construction industry" as defined in Subsection 58-55-302(1)(e)(ii) is more broad in scope than the definition of "construction trades" and includes:
(a) Experience in the construction industry regardless if paid as a W-2, or as an owner, and regardless of whether licensed or exempt.
(b) Experience while performing construction activities in the military.
(c) Experience obtained under the supervision of a construction trades instructor as a part of an educational program is qualifying experience for a contractor's license.
(2)(a) "Two years full-time paid employment", as defined in Subsection 58-55-302910(e)(ii)(A), shall be a total of 4,000 hours paid employment.
(b) The following shall satisfy the experience requirement in Subsection 58-55-302(1)(e)(ii)(A):
(i) a passing score on the NASCLA Accredited Examination for Commercial General Building Contractors;
(ii) a four-year bachelor's degree or a two-year associate's degree in Construction Management; or
(iii) a Utah professional engineer license.
(3) Requirements for S202 Solar Photovoltaic Contractor. In addition to the requirements of Subsections (1) and (2), an applicant shall hold a current certificate by the NABCEP.
(4) Requirements for S354 Radon Mitigation Contractor. In addition to the requirements of Subsections (1) and (2), an applicant shall hold a current certificate issued by the NRSB or the AARST-NRPP.

R156-55a-302d. Qualifications for Licensure - Proof of Insurance and Registrations.
In accordance with the provisions of Subsection 58-55-302(2)(b), an applicant who is approved for licensure shall submit proof of liability insurance which provides coverage for the scope of work performed, in force for the entire duration of active licensure, and in coverage amounts of at least $100,000 for each incident and $300,000 in total by means of a certificate of insurance naming the Division as a certificate holder.

R156-55a-302e. Requirements for Construction Trades Instructors, Schools and Colleges.
In accordance with Subsection 58-55-302(1)(f), any school that provides instruction to students by engaging in the construction trade for the public as part of the instruction is required to be a Utah licensed contractor with the classification in the scope of practice in which the students are being instructed.

R156-55a-302f. Pre-licensure Education - Standards.
(1) Qualifier Education Requirement. The 25-hour pre-licensure course required by Subsection 58-55-302(1)(e)(iii) and the five-hour pre-licensure course required by Subsection 58-55-302(1)(e)(iv) shall be completed by the qualifier for a contractor license applicant.
(a) Any approved 20-hour pre-licensure course completed by the qualifier before November 30, 2017 shall be accepted by the Division as satisfaction of the 25-hour and five-hour pre-licensure course requirements in Subsection 58-55-302(1)(e)(iii) and (iv).
(b) Any approved 25-hour pre-license course completed by the qualifier before July 1, 2019 shall be accepted by the Division as satisfaction of the 25-hour and five-hour pre-license course requirements in Subsection 58-55-302(1)(e)(iii) and (iv).
(2) Content of the 25-hour course. The 25-hour course may include a provider-administered exam at the end of the course for no additional fee, and shall include the following topics and hours of education relevant to the practice of the construction trades consistent with the laws and rules of this state:
(a) 15 hours of financial responsibility instruction that includes the following:
(i) record keeping and financial statements;
(ii) payroll, including:
(A) payroll taxes;
(B) worker compensation insurance requirements;
(C) unemployment insurance requirements;
(D) professional employer organization (employee leasing) alternatives;
(E) prohibitions regarding paying employees on 1099 forms as independent contractors, unless licensed or exempted;
(F) employee benefits; and
(G) Fair Labor Standard Act;
(iii) cash flow;
(iv) insurance requirements including auto, liability, and health; and

(v) independent contractor licensure and exemption requirements;

(b) six hours of construction business practices that includes the following:

(i) estimating and bidding;

(ii) contracts;

(iii) project management;

(iv) subcontractors; and

(v) suppliers;

(c) two hours of regulatory requirements that includes the following:

(i) licensing laws;

(ii) Occupational Safety and Health Administration (OSHA);

(iii) Environmental Protection Agency (EPA); and

(iv) consumer protection laws; and

(d) two hours of mechanic lien fundamentals that include the State Construction Registry.

(3) Content of the five-hour course. The five-hour course shall include five hours of education on the topics covered in the Utah Contractor Business and Law examination. The five-hour course may include a provider-administered exam at the end of the course for no additional fee.

(4) Program Schedule.

(a) An approved pre-licensure course provider shall offer the 25-hour and five-hour course:

(i) at least 12 times per year; and

(ii) comply with Subsection 58-55-102(7)(b).

(b) An approved pre-licensure course provider is not obligated to provide a course if the provider determines the enrollment is not sufficient to reach breakeven on cost.

(5) Program Instruction Requirements: The pre-licensure course shall meet the following standards:

(a) Time. Each hour of pre-licensure course credit shall consist of 50 minutes of education in the form of live lectures or training sessions. Time allowed for lunches or breaks may not be counted as part of the course time for which course credit is issued.

(b) Learning Objectives. The learning objectives of the pre-licensure course shall be reasonably and clearly stated.

(c) Teaching Methods. The pre-licensure course shall be presented in a competent and well organized manner consistent with the stated purpose and objective of the program. The student must demonstrate knowledge of the course material.

(d) Faculty. The pre-licensure course shall be prepared and presented by individuals who are qualified by education, training or experience.

(e) Distance Learning. Distance learning, internet courses, and home study courses are not allowed to meet pre-licensure course requirements.

(f) Registration and Attendance. The provider shall have a competent method of registration and verification of attendance of individuals who complete the pre-licensure education.

(g) Education Curriculum and Study/Resource Guide. The provider shall be responsible to provide or develop pre-licensure course curriculum and study/resource guide for the pre-licensure course that must be pre-approved by the Commission and the Division prior to use by the provider.

(h) Live Broadcast. The pre-licensure education course may be taught by live broadcast if:

(i) the student and the instructor are able to see and hear each other; and

(ii) a representative of the provider is at any remote location to monitor registration and attendance at the course.

(6) Certificates of Completion. The pre-licensure course provider shall provide individuals completing the pre-licensure course a certificate that contains the following information:

(a) the date of the pre-licensure course;

(b) the name of the pre-licensure course provider;

(c) the attendee's name;

(d) verification of completion; and

(e) the signature of the pre-licensure course provider.

(7) Reporting of Program Completion. A pre-licensure course provider shall, within seven calendar days, submit directly to the Division verification of attendance and completion on behalf of persons attending and completing the program. This verification shall be submitted on forms provided by the Division.

(8) Program Monitoring. On a random basis, the Division or Commission may assign monitors at no charge to attend a pre-licensure course for the purpose of evaluating the course and the instructor(s).

(9) Documentation Retention. Each provider shall for a period of four years maintain adequate documentation as proof of compliance with this section and shall, upon request, make such documentation available for review by the Division or the Commission. Documentation shall include:

(a) the dates of all pre-licensure courses that have been completed;

(b) registration and attendance logs of individuals who completed the pre-licensure course;

(c) the name of instructors for each course provided as a part of the program; and

(d) pre-licensure course handouts and materials.

(10) Disciplinary Proceedings. As provided in Section 58-1-401 and Subsection 58-55-302(1)(e)(iii), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any pre-licensure course provider, if the pre-licensure course provider fails to meet any of the requirements of this section or the provider has engaged in other unlawful or unprofessional conduct.

(11) Exemptions. In accordance with Subsections 58-55-302(1)(e)(iii) and (iv), the following persons are not required to complete the pre-licensure course program requirements:

(a) a person holding a four-year bachelor degree or a two-year associate degree in Construction Management from an accredited program;

(b) a person holding an active and unrestricted Utah professional engineer license;

(c) a person who is or has been a qualifier on an active and unrestricted contractor license within the past five years.

R156-55a-303a. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 55 is established by rule in Section R156-1-308a(1).

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

(3) In accordance with Subsections 58-55-501(21) and 58-1-308(3)(b)(i), there is established a continuing education requirement for license renewal. Each licensee, or the licensee's qualifier, or an officer, director, or supervising individual, as designated by the licensee, shall comply with the continuing education requirements set forth in Section R156-55a-303b.

(4) All contractors shall renew their license in an online form approved by the Division, except as permitted by the Division in writing.

R156-55a-303b. Continuing Education - Standards.

(1) Required Hours. Pursuant to Subsection 58-55-

302.5, each licensee shall complete six hours of continuing education during each two-year license term. A minimum of three hours shall be core education; the remaining three hours may be professional education or core education. A minimum of three hours shall consist of live in-class attendance; the remaining three hours may consist of distance learning courses.

(a) Regular attendance by a commission member on the Construction Services Commission shall satisfy the member's continuing education requirements under Section 58-55-302.5.

(b) For an HVAC contractor licensee, at least three of the six hours described in Subsection (1) shall include continuing education directly related to the installation, repair, or replacement of a heating, ventilation, or air conditioning system.

(c) For all contractors with a renewal cycle that ends after January 1, 2020, at least one of the six hours described in Subsection (1) shall include energy conservation.

(d) "Core continuing education" is defined as construction codes, construction laws, job site safety, OSHA 10 or OSHA 30 safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices, finance, bookkeeping, energy conservation, and construction business practices.

(e) "Professional continuing education" is defined as substantive subjects dealing with the practice of the construction trades, including land development, land use, planning and zoning, professional development, arbitration practices, estimating, marketing techniques, servicing clients, personal and property protection for the licensee and the licensee's clients and similar topics.

(f) The following course subject matter is not acceptable as core education or professional education hours: mechanical office and business skills, such as typing, speed reading, memory improvement and report writing; physical well-being or personal development, such as personal and business motivation, stress management, time management, dress for success, or similar subjects; presentations by a supplier or a supplier representative to promote a particular product or line of products; and meetings held in conjunction with the general business of the licensee or employer.

(g) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

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

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

(b) Provider. The course provider shall be among those specified in Subsection 58-55-302.5(2).

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

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

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

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

(g) Distance learning. A course that is provided through Internet or home study may be recognized for continuing education if the course verifies registration and participation in the course by means of a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant. A home study course shall include no fewer than five variations of the final examination, distributed randomly to participants. Home study courses, including the five exam variations, shall be submitted in their entirety to the Division for review. Providers shall track the following:

(i) the amount of time each student has spent in the course;

(ii) what activities the student did or did not access; and

(iii) all of the student's test scores.

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

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit and type of credit (core or professional);

(vi) the attendee's name; and

(v) the signature of the course provider.

(i) Live Broadcast. A course provided through live broadcast may be recognized for live in-class continuing education credit if the student and the instructor are able to see and hear each other.

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

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

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

(6) The continuing education requirement for electricians, plumbers and elevator mechanics as established in Subsections 58-55-302.7, if offered by a provider specified in Subsection 58-55-302.5(2), shall satisfy the continuing education requirement for contractors as established in Subsection 58-55-302.5 and implemented herein. The contractor licensee shall assure that the course provider has submitted the verification of the electrician's, plumber's or elevator mechanic's attendance on behalf of the licensee to the continuing education registry as specified in Subsection (8).

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

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

(9) As provided in Section 58-1-401 and Subsections 58-55-302.5(2) and 58-55-302.7(4)(a), the Division may

refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any course or provider, if the course or provider fails to meet any of the requirements of this section or the provider has engaged in unlawful or unprofessional conduct.

(10) Continuing Education Registry.

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

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

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

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

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

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

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

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

R156-55a-304. Contractor License Qualifiers.

(1) The capacity and material authority specified in Subsection 58-55-304(4) is clarified as follows:

(a) Except as allowed in Subsection (b), the qualifier must receive remuneration for work performed for the contractor licensee for not less than 12 hours of work per week;.

(i) If the qualifier is an owner of the business, the remuneration may be in the form of owner's profit distributions or dividends with a minimum ownership of 20 percent of the contractor licensee.

(ii) If the qualifier is an officer or manager of the contractor licensee, the remuneration must be in the form of W-2 wages.

(b) The 12 hour minimum in Subsection (a) may be reduced if the total of all hours worked by all owners and employees is less than 50 hours per week, in which case the minimum may not be less than 20 percent of the total hours of work performed by all owners and employees of the contractor.

(2)(a) A qualifier may hold up to three specialty classifications, in addition to any general contractor classifications, except that an R101 Residential and Small Commercial Non-Structural Remodeling and Repair qualifier may not have any other specialty classifications.

(b) A qualifier may change classifications at any time by surrendering a classification, and by applying for any classification for which the qualifier is permitted by law.

(c) A current qualifier shall surrender or replace the qualifier's classifications as needed to comply with Subsection (2)(a) at the time of any renewal or reinstatement involving the qualifier.

(3) A qualifier may not act as the qualifier for more than three licensees at any one time, unless:

(a) the qualifier demonstrates by sufficient evidence satisfactory to the Commission and the Division that the qualifier exercises material authority over the businesses; and

(b) written approval is granted by the Commission and the Division.

R156-55a-305. Compliance Agency Reporting of Sole Owner Building Permits Issued.

In accordance with Subsection 58-55-305(2), a compliance agency that issues building permits to sole owners of property shall submit, within 30 days of issuance, the following information concerning each building permit issued in its jurisdiction, to a Division-designated fax number, email address, or written mailing address:

(1) building permit number;

(2) date issued;

(3) issuing compliance agency's name, address, and phone number;

(4) sole owner's full name, home address, and phone number;

(5) building site subdivision and lot number.

R156-55a-305a. Exempt Contractors Filing Affirmation of Liability and Workers Compensation Insurance.

(1) Initial affirmation. In accordance with Subsection 58-55-305(1)(h)(ii)(H), any person claiming exemption under Subsection 58-55-305(1)(h) for projects with a value greater than $1,000 but less than $3,000 shall file a registration of exemption with the Division which includes:

(a) the identity and address of the person claiming the exemption; and

(b) a statement signed by the registrant verifying:

(i) that the person has liability insurance in force which includes the Division being named as a certificate holder, the policy number, the expiration date of the policy, the insurance company name and contact information, and coverage amounts of at least $100,000 for each incident and $300,000 in total; and

(ii) that the person has workers compensation insurance in force which names the Division as a certificate holder, includes the policy number, the expiration date of the policy, the insurance company name and contact information; or

(iii) that the person does not hire employees and is therefore exempt from the requirement to have workers compensation insurance.

(2) Periodic reaffirmations required. The affirmation required under Subsection (1) shall be reaffirmed on or before November 30 of each odd numbered year.

R156-55a-306. Contractor Financial Responsibility - Division Audit.

In accordance with Subsections 58-55-302(10)(c), 58-55-306, and 58-55-102(20), the Division may consider various relevant factors in conducting a financial responsibility audit of an applicant, licensee, qualifier, or any owner, including:

(1)(a) judgments, tax liens, collection actions, bankruptcy schedules and a history of late payments to creditors, including documentation showing the resolution of each of the above actions;

(b) financial statements and tax returns, including the ability to prepare or have prepared competent and current financial statements and tax returns;

(c) an acceptable current credit report that meets the following requirements:

(i) for individuals:

(A) a credit report from each of the three national reporting agencies, Trans Union, Experian, and Equifax; or

(B) a tri-merged credit report of the agencies identified in Subsection (A); or

(ii) for entities, a business credit report such as an

Experian Business Credit Report or a Dun and Bradstreet Report;

(d) an explanation of the reasons for any financial difficulties and how the financial difficulties were resolved;

(e) any of the factors listed in Subsection R156-1-302 that may relate to failure to maintain financial responsibility;

(f) each of the factors listed in this Subsection regarding the financial history of the owners of the applicant or licensee;

(g) any guaranty agreements provided for the applicant or licensee and any owners; and

(h) any history of prior entities owned or operated by the applicant, licensee, qualifier, or any owner that have failed to maintain financial responsibility.

R156-55a-308b. Natural Gas Technician Certification.

(1) In accordance with Subsection 58-55-308(1), the scope of practice defined in Subsection 58-55-308(2)(a) requiring certification is further defined as the installation, modification, maintenance, cleaning, repair or replacement of the gas piping, combustion air vents, exhaust venting system or derating of gas input for altitude of a residential or commercial gas appliance.

(2) An approved training program shall include the following course content:

(a) general gas appliance installation codes;

(b) venting requirements;

(c) combustion air requirements;

(d) gas line sizing codes;

(e) gas line approved materials requirements;

(f) gas line installation codes; and

(g) methods of derating gas appliances for elevation.

(3) In accordance with Subsection 58-55-308(2)(c)(i), the following programs are approved to provide natural gas technician training, and to issue certificates or documentation of exemption from certification:

(a) Federal Bureau of Apprenticeship Training;

(b) Utah college apprenticeship program;

(c) Trade union apprenticeship program;

(d) Rocky Mountain Gas Association; and

(e) Home Builders Association of Utah.

(4) In accordance with Subsection 58-55-308(3), the approved programs set forth in paragraphs (3)(b), (c), (d), and (e) herein shall require program participants to pass the RMGA Gas Appliance Installers Certification Exam, or equivalent exams approved by the Commission established or adopted by a training program, with a minimum passing score of 80%.

(5) In accordance with Subsection 58-55-308(3), a person who has not completed an approved training program, but has passed the RMGA Gas Exam or approved equivalent exam established or adopted by an approved training program, with a minimum passing score of 80%, or the Utah licensed Journeyman or Residential Journeyman Plumber Exam, with a minimum passing score of 70%, shall be exempt from the certification requirement set forth in Subsection 58-55-308(2)(c)(i).

(6) Content of certificates of completion. An approved program shall issue a certificate, including a wallet certificate, to persons who successfully complete their training program containing the following information:

(a) name of the program provider;

(b) name of the approved program;

(c) name of the certificate holder;

(d) the date the certification was completed; and

(e) signature of an authorized representative of the program provider.

(7) Documentation of exemption from certification. The following shall constitute documentation of exemption from certification:

(a) certification of completion of training issued by the Federal Bureau of Apprenticeship Training;

(b) current Utah licensed Journeyman or Residential Journeyman plumber license; or

(c) certification from the RMGA or approved equivalent exam which shall include the following:

(i) name of the association, school, union, or other organization who administered the exam;

(ii) name of the person who passed the exam;

(iii) name of the exam;

(iv) the date the exam was passed; and

(v) signature of an authorized representative of the test administrator.

(8) Each person engaged in the scope of practice defined in Subsection 58-55-308(2)(a) and as further defined in Subsection (1) herein, shall carry in their possession documentation of certification or exemption.

R156-55a-311. Reorganization - Conversion of Contractor Business Entity.

(1) A conversion from one form of entity to another form where "Articles of Conversion" are filed with the Utah Division of Corporations and Commercial Code shall not require a new contractor application.

(2) Except as provided in Subsection (1), a reorganization of the business entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity constitutes a reorganization and includes a change to a new entity under the same form of business entity or a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation, or any other business form.

R156-55a-312. Inactive License.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the licensee will not engage in the construction trade(s) for which the license was issued while on inactive status except to identify that licensee as an inactive licensee.

(2) A license on inactive status will not be required to meet the requirements of licensure in Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b).

(3) The requirements for reactivation of an inactive license specified in Subsection R156-1-305(6) shall also include:

(a) documentation that the licensee meets the requirements of Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b); and

(b) documentation that the licensee has taken and passed the business and law examination and the contractor classification examination, if required, for the contractor classification for which activation is sought

(c) prior to a license being activated, a licensee shall meet the requirements of renewal.

R156-55a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to notify the Division with respect to any matter for which notification is required under this rule or Title 58, Chapter 55, the Construction Trades Licensing Act, including a change in qualifier. Such failure shall be considered by the Division and the Commission as grounds for immediate suspension of the contractor's license;

(2) failing to notify the Division within 10 days of any change of the name, address, phone number, or email address of the qualifier or owners of a licensee;

(3) failing to continuously maintain insurance and

registration as required by Subsection 58-55-302(2) and Section R156-55a-302d;

(4) failing to provide within 30 days of a request from the Division or from any person that has a reasonable basis to make a claim on the licensee's insurance policy:

(a) proof of licensee's insurance coverage;

(b) the name of the licensee's insurance company, policy number, date of expiration, and insurance coverage limits;

(c) a copy of the licensee's insurance policy;

(d) a copy of the licensee's worker compensation policy, if required to maintain worker compensation insurance under Utah law; or

(e) any exclusions included in the licensee's insurance policy;

(5) failing to provide the Division, within 30 days of a request, documents and other requested information to determine compliance with any section under Title 58, Chapter 55 or Title 58, Chapter 1 of the Utah Code;

(6) refusing, as an electrical or plumbing contractor, to timely and accurately certify the hours of work experience when requested by an electrician or plumber who is or has been an employee;

(7) refusing, as a contractor, to timely and accurately certify the work experience for a contractor application when requested by a current or former employee;

(8) failure of a qualifier, owner, applicant, or licensee to be knowledgeable of the laws and rules applicable to their profession;

(9) failing to timely provide, upon request by any person, a copy of a current license or license number when performing construction trades work;

(10) an owner, qualifier, or licensee advising or instructing any person or applicant, for a fee, concerning an examination required under Title 58, Chapter 55 for which that owner, qualifier, or licensee was a subject-matter expert of the examination, unless:

(a) the owner, qualifier, or licensee is an instructor for an accredited university, college, trade, or technical school; and

(b) the Construction Services Commission approves in writing of the owner, qualifier, or licensee providing that instruction;

(11) using, hiring, or contracting with a professional employer organization that is not licensed with the Utah Insurance Department.

R156-55a-502. Penalty for Unlawful Conduct.

The penalty for violating Subsection 58-55-501(1) while suspended from licensure shall include the maximum fine allowed by Subsection 58-55-503(4)(i).

R156-55a-503. Administrative Penalties.

(1) In accordance with Subsection 58-55-503, the following fine schedule shall apply to citations issued under Title 58, Chapter 55:

TABLE II

FINE SCHEDULE

FIRST OFFENSE

Violation	All Licenses Except Electrical or Plumbing	Electrical or Plumbing
58-55-308(2)	$ 500.00	N/A
58-55-501(1)	$ 500.00	$ 500.00
58-55-501(2)	$ 500.00	$ 800.00
58-55-501(3)	$ 800.00	$1,000.00
58-55-501(9)	$ 500.00	$ 500.00
58-55-501(10)	$ 800.00	$1,000.00
58-55-501(12)	N/A	$ 500.00
58-55-501(14)	$ 500.00	N/A
58-55-501(19)	$ 500.00	N/A
58-55-501(21)	$ 500.00	$ 500.00
58-55-501(22)	$ 500.00	N/A
58-55-501(23)	$ 500.00	N/A
58-55-501(24)	$ 500.00	N/A
58-55-501(25)	$ 500.00	N/A
58-55-501(26)	$ 500.00	N/A
58-55-501(27)	$ 500.00	N/A
58-55-501(28)	$ 500.00	N/A
58-55-501(29)	$ 500.00	N/A
58-55-504(2)	$ 500.00	N/A

SECOND OFFENSE

58-55-308(2)	$1,000.00	N/A
58-55-501(1)	$1,000.00	$1,500.00
58-55-501(2)	$1,000.00	$1,500.00
58-55-501(3)	$1,600.00	$2,000.00
58-55-501(9)	$1,000.00	$1,000.00
58-55-501(10)	$1,600.00	$2,000.00
58-55-501(12)	N/A	$1,000.00
58-55-501(14)	$1,000.00	N/A
58-55-501(19)	$1,000.00	N/A
58-55-501(21)	$1,000.00	$1,000.00
58-55-501(22)	$1,000.00	N/A
58-55-501(23)	$1,000.00	N/A
58-55-501(24)	$1,000.00	N/A
58-55-501(25)	$1,000.00	N/A
58-55-501(26)	$1,000.00	N/A
58-55-501(27)	$1,000.00	N/A
58-55-501(28)	$1,000.00	N/A
58-55-501(29)	$1,000.00	N/A
58-55-504(2)	$1,000.00	N/A

THIRD OFFENSE

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-55-503(4)(h).

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) If multiple offenses are cited on separate citations, the fine shall be the maximum fine for each offense.

(5) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(6) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence presented.

R156-55a-504. Crane Operator Certifications.

In accordance with Subsection 58-55-504(2)(a) one of the following certifications is required to operate a crane on commercial construction projects:

(1) a certification issued by the National Commission for the Certification of Crane Operators;

(2) a certification issued by the Operating Engineers Certification Program; or

(3) a certification issued by the Crane Institute of America.

R156-55a-602. Contractor License Bonds.

Pursuant to the provisions of Subsections 58-55-306(1)(b) and 58-55-306(5)(b)(iii), a contractor shall provide a license bond issued by a surety acceptable to the Division in the amount, form, and coverage as follows:

(1) An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" at the date of the bond.

(2) The coverage of the license bond shall include losses that may occur as the result of the contractor's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 55 and rules R156-1 and R156-55a including the failure to maintain financial responsibility, the failure of the licensee to pay its obligations, and the failure of the owners or a licensed unincorporated entity to pay income taxes or self-employment taxes on the gross distributions from the unincorporated entity to its owners.

(3) The financial history of the applicant, licensee, qualifier, or any owner, as outlined in Section R156-55a-306, may be reviewed in determining the bond amount required under this section.

(4) If the licensee is submitting a bond under Subsection 58-55-306(5)(b)(iii)(B), the amount of the bond shall be 20% of the annual gross distributions from the unincorporated entity to its owners. As provided in Subsection 58-55-302(10)(c), the Division, in determining if financial responsibility has been demonstrated, may consider the total number of owners, including new owners added as reported under the provisions of Subsection 58-55-302(10)(a)(i), in setting the amount of the bond required under this subsection.

(5) If the licensee is submitting a bond under any subsection other than Subsection 58-55-306(5)(b)(iii)(B), the minimum amount of the bond shall be $50,000 for the E100 or B100 classification of licensure; $25,000 for the R100 classification of licensure; or $15,000 for other classifications. A higher amount may be determined by the Division and the Commission as provided in Subsection R156-55a-602(6).

(6) The amount of the bond specified under Subsection R156-55a-602(5) may be increased by an amount determined by the Commission and Division when the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is insufficient to reasonably cover risks to the public health, safety and welfare. The financial history of the applicant, qualifier, licensee or any owner, as outlined in Section R156-55a-306 may be reviewed in determining the bond amount required.

(7) A contractor may provide a license bond issued by a surety acceptable to the Division in an amount less than the bond amount specified in Subsection R156-55a-602(5) if:

(a) the contractor demonstrates by clear and convincing evidence that:

(i) the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is in excess of what is reasonably necessary to cover risks to the public health, safety and welfare;

(ii) the contractor's lack of financial responsibility is due to extraordinary circumstances that the contractor could not control as opposed to general financial challenges that all contractors experience; and

(iii) the contractor's scope of practice will be restricted commensurate with the degree of risk the contract presents to the public health, safety, and welfare; and

(b) the Commission and Division approve the amount.

KEY: contractors, occupational licensing, licensing
July 22, 2019 **58-1-106(1)(a)**
Notice of Continuation August 4, 2016 **58-1-202(1)(a)**
58-55-101
58-55-308(1)(a)
58-55-102(39)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-78. Vocational Rehabilitation Counselors Licensing Act Rule.
R156-78-101. Title.

This rule is known as the "Vocational Rehabilitation Counselors Licensing Act Rule".

R156-78-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 78, as used in Title 58, Chapters 1 and 78 or in this rule:

(1) "Disability related work experience", as used in Subsection 58-78-302(1)(e), means the practice of providing vocational rehabilitation services as defined in Subsection 58-78-102(3).

(2) "In-service" means a continuing education course that meets the requirements in Subsection R156-78-304(4) and is hosted or sponsored by an employer and not by a professional association, society or organization related to the profession.

(3) "LVRC" means a licensed vocational rehabilitation counselor.

(4) "Related field", as used in Subsection 58-78-302(1)(d), includes any of the following:

(a) psychology;

(b) clinical psychology;

(c) counseling psychology;

(d) professional guidance and counseling;

(e) social work;

(f) educational counseling;

(g) educational psychology with rehabilitation counseling emphasis;

(h) special education with rehabilitation counseling emphasis; and

(i) any other field deemed substantially related to the practice of rehabilitation counseling by the Board and Division.

(5) "Supervision", as used in Subsections 58-78-302(1)(e) and 58-78-304(1) means general supervision in that the supervising licensee:

(a) establishes a professional relationship with the supervisee which ensures that the work being performed is consistent with the scope and standards of the profession;

(b) is available for consultation with the person being supervised by personal face-to-face contact, or direct voice contact by telephone, radio, or some other means, whether or not the supervising licensee is located on the same premises as the person being supervised;

(c) provides necessary consultation within a reasonable period of time; and

(d) maintains routine personal contact with the person being supervised.

(6) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 78, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-78-502.

(7) "Vocational assessment", as used in Subsection 58-78-102(3)(c), includes the performance of forensic evaluations.

R156-78-103. 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 78.

R156-78-104. Organization - Relationship to Rule R156-1.

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

R156-78-302b. Experience Requirement.

(1) An applicant for licensure verifying completion of the experience requirement established in Subsection 58-78-302(1)(e) with experience that was not completed under the supervision of an LVRC must apply for licensure before January 1, 2011 for the applicant's experience to count toward completion of the experience requirement. Applicants for licensure who apply on or after January 1, 2011 must verify completion of experience under the supervision of an LVRC.

(2) A maximum of 2,000 hours of supervised experience during any one year period may be credited toward the 4,000 hour supervised experience requirement.

R156-78-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-78-302(1)(f), the examination requirements for licensure as an LVRC include passing the Certified Rehabilitation Counselor Examination administered by the Commission on Rehabilitation Counselor Certification.

R156-78-303. 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 78 is established by rule in Section R156-1-308a.

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

R156-78-304. Continuing Education.

(1) In accordance with Subsection 58-78-303(3), there is established a continuing education requirement for all individuals licensed under Title 58, Chapter 78 as an LVRC.

(2) During the two-year license renewal period commencing April 1 of each odd-numbered year, an LVRC shall be required to complete not less than 40 hours of continuing education directly related to the licensee's professional practice of which a minimum of four hours must be completed in ethics/law.

(3) The required number of hours of continuing education for an individual who first becomes licensed during the two-year period shall be decreased in a pro-rata amount equal to any part of that two-year period preceding the date on which that individual first became licensed.

(4) Continuing education under this Section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide continuing education relevant to the practice of vocational rehabilitation counseling; and

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

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

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, conferences or training sessions which meet the criteria listed in Subsection (4) above, and which are approved by, conducted by, or under the sponsorship of:

(i) universities and colleges; or

(ii) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of vocational rehabilitation counselors;

(b) a maximum of 20 hours per two-year period may be recognized for:

(i) teaching courses under Subsection (5)(a); or

(ii) supervision of an individual completing the experience requirement for licensure as an LVRC;

(c) a maximum of 12 hours per two-year period may be recognized for in-service directly related to practice as an LVRC; and

(d) a maximum of 24 hours of continuing education per two-year period may be recognized for internet or distance-learning courses that include an examination and issuance of a completion certificate.

(6) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of four years.

(7) A licensee requesting a waiver of the continuing education requirement must comply with requirements as established by rule in Section R156-1-308d.

(8) If a licensee completes more than the required number of hours of continuing education during a two-year renewal cycle specified in Subsection (2), up to ten hours of the excess over the required number may be carried over to the next two-year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

R156-78-502. Unprofessional Conduct.

(1) "Unprofessional conduct" includes:

(a) violating any provision of the Code of Professional Ethics for Rehabilitation Counselors, published by the Commission on Rehabilitation Counselor Certification, effective January 1, 2017, which is hereby adopted and incorporated by reference;

(b) failing to report in writing to the Division unlawful or unprofessional conduct as defined in Section 58-78-501, 58-78-502 and this Section, by a person licensed under Title 58, Chapter 78 within ten days after learning of the conduct, if the conduct:

(i)(A) results in disciplinary action taken by the licensee's employer or a professional association; or

(B) results in a significant adverse impact on the public's health, safety or welfare; and

(ii) was not known by the licensee to have already been reported to the Division; and

(c) failing to provide general supervision as defined in Subsection R156-78-102(4).

KEY: licensing, vocational rehabilitation counselor

January 2, 2018	**58-78-101**
Notice of Continuation July 15, 2019	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-79. Hunting Guides and Outfitters Licensing Act Rule.
R156-79-101. Title.

This rule is known as the "Hunting Guides and Outfitters Licensing Act Rule".

R156-79-102. Definitions.

In addition to the definitions in Sections 58-1-102 and 58-79-102, which shall apply to this rule:

(1) "Client" means the person who engages the professional services of a licensed outfitter.

(2) "Certification of completion of a first aid and CPR course" means a valid certificate issued by one of the following:

(a) the American Red Cross;

(b) the American Heart Association; or

(c) another organization that offers substantially equivalent first aid and CPR courses as approved by the Division in collaboration with the Board, to denote the individual whose name and signature appear on the certificate has successfully completed the applicable first aid and CPR course.

(3) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(a) a finding of guilt based on evidence presented to a judge or jury;

(b) a guilty plea;

(c) a plea of nolo contendere;

(d) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(e) a pending diversion agreement;

(f) a conviction which has been reduced pursuant to Subsection 76-3-402(1); or

(g) an equivalent of any of the above in another jurisdiction.

(4) "Packing" means transporting for hire or compensation hunters, game animals or equipment in the field.

(5) "Protecting" means the hunting guide and outfitter protects any clientele.

(6) "Responsible charge" means having principal care for the safety and welfare of a client when and where the hunting guide services are being provided.

(7) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 79, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-79-502.

R156-79-103. 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 79.

R156-79-104. Organization - Relationship to Rule R156-1.

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

R156-79-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3) and Section 58-79-302, the application requirements for licensure are defined herein.

(1) An application for licensure as a hunting guide shall be accompanied by:

(a) a current certification of criminal history record for the applicant issued by the state of Utah or the applicant's state of residency;

(b) a current certification of wildlife violation record for the applicant issued by the Utah Division of Wildlife Resources or the State Wildlife Agency of the applicant's state of residency;

(c) a verification of licensure from any state or territory of the United States or province of Canada in which the applicant has been licensed as a hunting guide; and

(d) a copy of a current photo identification for the applicant showing the applicant is at least 18 years of age. Acceptable photo identification shall include:

(i) a driver license issued by a state of the United States of America or the District of Columbia; or

(ii) an identification card issued by a federal, state or local government agency of the United States of America.

(2) An application for licensure as an outfitter shall be accompanied by:

(a) a current certification of criminal history record for the applicant issued by the state of Utah or the applicant's state of residency;

(b) a current certification of wildlife violation record for the applicant issued by the Utah Division of Wildlife Resources or the State Wildlife Agency of the applicant's state of residency;

(c) a verification of licensure from any state or territory of the United States or province of Canada in which the applicant has been licensed; and

(d) a copy of a current photo identification for the applicant showing the applicant is at least 18 years of age. Acceptable photo identification shall include:

(i) a driver license issued by a state of the United States of America or the District of Columbia; or

(ii) an identification card issued by a federal, state or local government agency of the United States of America.

R156-79-302c. Qualifications for Licensure - Examination Requirements.

(1) For the purposes of this rule, to show an applicant possesses a minimum degree of skill and ability, the applicant shall meet one of the following requirements:

(a) an applicant as a hunting guide shall pass the Utah Hunting Guide Examination or the Utah Outfitters Examination with a passing score of at least 75%; or

(b) an applicant as an outfitter shall pass the Utah Outfitters Examination with a passing score of at least 75%.

(2) An individual who fails an examination may retake the failed examination as follows:

(a) no sooner then 30 days following any failure, up to three failures; and

(b) no sooner than six months following any failure thereafter.

(3) The examination shall include an assessment of the applicant's knowledge of the Division hunting guide and outfitter statute and rules, the Utah Division of Wildlife Resources statutes and rules, the United States Forest Service and the Federal Bureau of Land Management hunting guidelines and rules and the Utah Hunter Safety Course guidelines and rules.

R156-79-302d. Qualifications for Licensure - Good Moral Character.

(1) Any one or more of the following may disqualify an individual from obtaining or holding a hunting guide or outfitters license:

(a) a violation of a state or federal wildlife, hunting guide or outfitter statute or regulation that includes:

(i) an imprisonment for more than five days within the previous five years;

(ii) an unsuspended fine of more than $2,000 imposed in the previous 12 months;

(iii) an unsuspended fine of more than $3,000 imposed

in the previous 36 months; or

(iv) an unsuspended fine of more than $5,000 imposed in the previous 60 months;

(b) any felony conviction within the last five years;

(c) a conviction for a felony offense against a person under Title 76, Chapter 5, Utah Criminal Code, Offenses Against the Person, within the last ten years;

(d) a conviction for one or more misdemeanors involving wildlife violations;

(e) a conviction for a misdemeanor crime of moral turpitude;

(f) a suspension or disciplinary action involving an individual obtaining or exercising the privileges granted by a hunting guide or outfitter license in this state or another state of the United States, province of Canada, by the Federal Bureau of Land Management or by the United States Forest Service; and

(g) a loss of the privilege to hunt in this state or another state of the United States or province of Canada.

R156-79-302e. Qualifications for Licensure - Equivalent Training Requirements.

(1)(a) An applicant for licensure as a hunting guide shall submit evidence of having successfully completed the following training:

(i) a first aid and CPR course as required under Subsection R156-79-102(2); and

(ii)(A) a basic hunting guide training program pursuant to Section R156-79-601; or

(B) 100 days of on-the job training that is substantially equivalent to the basic hunting guide training program.

(b) No more than 15 days of on-the-job training may be accepted for any single item of training listed in Section R156-79-601.

(2)(a) An applicant for licensure as an outfitter shall submit evidence of having successfully completed the following training:

(i) a first aid and CPR course as required under Subsection R156-79-102(2); and

(ii)(A) a basic outfitter training program pursuant to Section R156-79-602; or

(B) 100 days of on-the-job training that is substantially equivalent to the basic outfitter training program.

(b) No more than 15 days of on-the-job training may be accepted for any single item of training listed in Section R156-79-602.

(3) An applicant shall document on-the-job training through:

(a) an affidavit by a licensed hunting guide or outfitter, as applicable to the license sought, attesting to the on-the-job training claimed by the applicant;

(b) for an outfitter who has been licensed in another state, self-authenticating guarantees of reliability, such as:

(i) federal land agency records;

(ii) approved training program records; or

(iii) client affidavits or letters.

(4) Three days of on-the-job training may be waived by the Division in collaboration with the Board for every day of training completed by an applicant who has attended a hunting guide or outfitter school that, as of the date of attendance, has been approved by the Division in collaboration with the Board.

R156-79-303. 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 79 is established by rule in Section R156-1-308a.

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

R156-79-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) engaging in fraud in advertising or soliciting hunting guide or outfitter services to the public;

(2) intentionally obstructing or hindering or attempting to obstruct or hinder lawful hunting by a person who is not a client or an employee of the licensee;

(3) failing to promptly report, unless a reasonable means of communication is not readily available, and in no event later than 20 days, a violation of a state or federal wildlife, game or guiding statute that the licensee believes was committed by a client or an employee of the licensee;

(4) materially breaching a contract with a person using the hunting guide or outfitting services of the licensee;

(5) failing to provide any animal used in the conduct of business with proper food, drink and subjecting any animal used in the conduct of business to needless abuse or cruel and inhumane treatment;

(6) failing to allow the Division or its agents access at all times to inspect hunting camps, whether or not the licensee is present;

(7) failing to provide a hunting guide for every two hunters in wilderness areas and for up to six hunters in all other areas of the state;

(8) failing to maintain a neat, orderly and sanitary camp by not disposing of garbage, debris and human waste appropriately;

(9) failing to provide clean drinking water or failing to protect all food from contamination;

(10) failing to separate livestock facilities and camp facilities and to protect streams from contamination;

(11) failing to report any serious injury or fatality to the client or outfitter staff to a federal, state, county or local law enforcement authority;

(12) failing to comply with state and federal laws and rules regarding hunting guides and outfitters;

(13) failing to comply with state and federal wildlife laws and rules;

(14) failing to adequately maintain general liability insurance coverage as required by the United States Forest Service or the Bureau of Land Management;

(15) failing as a licensee to carry an original license, as issued by the Division, at all times when providing outfitting or hunting guide services;

(16) providing outfitter services to a person who is not properly licensed to hunt for the species sought by that person; and

(17) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established by the Utah Guides and Outfitters Association, adopted July 1, 2006, which is hereby incorporated by reference.

R156-79-601. Content of the Hunting Guide Basic Training Program.

The basic training program for hunting guides as required in Subsection 58-79-302(1)(e) shall be approved by the Division in collaboration with the Board and may include the following components or their equivalent:

(1) hunter ethics and attitude;

(2) horsemanship;

(3) packing skills;

(4) transporting livestock;

(5) shoeing skills;

(6) use of a crosscut saw and ax;

(7) use of a chain saw;

(8) general weapon knowledge;

(9) guiding skills;
(10) game care;
(11) setting up camps;
(12) hunting guide regulations;
(13) first aid and CPR training provided by:
(a) the American Red Cross;
(b) the American Heart Association; or
(c) another organization that offers substantially equivalent training as approved by the Division in collaboration with the Board;
(14) orienteering and map reading;
(15) a basic off highway vehicle safety course;
(16) basic survival skills;
(17) trophy judging skills;
(18) other topics pertinent to the hunting guide industry as approved by the Division in collaboration with the Board.

R156-79-602. Content of the Outfitter Basic Training Program.

The basic training program for outfitters as required in Subsection 58-79-302(2)(e) shall be approved by the Division in collaboration with the Board and may include the following components or their equivalent:
(1) hunter ethics and attitude;
(2) horsemanship;
(3) packing skills;
(4) transporting livestock;
(5) shoeing skills;
(6) use of a crosscut saw and ax;
(7) use of a chain saw;
(8) general weapon knowledge;
(9) guiding skills;
(10) game care;
(11) setting up camps;
(12) outfitter regulations;
(13) first aid and CPR training provided by:
(a) the American Red Cross;
(b) the American Heart Association; or
(c) another organization that offers substantially equivalent training as approved by the Division in collaboration with the Board;
(14) a basic off highway vehicle safety course;
(15) supervising clientele;
(16) hiring and supervising personnel;
(17) outfitter advertising;
(18) booking clientele;
(19) going into business for oneself;
(20) wilderness and back country manners;
(21) applying federal and state land use policies;
(22) obtaining all necessary licenses and permits and permissions for the client;
(23) providing staff and facilities for hunting;
(24) providing a hunting guide;
(25) orienteering and map reading;
(26) basic survival skills;
(27) trophy judging skills;
(28) other topics pertinent to the outfitter industry as approved by the Division in collaboration with the Board.

KEY: licensing, hunting guides, outfitters

July 9, 2015	**58-79-101**
Notice of Continuation July 8, 2019	**58-1-106(1)(a)**
	58-1-202(1)(a)

R277. Education, Administration.
R277-301. Educator Licensing.
R277-301-1. 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 licenses and license areas of concentration available and the requirements and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah.

R277-301-2. 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) "Educator preparation program" means the same as that term is defined in R277-303-2.

(4) "Endorsement" means a designation on a license area of concentration earned through demonstrating required competencies established by the Superintendent that qualifies the individual to:

(a) provide instruction in a specific content area; or

(b) apply a specific set of skills in an education setting.

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

(6)(a) "License areas of concentration" or "license area" means a designation on a license of the specific educational setting or role for which the individual is qualified, to include the following:

(i) Early Childhood;

(ii) Elementary;

(iv) Secondary;

(v) Educational Leadership

(vi) Career and Technical Education or "CTE";

(vii) School Counselor;

(viii) School Psychologist;

(ix) Special Education;

(x) Preschool Special Education;

(xi) Deaf Education;

(xii) Speech-Language Pathologist;

(xiii) Speech-Language Technician;

(xiv) School Social Worker; and

(xv) Communication Disorders.

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

R277-301-3. License Structure.

(1) Utah educator licenses include the following licenses:

(a) Associate educator license;

(b) Professional educator license; and

(c) LEA-specific educator license.

(2) All new Utah educator licenses shall include general, content knowledge, and pedagogical requirements.

(3) The Superintendent may only issue a single active Utah educator license to an individual.

(4) An educator license shall include at least one area of concentration.

(5) License areas of concentration and endorsements shall have a designation of:

(a) associate;

(b) professional; or

(c) LEA-specific.

(6) An associate educator license may only include associate or LEA-specific license areas of concentration and endorsements.

(7) An LEA-specific educator license may only include LEA-specific license areas of concentration and endorsements.

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

(9) The Superintendent shall review, adopt, and establish passing standards for all assessments required for educator licensing.

(10)(a) All licenses expire on June 30 of the year of expiration and may be renewed any time after January 1 of the same year.

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

R277-301-4. Associate Educator License Requirements.

(1) The Superintendent shall issue an associate educator license to an individual that applies for the license and that meets all requirements in this Section R277-301-4.

(2) An associate educator license, license area, or endorsement is valid for two years.

(3) The Superintendent may only renew an associate educator license if:

(a) the individual has less than two years of experience in a Utah public or accredited private school; or

(b) the individual is employed by a Utah public or accredited private school and the employer has requested a one year extension of the license.

(4) The general requirements for an associate educator license shall include:

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

(b) completion of the educator ethics review described in R277-500 within one calendar year prior to the application; and

(c) one of the following:

(i) a bachelor's degree or higher from a regionally accredited institution;

(ii) current enrollment in a university-based Board-approved educator preparation program that will result in a bachelor's degree or higher from a regionally accredited institution; or

(iii) skill certification in a specific CTE area as established by the Superintendent.

(5) The content knowledge requirements for an associate educator license shall include:

(a) for an elementary license area, passage of an elementary content knowledge test, approved by the Superintendent, that distinctly measures content in:

(i) mathematics;
(ii) reading/language arts;
(iii) social studies; and
(iv) science;
(b) for a secondary or CTE license area with a content endorsement, one of the following:
(i) passage of a content knowledge test approved by the Superintendent, where available;
(ii) a bachelor's degree or higher with a major in the content area from a regionally accredited university; or
(iii) enrollment in a program that will result in a degree described in Subsection (5)(b)(ii); and
(c) for all other license areas, enrollment in a university-based Board-approved educator preparation program.
(6) Additional requirements for an associate educator license shall include:
(a) successful completion of professional learning modules created or approved by the Superintendent in:
(i) educator ethics;
(ii) classroom management and instruction;
(iii) basic special education law and instruction;
(iv) the Utah Effective Teaching Standards described in R277-530; or
(b) enrollment in a university-based Board-approved educator preparation program.
(7) An individual holding a professional educator license may receive an associate license area or endorsement in additional areas if all the requirements of this section are met.
(8) A license applicant who has received or completed license preparation activities inconsistent with this rule may present compelling information and documentation for review and approval by the Superintendent to satisfy the associate educator license requirements.
(9) The Superintendent shall designate a panel of at least three Board staff members to review an appeal made under subsection (8).
(10) An LEA that employs an individual that holds an associate educator license shall develop a personalized professional learning plan designed to support the educator in meeting the requirements for a professional educator license no later than 60 days after beginning work in the classroom, which shall:
(a) be provided to the Superintendent upon request;
(b) include a formal discussion and observation process no later than 30 days after beginning work in the classroom; and
(c) consider:
(i) previous education related experience; and
(ii) previous educational preparation activities.
(11) An educator with an associate educator license may upgrade to a professional educator license at any time prior to expiration of the associate educator license if the educator meets all requirements of Section R277-301-5.

R277-301-5. Professional Educator License Requirements.
(1) The Superintendent shall issue a professional educator license to an individual that applies for the license and meets all requirements in this Section R277-301-6.
(2) A professional educator license, license area, or endorsement is valid for five years.
(3) The general requirements for a professional educator license shall include:
(a) all general requirements for an associate educator license under Subsection R277-301-5(4);
(b) completion of:
(i) a bachelor's degree or higher from a regionally accredited institution; or
(ii) skill certification in a specific CTE area as established by the Superintendent; and
(c) one of the following:
(i) a recommendation from a Board-approved educator preparation program; or
(ii) a standard educator license in the area issued by a licensing jurisdiction outside of Utah that is currently valid or is renewable consistent with Section 53E-6-307.
(4) The content knowledge requirements for a professional educator license shall include:
(a) all content knowledge requirements for an associate educator license under Subsection R277-301-4(5); and
(b) demonstration of all content knowledge competencies as established by the Superintendent.
(5) The pedagogical requirements for professional educator license shall include:
(a) demonstration of all pedagogical competencies as established by the Superintendent; and
(b) when applicable to the license area, passage of a pedagogical performance assessment meeting standards:
(i) established by the Superintendent; and
(ii) approved by the Board.
(6) An individual holding a Utah level 1, level 2, or level 3 educator license on January 1, 2020 is considered to have met the pedagogical requirements described in Subsection (5).
(7) An individual holding a Utah level - APT educator license that is employed by a Utah LEA and an individual enrolled in ARL or a university-based Board-approved educator preparation program on January 1, 2020 may meet the content knowledge and pedagogical requirements described in this Section R277-301-6 by completing all requirements of the applicable program.
(8) An individual holding a Utah professional educator license and license area in early childhood education, elementary, secondary, CTE, special education, or deaf education is considered to have met the pedagogical performance assessment requirement of Subsection (5)(b) if applying to add any of the license areas in the subsection.
(9) A license applicant who has received or completed license preparation activities inconsistent with this rule may present compelling information and documentation for review and approval or denial by the Superintendent to satisfy the professional educator license requirements.
(10) The Superintendent shall designate a panel of at least three individuals, including at least two Board licensed educators not employed by the Board, to review an appeal and make a recommendation to the Superintendent for the Superintendent's review and decision described in Subsection (9).

R277-301-6. 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.
(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 requirements of this rule.
(3) The Superintendent shall accept scores from an applicant on reasonably equivalent content knowledge or pedagogical performance assessments utilized by licensing jurisdictions outside of Utah that meet the passing standard of that jurisdiction as meeting the requirements of this rule.
(4) The Superintendent shall accept demonstrations of content knowledge and pedagogical competencies from an

applicant utilized by licensing jurisdictions outside of Utah that are 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 another jurisdiction shall be considered to have met both the content knowledge and pedagogical assessment requirements in the areas and subjects taught.

R277-301-7. LEA-specific Educator License Requirements.

(1) The Superintendent may issue an LEA-specific educator license to a candidate if:

(a) the LEA requesting the LEA-specific educator license has an adopted policy, posted on the LEA's website, which includes:

(i) educator preparation and support:

(A) as established by the LEA; and

(B) aligned with the Utah Effective Teaching Standards described in R277-530;

(ii) criteria for employing educators with an LEA-specific license; and

(iii) compliance with all requirements of this Rule R277-301;

(b) an LEA governing board applies on behalf of the the candidate

(c) the candidate meets all the requirements in this Section R277-301-7; and

(d) within the first year of employment, the LEA trains the candidate on:

(i) educator ethics;

(ii) classroom management and instruction;

(iii) basic special education law and instruction; and

(iv) the Utah Effective Teaching Standards described in R277-530.

(2)(a) Except as provided in Subsection (2)(b), an LEA governing board may request an LEA-specific educator license for a license area described in Subsection R277-301-2(6).

(b) An LEA may not request an LEA-specific educator license for a license area in:

(i) Special Education; or

(ii) Preschool Special Education.

(3) An LEA-specific license, license area, or endorsement is valid only within the requesting LEA.

(4) An LEA-specific license, license area, or endorsement is valid for one, two, or three years in accordance with the LEA governing board's application.

(5) The first renewal of an LEA-specific educator license, license area, or endorsement shall be approved or denied by the Board.

(6) The Board may require that subsequent renewals be approved by the Board on a case by case basis.

(7) An LEA-specific license expires immediately if the educator's employment with the LEA that requested the license ends.

(8) The general requirements for an LEA-specific educator license shall include:

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

(b) completion of the educator ethics review described in Rule R277-500 within one calendar year prior to the application; and

(c) approval of the request by the LEA governing board in a public meeting no more than 60 days prior to the application, which includes the LEA's rationale for the request.

(9) The content knowledge and pedagogical requirements for an LEA-specific educator license shall be established by the LEA governing board.

R277-301-8. Requirements for LEAs.

(1) An LEA shall provide a mentoring program that provides a trained mentor educator and annual mentoring plan:

(a) for educators holding an associate educator license;

(b) for at least two years for LEA-specific educator license holders; and

(c) for educators holding a professional educator license with less than three years of experience.

(2) A trained mentor educator under Subsection (1) shall hold a professional educator license and shall, where possible:

(a) perform substantially the same duties as the educator with release time to work as a mentor; or

(b) be assigned as an instructional coach or equivalent position.

(3) A trained mentor educator under Subsection (1) shall assist the educator to meet the Utah Effective Educator Standards established in Rule R277-530, but may not serve as an evaluator of the educator.

(4) A mentoring program under Subsection (1) shall include:

(a) a formal professional learning plan and LEA support in meeting the requirements of a professional license area; and

(b) if the educator holds an LEA-specific educator license, on-going training on educator ethics and special education.

(5) An LEA school that requests LEA-specific licenses, license areas, or endorsements shall prominently post the following information on each school's website:

(a) disclosure of the fact that the school employs individuals holding LEA-specific educator licenses, license areas, or endorsements;

(b) the percentage of the types of licenses, license areas, and endorsements held by educators employed in the school based on the employees' FTE in CACTUS; and

(c) a link to the Utah Educator Look-up tool provided by the Superintendent in accordance with Subsection R277-515-7(6).

R277-301-9. Superintendent Annual Report to the Board.

The Superintendent shall annually report to the Board on licensing, including:

(1) educator licensing;

(2) educator preparation; and

(3) equitable distribution of teachers.

R277-301-10. Effective Date.

(1) This rule will be effective beginning January 1, 2020.

(2) This rule will supersede Rule R277-502 on January 1, 2020.

KEY: professional competency, educator licensing

July 2, 2019 **Art X Sec 3**
53A-6-104
53A-1-401

R277. Education, Administration.
R277-303. Educator Preparation Programs.
R277-303-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Subsection 53E-6-201(3)(a), which allows the Board to establish the criteria for obtaining licenses; and

(d) Section 53E-6-302, which requires the Board to establish standards for approval of educator preparation programs.

(2) The purpose of this rule is to establish criteria for educator preparation programs in the State of Utah.

R277-303-2. Definitions.

(1)(a) "Educator preparation program" means a comprehensive program administered by an entity that is intended to prepare individuals to meet the requirements for a Utah professional license or license area of concentration.

(b) "Educator preparation program" may include a program developed by or associated with an institution of higher education, individual LEA, or the Board.

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

(3) "License area" has the same meaning as set forth in Subsection R277-301-2(5)(a).

(4) "Professional license" means the educator license described in Section R277-301-6.

R277-303-3. Educator Preparation Program Review and Approval.

(1) The Superintendent shall establish uniform procedures for initial approval and review of educator preparation programs to ensure compliance with this R277-303.

(2) The Superintendent shall approve an educator preparation program that meets the requirements of this rule and the standards for program approval established in:

(a) Rule R277-304;

(b) Rule R277-305;

(c) Rule R277-306; and

(d) all other applicable Board rules.

(3) The Superintendent shall conduct an on-going review of approved educator preparation programs and shall renew or deny approval for a program at least every seven years.

(4) The Superintendent may grant preliminary approval to a new educator preparation program within a Utah public college or university pending approval by the Utah State Board of Regents.

(5) The Superintendent shall make a report to the Board when an educator preparation program's initial application for approval is granted or denied.

(6) The Superintendent may place an approved educator preparation program on probation for:

(a) failure to meet program requirements detailed in applicable Board rules; or

(b) failure to submit complete and accurate information in a report required under this rule.

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

(8) The Superintendent may require a program or subset of programs to submit reports to inform the annual report to the Board required in Section R277-301-10.

(9) The Superintendent shall accept an approved educator preparation program's recommendations for a professional license or license area if the prospective licensee has met all other requirements of Board rule.

R277-303-4. Educator Preparation Programs.

(1) An educator preparation program that applies for approval by the Superintendent shall demonstrate how it will ensure that participants:

(a) are prepared to meet the Utah Effective Educator Standards established in R277-530;

(b) successfully complete or are prepared to complete the pedagogical performance assessment required in R277-301;

(c) have met the competencies required in R277-301; and

(d) have sufficiently demonstrated the ability to work in the applicable license area and subject area.

(2) In addition to the requirements of Subsection (1), an educator preparation program that is not also a Utah LEA shall:

(a) have a physical location in the state of Utah where participants attend classes; or

(b) if the program provides only online instruction:

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

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

(c) establish entry requirements that are designed to ensure that only high quality individuals enter the preparation 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

(d) include a student teaching or intern experience that meets the requirements detailed in:

(i) Rule R277-304;

(ii) Rule R277-305; and

(iii) Rule R277-306; and

(e) include a pedagogical performance assessment meeting standards established by the Superintendent and approved by the Board for all new students enrolled in the program after January 1, 2020 in all license areas for which such an assessment is available.

(3)(a) If the Superintendent denies an application from an educator preparation program, the proposed educator preparation program may appeal the Superintendent's decision to the Board by submitting a written appeal to the Board Secretary.

(b) The Board shall assign an appeal under Subsection (3)(a) to a standing committee to make a recommendation to the full Board for final action.

(4) An approved educator preparation program may recommend an individual that completed the program for a professional license or license area for up to five years after the individual completed the program, as long as all current license requirements have been met.

(5) If five years have passed since an individual completed an approved educator preparation program, the program may recommend the individual for a professional license or license area if the program:

(a) reviews the individual's program; and

(b) requires the individual to complete any additional necessary requirements to meet current programs standards prior to making a licensing recommendation.

(6) Notwithstanding Subsections (4) and (5), an

approved educator preparation program may recommend an individual who began the program before January 1, 2020 for a professional license or license area without meeting the pedagogical performance assessment requirement in R277-301, but must present documentation showing that the individual met the appropriate license requirements in effect prior to that date.

R277-303-5. Superintendent Responsibilities.

(1) The Superintendent shall provide support to educator preparation programs and potential licensees to the extent that funding allows by:

(a) maintaining a website to:

(i) facilitate collaboration between educator preparation programs;

(ii) facilitate communication between potential educators and approved programs; and

(iii) provide access to up-to-date research on educator preparation and education practices;

(b) reviewing third-party preparation materials for alignment with the Utah Effective Educator Standards in R277-530; and

(c) working with potential licensed educators to help them become licensed educators.

(2) The Superintendent shall design and maintain a model educator preparation program that:

(a) meets all requirements of this rule;

(b) may be adopted by an LEA or an accredited private school; and

(c) is overseen by staff distinct from the staff responsible for ensuring educator preparation program compliance with this Rule R277-303.

R277-303-6. Effective Date.

This rule will be effective beginning January 1, 2020.

KEY: educator preparation program, pedagogical assessment, professional competency, programs
July 2, 2019 **Art X Sec 3**
53E-3-401(4)
53E-6-201(3)(a)

R277. Education, Administration.
R277-406. Early Literacy Program and Benchmark Reading Assessment.
R277-406-1. 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 53F-2-503(14)(a), which directs the Board to develop rules for implementing the Early Literacy Program; and

(d) Section 53E-4-307, which requires the Board to approve a benchmark assessment for statewide use to assess the reading competency of students in grades one, two, and three.

(2) The purpose of this rule is to outline the responsibilities of the Superintendent and LEAs for implementation of Section 53F-2-503 and the Board's administration of Early Literacy in the state, including to:

(a) set expectations for LEA Early Literacy Plans;

(b) establish timelines for LEA Early Literacy Plans;

(c) provide definitions and designate assessments required in Section 53E-4-307;

(d) provide testing reporting windows, and timelines; and

(e) require LEAs to submit student reading assessment data to the Board.

R277-406-2. Definitions.

(1) "Benchmark reading assessment" means the Acadience Reading assessment that:

(a) is given three times each year;

(b) gives teachers information to:

(i) plan appropriate instruction; and

(ii) evaluate the effects of instruction; and

(c) provides data about the extent to which students are prepared to be successful on an end of year criterion referenced test.

(2) "Evidence-based" means a strategy that has demonstrated a statistically significant effect on improving student outcomes.

(3) "Parental notification requirements" means notice by any reasonable means, including electronic notice, notice by telephone, written notice, or personal notice.

(4) "Plan" means the literacy proficiency improvement plan required in the Early Literacy Program that is submitted by a public school district or a charter school, as required in Subsection 53F-2-503(4).

(5) "Program money" means the same as that term is defined in Section 53F-2-503.

(6) "Reading below grade level" means that a student:

(a) performs below the benchmark score on the benchmark reading assessment; and

(b) requires additional instruction beyond that provided to typically-developing peers in order to close the gap between the student's current level of reading achievement and that expected of all students in that grade.

(7) "Reading remediation interventions" means reading instruction or reading activities, or both, given to students in addition to their regular reading instruction, during another time in the school day, outside regular instructional time, or in the summer, which is focused on specific needs as identified by reliable and valid assessments.

(8) "Utah eTranscript and Record Exchange" or "UTREx" means the same as that term is defined in Section R277-404-2.

R277-406-3. Benchmark Reading Assessments.

(1) An LEA shall administer the benchmark reading assessments in grade 1, grade 2, and grade 3 within the following testing windows:

(a) the first benchmark before September 30;

(b) the second benchmark between December 1 and January 31; and

(c) the third benchmark between the middle of April and June 15.

(2) An LEA shall report benchmark reading assessment results to the Superintendent by:

(a) October 30;

(b) the last day of February; and

(c) June 30.

(3) If the benchmark reading assessment indicates a student is reading below grade level, the LEA shall implement the parental notification requirements and evidence-based reading remediation interventions described in Section 53E-4-307.

(4) An LEA shall report benchmark reading assessment results to parents of students in grade 1, grade 2, and grade 3 by:

(a) October 30;

(b) the last day of February; and

(c) June 30.

(5) An LEA shall submit to UTREx the following information from the benchmark reading assessment:

(a) whether or not each student received reading intervention; and

(b) UTREx Special Codes related to the benchmark reading assessment.

(6) An LEA that selects the reading assessment technology shall use the assessment consistent with Board directives.

R277-406-4. Early Literacy Plans -- LEA and Superintendent Requirements - Timelines.

(1) Beginning with the 2019-20 school year, to receive program money, an LEA shall submit:

(a) a plan in accordance with Subsection 53F-2-503(4); and

(b) other required materials within established deadlines.

(2)(a) Any time before July 1, an LEA may submit its plan to the Superintendent for pre-approval; and

(b) For each LEA that submits a plan for pre-approval, the Superintendent shall provide feedback in preparation for the LEA submitting the plan to its local board;

(3) An LEA shall submit a final plan to the Superintendent by no later than August 15;

(4) Notwithstanding Subsection (3), by September 1 an LEA shall provide to the Superintendent:

(a) proof that the LEA's governing board reviewed and approved the LEA's plan in an open meeting; and

(b) if necessary, a revised plan reflecting changes made to the LEA's plan by the LEA's governing board.

(5) Within three weeks of an LEA submitting a final, local board-approved plan to the Superintendent, the Superintendent shall notify the LEA if the plan has been approved or if modifications to the plan are required.

(6) If the Superintendent does not approve an LEA's plan, the LEA may, by October 15:

(a) incorporate needed changes or provisions;

(b) obtain approval for the amended plan from the LEA's governing board; and

(c) resubmit the amended plan; and

(7) If an LEA timely resubmits a plan that includes the required modifications, the Superintendent shall approve the plan by November 1.

(8) If an LEA fails to timely resubmit an acceptable plan by November 1, the LEA is not eligible for funding in the current school year.

(9) When reviewing an LEA plan for approval, the Superintendent shall evaluate:

(a) the extent to which the LEA's goals are ambitious, yet attainable; and

(b) whether the plan uses evidence-based curriculum, materials, and practices, which will support the LEA in meeting its growth goals.

(10) All LEA plans shall be reported to the Superintendent using a digital reporting platform.

R277-406-5. Accountability and Reporting on Early Literacy Plans.

(1) An LEA shall report progress toward the goals outlined in the LEA's plan to the Superintendent by June 30 each year.

(2) In accordance with Section 53F-2-503, a growth goal in an LEA's plan:

(a) is calculated using the percentage of students in an LEA's grades 1 through 3 who made typical, above typical, or well-above typical progress from the beginning of the year to the end of the year, as measured by the benchmark reading assessment; and

(b) sets the target percentage of students in grades 1 through 3 making typical progress or better at a minimum of 60 percent.

(3) The Superintendent shall use the information provided by an LEA described in Subsection R277-406-4 to determine the progress of each student in grades 1 through 3 within the following categories:

(i) well-above typical;

(ii) above typical;

(iii) typical;

(iv) below typical; or

(v) well-below typical.

(4) If an LEA does not make sufficient progress toward its plan goals, as defined in Subsection (5), the LEA shall be in the Board System of Support and required to participate in interventions to improve early literacy.

(5) Sufficient progress toward plan goals means the LEA meets:

(a) the LEA's growth goal, as described in Subsection 53F-2-503(4)(a)(v); and

(b) at least one of the LEA-designated goals addressing performance gaps, as described in Subsection 53F-2-503(4)(a)(vi).

(6) The Superintendent shall establish the strategies, interventions, and techniques for schools that are in the Board System of Support to help schools achieve early literacy goals.

KEY: reading, improvement, goals

July 2, 2019 **Art X Sec 3**

Notice of Continuation June 7, 2018 **53E-3-401(4)**

53F-2-503(14)(a)

R277. Education, Administration.
R277-417. Prohibiting LEAs and Third Party Providers from Offering Incentives or Disbursement for Enrollment or Participation.
R277-417-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(2) The purpose of this rule is to provide standards and procedures for prohibiting LEAs and third party providers from offering incentives for student enrollment.

R277-417-2. Definitions.

(1)(a) "Disbursement" means the payment of money or provision of other item of value greater than $10, per school year, offered as payment or compensation to a student or to a parent or guardian for:

(i) a student's enrollment in an LEA; or

(ii) a student's participation in an LEA's program.

(b) "Disbursement" does not include a reimbursement paid by an LEA to a student, parent or guardian, for an expenditure incurred by the student, parent or guardian on behalf of the LEA if:

(i) the expenditure is for an item that will be the property of the LEA; and

(ii) the expenditure was preauthorized by the LEA, as evidenced by preauthorization documentation.

(2) "Educational good or service" means the same as that term is defined in Section 53E-3-401.

(3) "Incentive" means one of the following given to a student or to the student's parent or guardian by an LEA or by a third party provider as a condition of the student's enrollment in an LEA or specific program for any length of time, during any school year:

(a) money greater than $10; or

(b) an item of value greater than $10.

(4) "Program" means a program within a school that is designed to accomplish a predetermined curricular objective or set of objectives.

(5) "Section 504 accommodation plan" required by Section 504 of the Rehabilitation Act of 1973, means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(6) "Third party provider" means a third party who provides an educational good or service on behalf of an LEA.

R277-417-3. LEA and Third Party Provider Use of Public Funds for Incentives and Disbursement.

(1) An LEA or a third party provider may not use public funds, as defined under Subsection 51-7-3(26), to provide the following to a student, parent or guardian, individual, or group of individuals:

(a) an incentive for a student's:

(i) enrollment in an LEA; or

(ii) participation in an LEA's program; or

(b) a referral bonus for a student's:

(i) enrollment in an LEA; or

(ii) participation in an LEA's program.

(2) An LEA or third party provider may not use public funds to provide a disbursement to a student or the student's parent or guardian for:

(a) curriculum exclusively selected by a parent;

(b) instruction not provided by the LEA;

(c) private lessons or classes not provided by:

(i) an employee of the LEA; or

(ii) a third party provider who meets all of the requirements of R277-115;

(d) technology devices exclusively selected by a parent; or

(e) other educational expense exclusively selected by a parent.

(3) An LEA may use public funds to provide:

(a) uniforms, technology devices, curriculum, or materials and supplies to a student if the uniforms, technology devices, curriculum, or materials and supplies are:

(i) available to all students enrolled in the LEA or program within the LEA; or

(ii) authorized by the student's college and career readiness plan, IEP, or Section 504 accommodation plan; or

(b) internet access for instructional purposes to a student:

(i) in kindergarten through grade 6; or

(ii) in grade 7 through grade 12 if:

(A) the internet access is provided in accordance with the fee waiver policy requirements of Section R277-407-8; or

(B) failure to provide the internet access will cause economic hardship on the student or parent.

(4) An LEA or third party provider shall ensure that equipment purchased or leased by the LEA or third party provider remains the property of the LEA and is subject to the LEA's asset policies if:

(a) the LEA or third party provider purchases equipment; and

(b) provides the equipment to a student or to the student's parent or guardian.

KEY: students, enrollment, incentives
July 2, 2019 **Art X Sec 3**
53E-3-401(4)

R277. Education, Administration.
R277-462. School Counseling Program.
R277-462-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Subsection 53E-2-304(2)(b) which directs local boards to develop policies for the implementation of student Plan for College and Career Readiness.

(2) The purpose of this rule is to establish:

(a) standards and procedures for an LEA applying for funds appropriated for the School Counseling Program;

(b) the minimum counselor to student ratios within an LEA; and

(c) provisions for an LEA not meeting the minimum counselor to student ratios;

R277-462-2. Definitions.

(1) "LEA" means, for purposes of this rule, an LEA that serves students any of in grades 7-12.

(2) "Program" means an LEA's school counseling program that shall be consistent with the program model described in Section R277-462-3.

(3) "School Counselor" means an educator licensed as a school counselor consistent with R277-506 and assigned to provide direct and indirect services to students consistent with the program.

(4) "Student" means, for purposes of this rule, only students in grades 7-12.

R277-462-3. Incorporation of College and Career Readiness School Counseling Program Model.

(1) This rule incorporates by reference the College and Career Readiness School Counseling Model Second Edition, 2016.

(2) A copy of the current College and Career Readiness School Counseling Program Model is located at:

(a) https://schools.utah.gov/file/5ff1f145-c2c4-4fe5-b8bc-61c744a27f51

(b) the Utah State Board of Education -- 250 East 500 South, Salt Lake City, Utah 84111.

R277-462-4. School Counseling Program Approval and Qualifying Criteria.

(1) To qualify for a funding distribution outlined in subsection (2), an LEA shall:

(a) have a plan for college and career readiness consistent with Section 53E-2-304 and R277-462-5;

(b) have an approved student success framework described in Section 53G-7-1304;

(c) participate in an on-site program review conducted by the Superintendent which shall:

(i) at least once every six years, be conducted with an LEA's accreditation review described in R277-410; and

(ii) assess the following components of the program:

(A) collaborative classroom instruction;

(B) implementation of the plan for college and career readiness;

(C) program contribution to achieving the student success framework;

(D) systemic dropout prevention; and

(E) overall administration of the program.

(d) at least once every three years conduct an internal on-site review consistent with elements of the on-site review conducted by the Superintendent;

(e) ensure school's program is self-evaluated annually;

(f) participate in statewide trainings provided by the Superintendent;

(g) provide adequate resources and program management to each program within the LEA;

(h) conduct a program needs assessment with relevant stakeholders at least once every three years including school-based data projects demonstrating program or intervention effectiveness;

(i) provide evidence of LEA governing board approval of the program;

(j) demonstrate parental involvement in the program including advisory committee participation;

(k) integrate collaborative classroom instruction consistent with student success framework and standards identified by the program model;

(l) maintain the required school counselor to student ratio described in Section R277-462-6;

(m) design a program that includes the needs of diverse students; and

(n) provide assistance for students in career literacy and future decision-making skills.

(2) An LEA that meets the requirements in subsection (1) may receive a funding distribution as follows:

(a) a WPU base for the first 400 students; and

(b) a per student distribution for each additional student beyond 400 students, up to 1200 students.

(3) An LEA shall use the October 1 enrollment count of the previous fiscal year when determining the distribution amount to request.

R277-462-5. Plan for College and Career Readiness.

(1) To qualify for funding described in Section R277-462-4 an LEA shall ensure each student within the LEA has a plan for college and career readiness.

(2) A student, student's parent, and school counselor shall collaboratively develop the student's plan for college and career readiness.

(3) A plan for college and career readiness shall:

(a) be a four-year plan and completed either:

(i) initiated at the beginning of a student's seventh grade year; or

(ii) within the first year the student is enrolled in grades 7-12;

(b) include parents in the individual planning meetings with a student;

(c) be maintained by the counseling department in each school;

(d) follow a student as the student progresses through each grade; and

(e) when applicable, transfer with a student between LEAs.

(4) An LEA shall ensure that a student's course registration and class schedule is consistent with the student's plan for college and career readiness.

(5) An LEA shall require all schools with the LEA to document parental involvement and participation in a student's planning meetings.

(5) An LEA shall ensure the implementation for a plan for college and career readiness in consistent with the LEA's program goals and includes the following conference meetings:

(a) at least one individual and one group conference meeting with a parent, school counselor and student during the student's:

(i) grades 7 and 8;

(ii) grades 9 and 10; and

(iii) grades 11 and 12.

(b) other meetings as needed.

R277-462-6. School Counselor to Student Ratios.

(1) To qualify for funding described in Section R277-462-4 an LEA shall have at least one school counselor for every 350 students.

(2) For purposes of counting toward fulfillment of this ratio, a school counselor shall be:

(a) a full-time equivalent within an LEA; and

(b) Board certified and licensed.

(3) An LEA may be considered compliant with subsection (1) if less than .25 school counselors would be needed for the LEA to meet the required ratio.

(4) No later than October 1 of each year an LEA shall certify to the Superintendent the school counselor to student ratio.

(5) No later than June 1 from submitting the LEA's certified ratio, an LEA that does not meet the required ratio in subsection (1) shall submit to the Board a plan outlining a reasonable timeline and method for achieving compliance.

(6) If an LEA fails to fulfill the plan described in subsection (5), the LEA may be placed on a corrective action plan described in R277-114.

(7) If an LEA fails to complete the corrective action plan described in subsection (6), the LEA shall be referred to the Board for further corrective action including loss of distributed funds.

R277-462-7. Allowable Use of Distributed Funds.

(1) An LEA shall ensure all funds distributed are used for any of the following purposes:

(a) a school collaborative classroom curriculum;

(b) personnel costs including clerical positions that support the plan for college and career readiness process;

(c) career center equipment or materials such as computers, media equipment, computer software, or occupational information;

(d) professional development for personnel involved in the program;

(e) expenses of extended hours which are required to run the program; and

(f) membership in the American School Counselor Association (ASCA) for one or more school counselors per school per year.

(2) An LEA may not use funds to supplant currently existing personnel or programs.

R277-462-8. Variances, Accountability, and Reporting.

(1) A new LEA or existing LEA with a new program, may receive funding under R277-462 if the new LEA:

(a) has received accreditation pursuant to R277-410; and

(b) has an approved program pursuant to R277-462.

(2) A new LEA or existing LEA with a new program, that does not meet the school counselor to student ratio described in Section R277-462-6 may receive a funding distribution after two years of planning, training and program implementation.

(3) No later than October 1, an LEA shall certify annually all previously qualified schools continue to meet the program criteria.

(4) An LEA shall provide data and information about the LEA's program as requested by the Superintendent.

KEY: public education, counselors
July 31, 2019 **Art X Sec 3**
Notice of Continuation May 23, 2019 **53E-2-304(2)(b)**
53E-3-401(4)

R277. Education, Administration.
R277-463. Class Size Average and Pupil-Teacher Ratio Reporting.
R277-463-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which places general control and supervision of the public school system under the Board;

(b) Section 53E-3-301, which directs the Board to report average class sizes and pupil-teacher ratios; and

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

(2) The purpose of this rule is to establish uniform class size and pupil-teacher ratio reporting procedures, including definitions and codes.

R277-463-2. Definitions.

(1) "Course" means the subject matter taught to students.

(a) Elementary courses are designated by grade level.

(b) Secondary courses are determined by course content.

(2) "EL" means English Learner.

(3)(a) "Individual class" means a group of students organized for instruction and assigned to one or more teachers or other staff members for a designated time period.

(b) A class may include:

(i) students from multiple grades; or

(ii) students taking multiple courses.

(c) The Superintendent shall determine an individual class from course data submitted to the Superintendent using a combination of course elements, such as:

(i) CACTUS identification number;

(ii) teacher of record;

(iii) class period;

(iv) term of student enrollment; and

(v) course cycle.

(4) "Pupil" means a student enrolled in a public school as of October 1 of the reported school year.

(5) "Teacher" means a full-time equivalent licensed educator, such as:

(a) a regular classroom teacher;

(b) a school-based specialist; or

(c) a special education teacher.

R277-463-3. Class Size Average for Elementary Classes.

(1)(a) An LEA shall report student level course data providing sufficient course information to determine the number of students in individual classes.

(b) An LEA shall calculate a class with students in multiple grades as one class.

(c) An LEA shall calculate an extended day classes in which one portion of the class arrives early and the other portion stays late as one class.

(2)(a) The Superintendent shall calculate average class size by grade.

(b) The Superintendent shall exclude special education, EL, online, and other non-traditional classes from class size average calculations.

(3) The Superintendent shall derive state and district-level class sizes from the median of school-level class sizes.

R277-463-4. Class Size Average for Secondary Classes.

(1)(a) An LEA shall report student level course data providing sufficient course information to determine the number of students in individual classes.

(b) An LEA shall calculate classes including students enrolled in multiple courses as one class.

(2)(a) The Superintendent shall calculate average class size for core language arts, mathematics, and science courses.

(b) The Superintendent shall exclude special education, EL, online, and other non-traditional classes from class size averages.

(3) The Superintendent shall derive state and district-level class sizes from taking the median of school-level class sizes.

R277-463-5. Pupil-Teacher Ratio Calculation.

(1)(a) The Superintendent shall calculate pupil-teacher ratios by school.

(b) The Superintendent shall calculate the pupil-teacher ratio for each school by dividing the number of enrolled pupils by the number of full-time equivalent teachers assigned to the school.

(2) The Superintendent shall derive district-level ratios by taking the median of school-level ratios.

(3) The Superintendent shall derive state-level ratios for charter schools and traditional schools by taking the median of school-level data.

R277-463-6. Reporting Format and Timeline.

The Superintendent shall report school, district and state-level ratios and class size averages to the public as required under Section 53E-3-301.

KEY: public schools, enrollment reporting, class size average reporting, pupil-teacher ratio reporting

July 2, 2019	**Art. X, Sec 3**
Notice of Continuation April 8, 2019	**53E-3-301**
	53E-3-401(4)

R277. Education, Administration.
R277-480. Charter School Revolving Account.
R277-480-1. 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 adopt rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Subsection 53F-9-203(2)(b), which requires the Board to administer the Charter School Revolving Account.

(2) The purpose of this rule is to:

(a) establish procedures for administering the Charter School Revolving Account;

(b) determine membership of the Charter School Revolving Account Committee; and

(c) determine loan amounts and loan repayment conditions.

R277-480-2. Definitions.

(1) "Charter school" means a public school created in accordance with the provisions of Title 53G, Chapter 5, Charter Schools.

(2) "Charter School Revolving Account" means a restricted account created within the Uniform School fund to provide assistance to charter schools to:

(a) meet school building construction and renovation needs; and

(b) pay for expenses related to the start up of a new charter school or the expansion of an existing charter school.

(3) "Charter School Revolving Account Committee" means the committee established by the Board under Subsection 53F-9-203(6).

(4) "Executive Director" means the Executive Directors of the State Charter School Board or the Executive Director's designee.

(4)(a) "Urgent facility need" means an unexpected exigency at a charter school that is entitled to priority under Subsection 53F-9-203(5) because it affects the health and safety of students.

(b) An "urgent facility need" may include:

(i) an unforeseen condition that precludes a school's qualification for an occupancy permit; or

(ii) an unforeseen circumstance that keeps the school from satisfying provisions of public safety, public health, or public school laws or Board rules.

R277-480-3. Charter School Revolving Account Committee.

(1) The Board shall establish a Charter School Revolving Account Committee in accordance with Subsection 53F-9-203(6).

(2) The State Charter School Board shall submit a list of at least three nominees per vacancy who meet the requirements of Subsection 53F-9-203(6)(b) for appointment by the Board consistent with timelines established by the Board.

(3) The Board shall annually accept nominations of individuals provided by the State Charter School Board who meet the qualifications of Subsection 53F-9-203(6)(b).

(4) The Board may only select Charter School Revolving Account Committee members who satisfy conditions of Subsection 53F-9-203(6).

(5) Charter School Revolving Account Committee members shall serve two year terms.

(6) The Executive Director shall be a non-voting Charter School Revolving Account Committee member.

R277-480-4. Charter School Revolving Account Application and Conditions.

(1) The Charter School Revolving Account Committee shall develop a loan application that is consistent with Section 53F-9-203, including criteria for urgent facility needs.

(2) The Charter School Revolving Account Committee may request any criteria or information from an applicant that the committee finds necessary and helpful in making final recommendations to the State Charter School Board and the Board.

(3)(a) The Charter School Revolving Account Committee shall accept applications for loans annually by April 30, subject to eligibility criteria and availability of funds.

(b) If the Charter School Revolving Account Committee does not distribute all available funds during its initial application process, the committee may set deadlines to review additional applications.

(4) To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation.

(5) A charter school's application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:

(a) agrees to enter into the loan as provided in the application materials;

(b) agrees to the interest established by the Charter School Revolving Account Committee and repayment schedule of the loan designated by the Charter School Revolving Account Committee and the Board;

(c) agrees that loan funds shall only be used consistent with the purposes of Section 53F-9-203 and the approved charter;

(d) agrees to any and all inspections, audits or financial reviews ordered by the Charter School Revolving Account Committee or the Board; and

(e) agrees to all terms required for the loan by the State Division of Finance, including:

(i) servicing by the State Division of Finance;

(ii) payment of an annual servicing fee;

(iii) agreement to execute an electronic funds transfer agreement for monthly payments by the school; and

(iv) in the case of default, agreement to terms established by the State Division of Finance for collection.

(6) The Charter School Revolving Account Committee shall establish terms and conditions for loan repayment, consistent with Section 53F-9-203. Terms shall include:

(7) The terms established under Subsection (6) shall include a tiered schedule of loan fund distribution as follows:

(a) 50 percent (up to $150,000) disbursed no more than 12 months prior to August 15 in the school's first year of operations;

(b) 25 percent (up to $75,000) disbursed no more than six months prior to August 15 in the school's first year of operation;

(c) the balance of loan funds disbursed no more than three months prior to August 15 in the school's first year of operations.

(8) The loan amount to a charter school board awarded under Section 53F-9-203 may not exceed:

(a) $1,000 per pupil based on the most recent October 1 enrollment count for operational schools; or

(b) $1,000 per pupil based on approved enrollment capacity of the first year of operation for pre-operational schools; or

(c) $300,000 of the total of all current loan awards by the Board to a charter school board.

R277-480-5. Charter School Revolving Account Committee Recommendations and Board Approval.

(1) The Charter School Revolving Account Committee shall make recommendations to the State Charter School Board and the Board only upon receipt of complete and satisfactory information from the applicant and upon a majority recommendation from the Charter School Revolving Account Committee.

(2) The submission of intentionally false, incomplete or inaccurate information from a loan applicant may result in:

(a) immediate cancellation of any previous loan;

(b) the requirement for immediate repayment of any funds received;

(c) denial of subsequent applications for a 12 month period from the date of the initial application; and

(d) a recommendation to a school's authorizer to consider revocation of the school's charter.

(3) The Superintendent and Executive Director shall review recommendations from the Charter School Revolving Account Committee.

(4) The Charter School Revolving Account Committee shall submit recommendations for loan funding to the State Charter School Board for review.

(5) The State Charter School Board shall submit final recommendations to the Board no more than 90 days after submission of all information and materials from the loan applicant to the Charter School Revolving Account Committee.

(6) Either the State Charter School Board or the Board may request additional information from loan applicants or a reconsideration of a recommendation by the Charter School Revolving Account Committee.

(7) The Board's approval or denial of a loan application constitutes the final administrative action in the charter school building revolving loan process.

KEY: charter schools, revolving account

July 2, 2019	**Art X, Sec 3**
Notice of Continuation May 13, 2019	**53F-9-203(2)(b)**
	53E-3-401(4)

R277. Education, Administration.
R277-493. Kindergarten Supplemental Enrichment Program.
R277-493-1. 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 53F-4-205(7), which directs the Board to adopt rules to implement the kindergarten supplemental enrichment program.

(2) The purpose of this rule is to make rules to establish reporting procedures and administer the kindergarten supplemental enrichment program established in Section 53F-4-205.

R277-493-2. Definitions.

(1)(a) "Eligible school" has the same meaning as defined in Subsection 53F-4-205.

(b) "Eligible school" does not include a school that receives funds under Section 53F-2-507, Enhanced kindergarten early intervention program.

(2) "Kindergarten supplemental enrichment program" has the same meaning as defined in Subsection 53F-4-205.

R277-493-3. Program Administration.

(1) An LEA with an eligible school may apply for kindergarten supplemental enrichment program funds by filing a grant application following a form approved by the Superintendent no later than May 15 annually.

(2) An application filed in accordance with Subsection (1) shall include:

(a) evidence of an eligible school's overall need for a kindergarten supplemental enrichment program based on the results of the eligible school's current kindergarten entry assessments and programming;

(b) a description of how the eligible school will use the Board approved uniform entry assessment to determine which students to target for the kindergarten supplemental enrichment program;

(c) a description of how the eligible school's program will coordinate with the Superintendent and LEA personnel to meet the annual reporting requirements of this rule;

(d) a description of how the eligible school will use funds to meet the requirements of Subsection 53F-4-205(4);

(e) if an eligible school is applying based on their percentage of students experiencing intergenerational poverty, a description of the learning strategies the school will employ to design and implement a program that is developed with the unique needs of students experiencing intergenerational poverty in mind; and

(f) other information as requested by the Superintendent.

(3)(a) If an eligible school has previously received funding through the kindergarten supplemental enrichment program, an application under Subsection (1) shall also include data from Board entry and exit exams to establish success in changing student outcomes in comparison to similarly situated peers who weren't able to receive the benefit of the kindergarten supplemental enrichment program.

(b) If an LEA submits a renewal application for a school that has previously been deemed eligible and received funding through the kindergarten supplemental enrichment program, the Superintendent may continue to deem the school as eligible based on the school's eligibility described in Subsection 53F-4-205(1)(b) from its initial application year.

(4) The Superintendent shall recommend distribution of funds by the Board in accordance with Subsection 53F-4-205(2).

(5) An eligible school that receives kindergarten supplement enrichment program funds shall comply with the assessment and reporting requirements of Section R277-489-3.

(6) The Superintendent shall require an eligible school that receives funds in accordance with this rule to demonstrate compliance with federal supplanting requirements.

R277-493-4. Eligibility to Apply for 2019-20 School Year Grant Funds.

(1) The Superintendent shall review data gathered from 2018-19 kindergarten entry and exit assessments to determine the following performance measures:

(a) average percentage of students state-wide with increases in literacy scores;

(b) average percentage of students state-wide with increases in numeracy scores;

(c) average percentage of students state-wide with decreases in literacy scores;

(d) average percentage of students state-wide with decreases in numeracy scores;

(2)(a) An eligible school that received program funds for the 2018-19 school year may reapply to receive program funds for the 2019-20 school year if the eligible school performs better than the state average in at least three of the four performance measures outlined in Subsection (1).

(b) An eligible school that does not meet the performance standards outlined in Subsection (2)(a) may not apply for program funds for the 2019-20 school year.

KEY: kindergarten, supplementals, enrichments
July 2, 2019 **Art X Sec 3**
Notice of Continuation April 8, 2019 **53E-3-401**
53F-4-205(7)

R277. Education, Administration.
R277-503. Licensing Routes.
R277-503-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53E-3-501, which directs the Board to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student services; and

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

(2) The purpose of this rule is to:

(a) provide minimum eligibility requirements for applicants for teacher licenses;

(b) provide explanation and criteria of various teacher licensing routes;

(c) provide criteria and procedures for licensed teachers to earn endorsements; and

(d) require all applicants for licenses to submit to a criminal background check.

R277-503-2. Definitions.

(1) "Alternative Routes to Licensure advisors" or "ARL advisors" means:

(a) a specialist designated by the Superintendent with specific professional development and educator licensing expertise; and

(b) a curriculum specialist designated by the Superintendent.

(2)(a) "Career and technical education" or "CTE" means organized educational programs that:

(i) prepare individuals for a wide range of high-skill, high-demand careers;

(ii) provide all students with a seamless education system from public education to post-secondary education, driven by a Plan for College and Career Readiness; and

(iii) provide students competency-based instruction, hands-on experiences, and certified occupational skills, culminating in further education and meaningful employment.

(b) CTE areas of study include:

(i) agriculture;

(ii) business and marketing;

(iii) family and consumer sciences;

(iv) health science;

(v) information technology;

(vi) skilled and technical sciences; and

(vii) technology and engineering education.

(3) "Competency-based" means a teacher training approach structured for an individual to master and demonstrate content and teaching skills and knowledge at the individual's own pace and sometimes in alternative settings.

(4) "Core academic subject" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

(5) "Council for Accreditation of Educator Preparation" or "CAEP" means the nationally-recognized organization that provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of k-12 teachers.

(6) "Endorsement" means a supplemental qualification to a teaching license that is based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program.

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

(8) "Letter of authorization" means a formal approval given to an individual, such as an out-of-state candidate or a first year ARL candidate who:

(a) is employed by an LEA in a position requiring a professional educator license;

(b) has not completed the requirements for an ARL license or a Level 1, 2, or 3 license; or

(c) has not completed necessary endorsement requirements.

(9) "Level 1 license" means a Utah professional educator license issued by the Board to an applicant who has met all ancillary requirements established by law or rule, and:

(a) completed an approved preparation program;

(b) completed an alternative preparation program;

(c) is approved pursuant to an agreement under the NASDTEC Interstate Contract; or

(d) completed the requirements of R277-511.

(10) "Level 2 license" means a Utah professional educator license issued by the Board after satisfaction of all requirements for a Level 1 license and:

(1) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;

(3) additional requirements established by law or rule.

(11) "Level 3 license" means a Utah professional educator license issued by the Board to an educator who holds a current Utah Level 2 license and has also received:

(a) National Board Certification;

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

(i) holds a Speech-Language Pathology area of concentration; and

(ii) has obtained American Speech-Language Hearing Association (ASHA) certification.

(12) "National Association of State Directors of Teacher Education and Certification" or "NASDTEC" means the educator information clearinghouse that maintains an interstate reciprocity agreement and database for its members regarding educators whose licenses have been suspended or revoked.

(13) "National Council for Accreditation of Teacher Education" or "NCATE" means the nationally-recognized organization that accredits the education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.

(14) "Pedagogical knowledge" means practices and strategies of teaching, classroom management, preparation and planning that are in addition to an educator's content knowledge of an academic discipline.

(15) "Regional accreditation" means formal approval of a school that has met standards considered to be essential for the operation of a quality school program by the following organizations:

(a) Middle States Commission on Higher Education;

(b) New England Association of Schools and Colleges;

(c) North Central Association Commission on Accreditation and School Improvement;

(d) Northwest Accreditation Commission;

(e) Southern Association of Colleges and Schools; and

(f) Western Association of Schools and colleges: Senior College Commission.

(16) "Restricted endorsement" means a qualification available only to teachers in necessarily existent small school settings based on content area knowledge obtained through a Board-approved program of study or demonstrated through passage of a Board-designated test.

(17) "State-approved Endorsement Plan" or "SAEP" means a plan in place developed between the Superintendent and a licensed educator to direct the completion of endorsement requirements by the educator.

(18) "Teacher Education Accreditation Council" or "TEAC" means the nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.

R277-503-3. Licensing Eligibility.

(1) For a license applicant following the traditional college or university license, the license applicant shall:

(a) complete a Board approved college or university teacher preparation program;

(b) be recommended for licensing; and

(c) satisfy all other requirements for educator licensing required by law; or

(2) For a license applicant following an alternative licensing route, the license applicant shall:

(a) have a bachelors degree or higher from an accredited higher education institution in an area related to the position the applicant is seeking;

(b) have skills, talents or abilities, as evaluated by the employing entity, making the applicant appropriate for a licensed teaching position and eligible to participate in an ARL program; and

(c) while participating in an alternative licensing program, be approved for employment under an ARL license.

(3) An ARL program may not exceed three school years.

(4) A license applicant seeking a Level 1 Utah educator license, or an area of concentration, or an endorsement in a core academic subject area shall submit passing scores on a Board-designated content test, where tests are available, prior to the issuance of a renewable license or endorsement.

(5) For each endorsement in a core academic area to be posted on the license, a teacher shall submit passing scores on a Board-designated content tests, where tests are available.

(6) A licensure candidate recommended for a Utah Level 1 license who does not submit a passing score on the test designated in Subsection(4) is not eligible for licensure until achieving a passing score.

(7) All educators licensed under this rule shall also:

(a) complete the background check required under Section 53A-6-401;

(b) satisfy the professional development requirements of R277-500; and

(c) be subject to all Utah licensing requirements and professional standards.

R277-503-4. Licensing Routes - Traditional and Alternative Routes.

(1) An applicant seeking a Utah educator license shall successfully complete the accredited program or legislatively-mandated program consistent with this rule.

(2) To be recognized by the Board, an institution of higher education teacher preparation program shall be:

(a) Nationally accredited by:

(i) CAEP;

(ii) NCATE; or

(iii) TEAC; and

(b) approved by the Board to recommend for licensure in the license area, or endorsements, or both in designated areas.

(3)(a) An applicant who meets the eligibility requirements in Section R277-503-3, and is assigned to teach exclusively in an online setting, is eligible to begin the ARL program.

(b) Upon completion of the ARL program, the applicant shall earn a license area of concentration that is restricted to providing instruction in an online setting.

R277-503-5. Alternative Routes to Licensure (ARL).

(1) To be eligible to begin the ARL program, an applicant for a school position requiring an elementary license area of concentration shall have a bachelors degree and at least 27 semester hours of applicable content courses distributed among elementary curriculum areas provided under R277-700-4.

(2) To be eligible to begin the ARL program, an applicant for a school position requiring a secondary license area of concentration shall hold at least a bachelors degree and:

(a) a degree major or major equivalent directly related to the assignment; or

(b) have completed all Board-designated content coursework required for the relevant endorsement.

(3) To be eligible to begin the ARL program, an applicant for a CTE school position who does not meet the requirements in R277-503-4(2) shall meet the requirements for a CTE license area of concentration as provided in R277-518.

(4) To be eligible for acceptance in the ARL program, an applicant shall be employed in a position at a Utah public or accredited private school where the applicant:

(a) receives a teaching assignment where the applicant has primary instruction responsibility for the assigned students;

(b) is designated the teacher of record for assigned courses for all school accountability and educator evaluation purposes;

(c) is responsible for the instructional planning of the courses including developing, adapting, and implementing the curriculum to meet student needs;

(d) analyzes and assesses student progress and adjusts instruction, materials, and delivery strategies to meet the students' needs;

(e) has final responsibility for determining student grades and credit for the courses taught by the applicant;

(f) is assigned in:

(i) a 7-12 secondary setting and employed at least 0.5 FTE in the applicant's eligible content areas; or

(ii) a K-6 elementary setting and employed at least 0.5 FTE and is responsible to teach language arts and reading, mathematics, science, and social studies or is employed in a state-sponsored dual immersion program; and

(g) shall be formally evaluated twice each school year consistent with R277-531, Public Educator Evaluation Requirements (PEER).

R277-503-6. Licensing by Agreement.

(1) An individual employed by an LEA shall satisfy the minimum requirements of R277-503-3 as a teacher with appropriate skills, training or ability for an identified licensed teaching position in the LEA.

(2) An applicant shall obtain an ARL application for licensing from the Board's web site.

(3) After evaluation of a candidate's transcripts and Board-designated content test score, the ARL advisors and the candidate shall determine the specific content knowledge and pedagogical knowledge required of the license applicant to satisfy the requirements for licensing.

(4) The ARL advisors may identify higher education

courses, district sponsored coursework, Board-approved professional development, or Board-approved competency tests to prepare or indicate content, content-specific, and developmentally-appropriate pedagogical knowledge required for licensing.

(5) An applicant who has been employed as an educator under a competency-based license or as a full-time instructional paraeducator may offer that experience in lieu of one or more pedagogy courses as follows:

(a) The applicant has had at least three years of experience as an educator or paraeducator;

(b) The applicant's experience has been successful based on documentation from the LEA; and

(c) The Superintendent and employing LEA have approved the applicant's experience in lieu of pedagogy courses.

(6) An employing LEA shall assign a trained mentor to work with an applicant for licensing by agreement.

(7)(a) An LEA shall supervise and assess a license applicant's classroom performance for a minimum of one school year if the applicant teaches full-time or a minimum of two school years if the applicant teaches part-time.

(b) An LEA may request assistance from an institution of higher education or the ARL advisors in monitoring and assessing an applicant.

(8)(a) An LEA shall assess a license applicant's disposition as a teacher following a minimum of one school year full-time teaching experience.

(b) An LEA may request assistance in assessment under Subsection (8)(a).

(9) The ARL advisors shall annually review and evaluate a license applicant following training, assessments or course work, and the full-time teaching experience and evaluation by the LEA.

(10) Consistent with evidence and documentation received, the ARL advisors may recommend a license applicant to the Board for a Level 1 educator license.

R277-503-7. Licensing by Competency.

(1) An LEA may employ an individual as a teacher if the individual:

(a) has appropriate skills, training, or ability for an identified licensed teaching position in the LEA; and

(b) satisfies the minimum requirements of Section R277-503-3.

(2)(a) An employing LEA, in consultation with the applicant and the ARL advisors, shall identify Board-approved content knowledge and pedagogical knowledge examinations.

(b) The applicant shall pass designated examinations demonstrating the applicant's adequate preparation and readiness for licensing.

(3) An employing LEA shall assign a trained mentor to work with an applicant for licensing by competency.

(4) An LEA shall monitor and assess a license applicant's classroom performance during a minimum of one-year full-time or two-years part-time teaching experience.

(5) An LEA shall assess a license applicant's disposition for teaching following a minimum of one-year full-time teaching experience.

(6) An LEA may request assistance in the monitoring or assessment of a license applicant's classroom performance or disposition for teaching.

(7) Following the one-year training period, an LEA and the Superintendent shall verify all aspects of preparation including content knowledge, pedagogical knowledge, classroom performance skills, and disposition for teaching to the ARL advisors.

(8) If all evidence/documentation is complete and satisfactory, the Superintendent shall recommend an applicant for a Level 1 educator license.

(9) An ARL candidate under Section R277-503-5 shall be issued an ARL license or license area as appropriate that is presumed to expire at the end of the school year.

(10) An ARL license may be extended annually for two subsequent school years with the following documentation of progress in the ARL program:

(a) a copy of the supervisor's successful end-of-year evaluation;

(b) copies of transcripts and test results, or both, showing completion of required coursework;

(c) verification of working with a trained mentor; and

(d) satisfaction of the full-time full year experience.

R277-503-8. LEA Specific Competency-based Licenses.

(1)(a) An LEA may apply to the Board for a Level 1 competency-based license for an applicant to fill a position in the LEA.

(b) The application shall demonstrate that other licensing routes for the applicant are untenable or unreasonable.

(2) An employing LEA shall request a Level 1 competency-based license no later than 60 days after the date of the individual's first day of employment.

(3) An application for a Level 1 competency-based license from the LEA for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b)(i) for a K-6 grade teacher, the satisfactory results of the state test including subject knowledge and teaching skills in the required core academic subjects under Subsection 53E-6-306(3)(a)(ii) as approved by the Board; or

(ii) for a teacher in grades 7-12, demonstration of a high level of competency in each of the core academic subjects in which the teacher teaches by passing the state core academic subject test required under Subsection R277-503-3(4), in each of the core academic subjects in which the teacher teaches at the Superintendent-established passing score.

(4) An application for a Level 1 competency-based license from an LEA for non-core teachers in grades K-12 shall provide documentation of:

(a) a bachelors degree, associates degree or skill certification; and

(b) skills, talents or abilities specific to the teaching assignment, as determined by the LEA.

(5) Following receipt of documentation and consistent with Subsection 53E-6-306(2), the Superintendent shall approve a Level 1 competency-based license.

(6) If an individual with a Level 1 competency-based license leaves the LEA before the end of the employment period, the LEA shall notify the Superintendent regarding the end-of-employment date.

(7) An individual's Level 1 competency-based license shall be valid only in the LEA that originally requested the competency-based license.

(8) A written copy of a Level 1 competency-based license shall prominently state the name of the LEA followed by LEVEL 1 - LEA SPECIFIC - COMPETENCY-BASED LICENSE.

(9)(a) An LEA may change the assignment of a competency-based license holder and provide notice to the Superintendent;

(b) The Superintendent may require additional competency-based documentation for the teacher to remain qualified.

(10) A Level 1 competency-based license is equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations,

and subject to the same renewal procedures except that an individual may renew a Level 1 competency-based license.

(11) A Level 2 competency-based license may be issued to a Level 1 competency-based license holder if that individual successfully completes the Entry years Enhancement program as detailed in R277-522.

(12) A Level 2 competency-based license is equivalent to the Level 2 license as described in R277-500 and R277-502 as to length and professional development expectations.

(13) A Level 3 competency-based license may be issued to a Level 2 competency-based license holder if that individual holds a doctorate in education or in a field related to a content unit of the public education system from an accredited institution.

(14) A Level 3 competency-based license is equivalent to the Level 3 license as described in R277-500 and R277-502 as to length and professional development expectations.

(15) If an individual holds a Utah license, an application for an LEA specific competency-based license shall be subject to additional Superintendent review based upon the following criteria:

(a) license level;

(b) current license status;

(c) area of concentration and endorsements on Utah license; and

(d) circumstances justifying the LEA specific license.

(16)(a) If an application is not approved based on the Superintendent's review of the criteria provided in Section R277-503-4, appropriate licensure procedures shall be recommended to the requesting LEA.

(b) An applicant may be required to:

(i) renew an expired license;

(ii) apply for an endorsement;

(iii) pass appropriate Board approved tests consistent with Subsection R277-503-3(4);

(iv) obtain an additional area of concentration;

(v) apply to Alternative Route to Licensure; or

(vi) satisfy other reasonable standards.

R277-503-9. Endorsement Routes.

(1)(a) An applicant shall successfully complete one of the following programs for an endorsement:

(i) a Board-approved institution of higher education educator preparation program with endorsements;

(ii) assessment, approval, and recommendation by a designated and subject-appropriate Board specialist; or

(iii) a Board-approved Utah institution of higher education or Utah LEA-sponsored endorsement program that includes content knowledge and content-specific pedagogical knowledge approved by the Superintendent.

(b)(i) The Superintendent shall be responsible for final recommendation and approval for programs described in Subsections (1)(a)(i) and (ii).

(ii) A university or LEA shall be responsible for final review and recommendation of programs described in Subsection (1)(a)(iii), and the Superintendent shall be responsible for final approval.

(2)(a) A restricted endorsement shall be available and limited to teachers in necessarily existent small schools as determined under R277-445.

(b) Teacher qualifications shall include at least nine semester hours of Superintendent-approved university-level courses in each course taught by the teacher holding a restricted endorsement.

(3) All provisions that directly affect the health and safety of students required for endorsements, such as prerequisites for drivers education teachers or coaches, shall apply to applicants seeking endorsements through all routes under this rule.

(4) Prior to an individual taking courses, exams or seeking a recommendation in the ARL licensing program, the individual shall have LEA and Superintendent authorization.

R277-503-10. Sunset Clause.

(1) This rule will sunset on June 30, 2020.

(2) Notwithstanding, Subsection (1), the Superintendent shall grant an Associate Educator license to an ARL candidate in good standing with the candidate's ARL program prior to June 30, 2020.

(3) An educator who receives an Associate Educator license under Subsection (2) may receive a Professional Educator license by completing the candidate's approved ARL program.

(4) The Superintendent may not accept new applications for the ARL program after November 1, 2019.

KEY: teachers, alternative licensing
July 31, 2019 **Art X Sec 3**
Notice of Continuation November 15, 2016 **53E-3-501(1)(a)**
53E-3-401(4)

R277. Education, Administration.
R277-511. Academic Pathway to Teaching (APT) Level 1 License.
R277-511-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Subsection 53E-6-201(2)(a), which allows the board by rule, to rank, endorse, or otherwise to:

(i) classify licenses; and

(ii) establish the criteria for an educator to obtain or retain a license; and

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

(2) The purpose of this rule is to provide standards and procedures:

(a) for an applicant to obtain an Academic Pathway to Teaching (APT) level 1 license; and

(b) for an APT level 1 license holder to obtain a level 2 license.

R277-511-2. Definitions.

(1)(a) "APT level 1 license" means a license obtained through the academic path to teaching process as described in this rule.

(b) "APT level 1 license" includes:

(i) an APT level 1 license with an Elementary (K-6) Concentration; and

(ii) an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement.

(2) "LEA administrator" means a school building principal or LEA administrator who:

(i) supervises an APT level 1 licensee; and

(ii) may recommend the APT level 1 licensee for Level 2 licensure to the Superintendent as described in Section R277-511-7.

(3) "Teacher leader" means a teacher designated as a teacher leader as described in R277-513.

R277-511-3. Superintendent Responsibilities.

(1) The Superintendent shall create an application for an APT level 1 license and publish the application on the Board's website.

(2) The Superintendent shall approve an application for an APT level 1 license if the applicant meets all of the requirements of Section R277-511-4 or Section R277-511-5.

R277-511-4. Requirements for an APT Level 1 License with an Elementary (K-6) Concentration.

(1) To qualify for an APT level 1 license with an Elementary (K-6) Concentration, an applicant shall:

(a) complete the application described in Subsection R277-511-3(1);

(b) have completed a bachelor's degree or higher;

(c) submit postsecondary transcripts to the Superintendent;

(d) receive a passing score on the Elementary Education: Multiple Subjects Praxis Assessment;

(e) complete the educator ethics review on the Board's website;

(f) successfully pass a background check as described in R277-516; and

(g) pay the applicable licensing fee.

(2) An APT level 1 license with an Elementary (K-6) Concentration is:

(a) equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations; and

(b) subject to the same renewal procedures.

R277-511-5. Requirements for an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement.

(1) To qualify for an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement, an applicant shall:

(a) complete the application described in Subsection R277-511-3(1);

(b) have completed a bachelor's degree or higher;

(c) submit postsecondary transcripts to the Superintendent;

(d) receive a passing score on one of the following that is related to the subject, field, or area to which they are seeking an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement:

(i) a Praxis II Subject Assessment; or

(ii) another Board-approved content knowledge assessment;

(e) complete the educator ethics review on the Board's website;

(f) successfully pass a background check as described in R277-516; and

(g) pay the applicable licensing fee.

(2) Except as provided in Subsection (3), an APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement is:

(a) equivalent to the Level 1 license as described in R277-500 and R277-502 as to length and professional development expectations; and

(b) subject to the same renewal procedures.

(3) An APT Level 1 License with a Secondary (6-12) Concentration and an Endorsement holder may only seek an additional endorsement after the APT Level 1 License with a Secondary (6-12) Concentration holder obtains a level 2 license.

R277-511-6. Requirements for an LEA that Employs an APT Level 1 License Holder.

If an LEA employs an APT level 1 license holder, the LEA shall:

(1) assign a teacher leader to serve as a mentor to the APT level 1 license holder;

(2) prepare the APT level 1 license holder to meet the Utah Effective Educator Standards described in R277-530-5;

(3) prepare a mentoring plan for each APT Level 1 license holder; and

(4) provide an APT Level 1 license holder's mentoring plan to the Superintendent upon request.

R277-511-7. Requirements for an APT Level 1 License Holder to Gain a Level 2 License.

(1) To receive a Level 2 license, an APT level 1 license holder shall:

(a)(i) complete three years of teaching full-time in one LEA under supervision of the teacher leader mentor and LEA administrator; or

(ii) complete four years of at least 0.4 FTE teaching in one LEA under the supervision of a teacher leader mentor and the LEA administrator;

(b) satisfy all Entry Years Enhancement for Quality Teaching requirements designated in R277-522;

(c) complete the requirements of the APT Level 1 license holder's mentoring plan;

(d) complete any additional requirements of the recommending LEA, including coursework and professional learning that the recommending LEA requires;

(e) complete the educator ethics review on the Board's website;

(f) renew the educator's background check as required in R277-516; and

(g) obtain a recommendation from the LEA administrator; and

(h) pay applicable licensing fees.

(2)(a) An APT level 1 license holder seeking a level 2 license may request a one year extension of the APT level 1 license at the recommendation of the LEA Administrator up to a maximum of two one-year extensions.

(b) Unless required by the recommending LEA, the years of teaching in Subsection (1)(a) do not need to be consecutive.

R277-511-8. Sunset Clause.

(1) This rule will sunset on June 30, 2020.

(2) Notwithstanding Subsection (1), the Superintendent shall convert the license of an educator with an APT Level 1 License prior to June 30, 2020, with a current teaching position in a Utah LEA, to an Associate Educator license.

(3) An educator with a converted license under Subsection (2) may receive a Professional Educator license by completing the requirements of Section R277-511-7.

(4)(a) The Superintendent may not accept new applications for APT licenses after September 1, 2019.

(b) Notwithstanding Subsection (4)(a), the Superintendent may accept an application for an APT license, for an applicant with a position in a Utah LEA through November 1, 2019.

KEY: Academic Pathway to Teaching, educator licensure
July 2, 2019 **Art X Sec 3**
53E-6-201
53E-3-401(4)

R277. Education, Administration.
R277-604. Private School, Home School, and Bureau of Indian Education (BIE) Student Participation in Public School Achievement Tests.
R277-604-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Section 53E-4-302, which directs the Board to require school districts and charter schools to administer the U-PASS assessment system to uniformly measure statewide student performance.

(2) The purpose of this rule is:

(a) to provide opportunities for Utah private school students and home school students who are Utah residents, and Utah students attending Bureau of Indian Education (BIE) schools to participate in U-PASS;

(b) to maintain the integrity and security of U-PASS;

(c) to provide an orderly and manageable administrative process for public schools to include Utah private school students and home school students who are Utah residents, and Utah students attending BIE schools to participate in U-PASS if they so desire; and

(d) to protect the public investment in U-PASS by making assessments available to students who are not funded by the public education system through fair, reasonable, and consistent practices.

R277-604-2. Definitions.

(1) "Home school student" means a student who has been excused from compulsory education and for whom documentation has been completed under Section 53G-6-204.

(2) "Private school" means a school that is not a public school but:

(a) has a current business license through the Utah Department of Commerce;

(b) is accredited as described in R277-410; and

(c) has and makes available a written policy for maintaining and securing student records.

(3) "Utah Performance Assessment System for Students" or "U-PASS" means:

(a) the summative adaptive assessment of a student in grades 3 through 8 in basic skills courses;

(b) the online writing assessment in grades 5 and 8;

(c) a high school assessment in grades 9 and 10;

(d) a statewide English Language proficiency assessment;

(e) the college readiness assessment; and

(f) the summative assessment of a student in grade 3 to measure reading grade level using the end of year benchmark reading assessment.

R277-604-3. Private Schools.

(1) Private school students who are Utah residents, as defined under 53G-6-302, may participate in U-PASS.

(2) Private school students who are not Utah residents may participate in U-PASS only by payment in advance of the full cost of individual assessments as determined by local school board policy.

(3)(a) Private schools that are interested in participating in U-PASS may, at the public school district's discretion, do so only in the public school district in which the private school is located.

(b) School districts shall determine at which public schools within the district private school students may take achievement tests.

(c) A private school may request the following from the school district in which the private school is located:

(i) an annual schedule of U-PASS dates;

(ii) the locations at which private schools may be tested; and

(iii) written policies for private school student participation.

(4) A school district shall develop a policy regarding private school student participation in U-PASS, which shall include:

(a) reasonable costs for the participation of Utah private school students in U-PASS to be paid in advance by either the student or the student's private school;

(b) an explanation of reasonable costs including costs for administration materials, scoring, and reporting of assessment results;

(c) notice to private school administrators of any required private school administrator participation in monitoring or proctoring of tests; and

(d) reasonable time lines for private school requests for participation and school district or school response.

R277-604-4. Home School Students.

(1) A home school student who is a Utah resident, as defined under Section 53G-6-302, may participate in U-PASS as provided in this rule.

(2) A home school student may participate in U-PASS only if the student has satisfied the home schooling requirements of Section 53G-6-204.

(3) A home school student who desires to participate in U-PASS may participate in:

(a) the public school district in which the home school student's parent or legal guardian resides; or

(b) a charter school.

(4) A home school student or parent may request the following from the school district in which the home school student or parent resides or a charter school:

(a) an annual schedule of U-PASS dates;

(b) the locations at which home school students may be tested; and

(c) written policies for home school student participation.

(5) A school district or charter school shall develop a policy regarding home school student participation in U-PASS, which:

(a) may not require a home school student to pay a fee that is not charged to traditional students;

(b) shall include notice to home school students or parents of any required parent or adult participation in monitoring or proctoring of tests; and

(c) shall include reasonable time lines for home school requests for participation and school district or school response.

R277-604-5. Bureau of Indian Education (BIE) Students.

(1) BIA schools may participate in all U-PASS requirements for all Utah students.

(2) Materials and training shall be provided to BIE schools from the public school district in which the school is located on the schedule that applies to Utah school districts.

R277-604-6. LEA Responsibilities.

An LEA shall comply with the following when administering U-PASS to a private, home school, or Bureau of Indian Educations' student:

(1) Board Rule R277-404; and

(2) the Standard Test Administration and Testing Ethics Policy described in R277-404-3.

KEY: home school, private school, participation, achievement tests
July 31, 2019 Art X Sec 3
Notice of Continuation October 14, 2016 53E-3-401
53E-4-302(1)(a)

R277. Education, Administration.
R277-622. School-based Mental Health Qualified Grant Program.
R277-622-1. Authority and Purpose.

(1) This rule is authorized by:

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

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

(c) Section 53F-2-415 which requires the Board to makes rules that establish:

(i) procedures for submitting a plan for the School-based Mental Health Qualified Grant Program;

(ii) a distribution formula the Board will use to distribute funds to an LEA; and

(iii) annual reporting requirements for an LEA that receives funds pursuant to the School-based Mental Health Qualified Grant Program.

(2) The purpose of this rule is to establish the procedures for an LEA to receive a School-based Mental Health Qualified Grant including:

(i) plan submission process, format, and requirements;

(ii) funding distribution methods; and

(iii) additional requirements including reporting and accountability.

R277-622-2. Definitions.

(1) "Plan" means a School-based Mental Health Qualified Grant plan described in Section R277-622-3.

(2) "Qualified Personnel" means the same as the term is defined in Subsection 53F-2-415(1).

(3) "Related Services" means mental-health or school nursing services provided by the local mental health authority or a private provider through a contract.

R277-622-3. School-based Mental Health Plan.

(1) To qualify for a School-based Mental Health Qualified Grant, an LEA shall submit a plan to the Superintendent.

(2) The plan shall include:

(a) a three-year projection for the LEA's goals, metrics, and outcomes;

(b) requirements outlined in Subsection 53F-2-415(3);

(c) plan for improving access to students who are underserved or at risk;

(d) how qualified personnel will increase access to mental health services;

(e) a process for utilization of qualified personnel in participating with an LEA's care team as outlined in R277-400;

(f) the source of the LEA's matching funds; and

(g) a timeline and process for stakeholder training in trauma-informed practices.

(3) Except as provided in Subsection (4), an LEA shall submit the LEA's plan no later than May 31 for a funding distribution to be made for the upcoming school year.

(4) An LEA shall submit a plan no later than June 7 for a funding distribution to be made in Fiscal Year 20.

(5) An LEA's approved plan is valid for three years and may be required to be reapproved after three years of implementation.

R277-622-4. Board Approval or Denial of LEA Plan.

(1) The Board shall approve or deny each LEA plan submitted by the Superintendent.

(2) If the Board denies an LEA's plan, the LEA may amend and resubmit the LEA's plan to the Superintendent until the Board approves the LEA plan.

R277-622-5. School-Based Mental Health Grant Distribution.

(1) An LEA with an approved plan pursuant to subsection R277-622-4 shall receive a School-based Mental Health Grant distribution.

(2) The funding amount distributed to an approved LEA shall be the sum of:

(a) $25,000; and

(b) a per student allocation based on the number of students in an LEA divided by the total available grant appropriation less the aggregate amount of appropriation allocated as described in Subsection (2)(a).

(3) The number of students used in Subsection (2)(b) shall be:

(i) based on the October 1 headcount in the prior year; or

(ii) for a new LEA, based on the new LEA's projected October 1 headcount.

(4) An LEA may only receive an initial distribution totaling 25% of the allocation upon plan approval.

(5) An LEA may receive a second distribution totaling 75% of the allocation upon demonstration to the Superintendent of:

(a) contracting of services for qualified personnel; or

(b) hiring qualified personnel.

(6) After the distribution described in subsections (2)(a) and (b), and by October 1 of each year, the Superintendent shall distribute any undistributed funds as an additional allocation to an LEA.

(7) An LEA may qualify for the additional allocation described in Subsection (6) if the LEA demonstrates an intent to collaborate with the Local Mental Health Authority of the county the LEA is located.

(8) The additional allocation described in subsection (6) shall be:

(a) the aggregate total of undistributed funds;

(b) subject to all matching fund requirements described in section R277-622-3;

(c) distributed to an eligible LEA in an amount equal to the LEA's portion of the student headcount of all eligible and participating LEAs; and

(d) used for collaboration with the Local Mental Health Authority of the County the LEA is located.

R277-622-6. Matching Funds.

(1) To qualify for a School-based Mental Health Qualified Grant, an LEA shall provide matching funds as required by Subsection 53F-2-415(4)(b).

(2) To qualify as matching funds the LEA's funds may come from any of the following sources or procedures:

(a) prioritizing of existing unrestricted state or local funds including:

(i) an unrestricted donation; or

(ii) new funds available in the next fiscal year;

(b) funds generated from property tax;

(c) charter school local replacement funds;

(d) unrestricted MSP Basic program funds; or

(e) another source of unrestricted state funds or local funds as approved by the Superintendent.

(3) Funds may not qualify as a match if:

(a) the funds are from restricted state funds including:

(i) funds granted to an LEA for a specific program created in statute or rule;

(ii) funds that have already been used as a match in a different state grant program; or

(iii) funds from a federal source; or

(b) the funds are described in Subsection 53F-2-415(5).

(4) An LEA shall demonstrate that all matching funds fit within the scope of work for school-based mental health and general health services as outlined in an LEA's plan.

(5) An LEA shall report revenues and expenditures of program funds by location code according to the Board approved chart of accounts.

R277-622-7. Allowable Uses of Funds.

(1) An LEA that receives a distribution pursuant to Section R277-622-6 may use the funds only for the following:

(a) salary and benefits for the hiring of qualified personnel; or

(b) procuring a contract for related services;

(2) If an LEA fails to hire qualified personnel by January 31 the allocated funds shall be returned to the Board.

(3) All unexpended funds distributed to an LEA shall be returned to the Board at the end of the LEA's school year and redistributed in the following year's distribution.

(4) An LEA shall use the LEA's matching funds and allocation within the fiscal year the funds are distributed.

(5) An LEA that has remaining balances at year end shall report the remaining balances in the LEA's annual program report described in R277-484.

(6) An LEA with remaining balances shall receive a reduction totaling the remaining balances in the LEA's award for the following fiscal year.

R277-622-8. Annual Reporting and Accountability.

(1) An LEA with an approved plan and funding amount shall provide the Superintendent with an annual report no later than October 1 of each year.

(2) The annual report shall include:

(a) a total baseline count of qualified personnel in an LEA before receiving the initial funding allocation;

(b) the number of qualified personnel hired above the baseline count using the funding allocation;

(c) the progress made toward achieving goals and outcomes outlined in the LEA's plan; and

(d) other information requested by the Superintendent.

KEY: mental health, programs, reporting
July 31, 2019 **Art X Sec 3**
53E-3-401
53E-4-302(1)(a)

R277. Education, Administration.
R277-707. Enhancement for Accelerated Students Program.
R277-707-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Section 53F-2-408, which requires the Board to establish a distribution formula for the expenditure of funds appropriated for the Enhancement for Accelerated Students Program; and

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

(2)(a) The purpose of this rule is to specify the procedures for distributing funds appropriated under Section 53F-2-408 to LEAs.

(b) The intent of this appropriation is to provide resources to LEAs to enhance the academic growth of accelerated students.

R277-707-2. Definitions.

(1) "Accelerated students" means students participating in accelerated programs.

(2) "Accelerated programs" means student services with increased depth, complexity, or rigor, which may include above-grade level coursework, including:

(a) Gifted and Talented programs;

(b) IB programs; or

(c) AP courses.

(3) "Advanced placement" or "AP" courses means rigorous courses developed by the College Board where:

(a) each course is developed by a committee composed of college faculty and AP teachers, and covers the breadth of information, skills, and assignments found in the corresponding college course; and

(b) students who perform well on the AP exam may be:

(i) granted credit; or

(ii) advanced standing at participating colleges or universities.

(4)(a) "Gifted and talented programs" means programs to identify, through multiple assessment instruments, and serve students with outstanding abilities who have potential for high performance in the following areas:

(i) general intellectual ability;

(ii) specific academic aptitude; and

(iii) creative or productive thinking.

(b) Instruments for identifying gifted and talent students shall not be solely dependent upon English vocabulary or comprehension skills and shall take into consideration abilities of culturally diverse students and students with disabilities.

(5) "International Baccalaureate" or "IB" Program means one of the following programs established by the International Baccalaureate Organization:

(a) the Diploma Program;

(b) the Middle Years Program; or

(c) the Primary Years Program.

(6) "Parent" means a student's parent, legal guardian, or a responsible adult with a power of attorney meeting the requirements of Subsection 53G-6-302(4).

(7) "Underrepresented students" means a subset of students, as determined by an LEA and approved by the Superintendent, that holds a smaller percentage in a program as compared to the overall school population.

(8) "Weighted Pupil Unit" means the basic state funding unit.

R277-707-3. Eligibility and Application.

(1) All LEAs are eligible to apply for the Enhancement for Accelerated Students Program funds annually.

(2) An LEA shall have a process for identifying students whose potential could be supported by accelerated programs.

(3) To receive program money, an LEA shall submit an application to the Superintendent that includes an LEA's plan for:

(a) how the LEA intends to engage all parents so that parents understand the opportunities available for their children in elementary, middle school, high school and beyond, including how the LEA will comply with Rule R277-462;

(b) how the LEA intends to spend program money; and

(c) how the LEA intends to eliminate barriers and increase enrollment of underrepresented students in accelerated academic programs.

(4) The Superintendent shall publish outlines and required submission dates related to an LEA application and plan for increasing enrollment of underrepresented students in accelerated academic programs.

R277-707-4. Distribution and Use of Funds.

(1) The Superintendent shall distribute Enhancement of Accelerated Students program funds as follows:

(a) the greater of 1.5% or $100,000 to support IB programs;

(b) 60% of funds to LEAs to support Gifted and Talented programs; and

(c) the remaining funds to LEAs to support AP programs.

(2)(a) The Superintendent shall determine funding to be awarded to an LEA's IB programs by:

(i) dividing the number of students enrolled in an LEA's IB program by the total enrollment of students in IB programs throughout the state; and

(ii) multiplying the result from Subsection (2)(a)(i) by the total IB allocation.

(b) The Superintendent shall determine 50% of the funding to be awarded for an LEA AP programs by:

(i) dividing the number of students enrolled in an LEA's AP classes by the total enrollment of students in AP classes throughout the state; and

(ii) multiplying the result from Subsection (2)(b)(i) by half of the total AP allocation.

(c) The Superintendent shall determine 50% of the funding to be awarded for LEA AP programs by:

(i) dividing the number of students in the LEA receiving a two or higher on an AP examination by the total number of students receiving a two or higher on an AP examination throughout the state; and

(ii) multiplying the result from Subsection (2)(c)(i) by half of the total AP allocation.

(3) If an LEA fails to demonstrate progress in meeting plan goals for placing and retaining underrepresented students in accelerated programs, the Superintendent may:

(a) place the LEA on probation and provide targeted technical assistance; and

(b) reduce funding to the LEA.

(4) Subject to the general requirements of Section R277-700-7:

(a) A middle school or high school:

(i) shall provide all course registration opportunities to each student; and

(ii) through consultation with students, parents, educators, and administrators, may consider academic readiness, but may not require prerequisites for enrolling in an AP or IB course.

(b) A school that offers a program eligible for funding

under Section 53F-2-408, may not prohibit a student from enrolling in the course based on the student's:

(i) grades or grade point average;

(ii) state standardized assessment scores; or

(iii) referral or lack of a referral from an educator;

(c) In addition to the restrictions listed in Subsection (d), a middle school or high school may not prohibit a student from enrolling in a course based on the student's:

(i) grade level;

(ii) participation in or passing a pre-requisite course;

(iii) participation in or passing an honors-level or college-preparatory course; or

(iv) requirements over the summer.

(5) An LEA may use Enhancement for Accelerated Students Program funds for:

(a) gifted and talented programs, including professional learning for teachers;

(b) identification of underrepresented students;

(c) Advanced Placement courses;

(d) Advanced Placement test fees of eligible low-income students, as defined in Section 53F-2-408;

(e) International Baccalaureate programs; or

(f) International Baccalaureate test fees of eligible low-income students, as defined in Section 53F-2-408.

R277-707-5. Performance Criteria and Reports.

(1) An LEA receiving funds shall submit an annual evaluation report to the Superintendent consistent with Section 53F-2-408.

(2) An LEA shall present the evaluation report identified in Subsection (1) to the LEA's local board in a public meeting.

(3) The report shall include the following performance criteria related to the identified students whose academic achievement is accelerated, which shall be disaggregated by groups as defined in the State Accountability System:

(a) number of elementary, middle school, and high school students participating in Gifted and Talented programs;

(b) number of AP classes taken, completed, and exams passed with a score of 2 or above;

(c) number of IB classes taken, completed, and exams passed with a score of 4 or above; and

(d) evidence of stakeholder input demonstrating that the LEA engaged parents;

(4) As part of the LEA's annual report under Subsection (1), an LEA shall provide assurances that the LEA is:

(a) increasing enrollment of underrepresented students in the LEA's accelerated academic courses; or

(b) meeting goals in the LEA's plan to increase enrollment and retention of underrepresented students in the LEA's accelerated academic courses.

KEY: accelerated learning, enhancement programs

July 2, 2019 **Art X Sec 3**

Notice of Continuation May 16, 2016 **53F-2-408**

53E-3-401(4)

R277. Education, Administration.
R277-716. Alternative Language Services for Utah Students.
R277-716-1. Authority and Purpose.

(1) This rule is authorized by:

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

(b) Title III; and

(c) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.

(2) The purpose of this rule is:

(a) to address the requirements of Title III and implementing regulations and case law;

(b) to clearly define the respective responsibilities of the Superintendent and LEAs:

(i) in identifying students learning English who are currently enrolled in Utah schools; and

(ii) in providing evidence-based language instruction educational programs to identified students; and

(c) in order to:

(i) meet Title III requirements;

(ii) meet funding eligibility requirements; and

(iii) appropriately distribute Title III funds for students learning English to LEAs with approved plans in the Utah Grants Management System.

R277-716-2. Definitions.

(1) "Alternative language services program" or "ALS program" means an evidence-based language instruction educational program used to achieve English proficiency and academic progress of identified students.

(2) "Alternative language services" or "ALS" means language services designed to meet the education needs of all students learning English so that students are able to participate effectively in the regular instruction program.

(3) "Consolidated State Plan" means the application for federal funds authorized under the Elementary and Secondary Education Act, or ESEA, 20 U.S.C. Sec. 1001, et seq., as amended, and other federal sources submitted annually to the Superintendent.

(4) "Evidence-based language instruction education program" means evidence-based methods, recommended by the Superintendent, that meet the "Non-Regulatory Guidance: Using Evidence to Strengthen Education Investments" developed by the U.S. Department of Education.

(5) "Immigrant children and youth" for purposes of this rule means individuals who:

(a) are ages 3 through 21;

(b) were born outside of the United States; and

(c) have not been attending one or more schools in any one or more states of the United States for more than three full academic years.

(6) "Instructional Materials Commission" means a Commission appointed by the Board to evaluate instructional materials for recommendation by the Board consistent with Title 53E, Chapter 4, State Instructional Materials Commission.

(7) "Language instruction educational program" means an instructional course:

(a) in which a student learning English is placed for the purpose of developing and attaining English proficiency, while meeting challenging state academic standards;

(b) that may make instructional use of both English and a child's native language to enable the child to attain and develop English proficiency; and

(c) that may include the participation of English proficient children if the course is designed to enable all participating children to become proficient in English and a second language.

(8) "State Approved Endorsement Program" or "SAEP" means a professional development plan on which a licensed Utah educator is working to obtain an endorsement.

(9) "Student learning English" means an individual who:

(a) who has sufficient difficulty speaking, reading, writing, or understanding the English language, and whose difficulties may deny the individual the opportunity to:

(i) learn successfully in classrooms where the language of instruction is English; or

(ii) participate fully in society;

(b) who was not born in the United States or whose native language is a language other than English and who comes from an environment where a language other than English is dominant; or

(c) who is an American Indian or Alaskan native or who is a native resident of the outlying areas and comes from an environment where a language other than English has had a significant impact on such individual's level of English language proficiency.

(10) "TESOL" means Teachers of English to Speakers of Other Langages.

(11) "TESOL Standards" mean the Pre-K-12 English Language Proficiency Standards established by TESOL International.

(12) "Title III" means federal provisions for providing language instruction to students learning English and immigrant children and youth under 20 U.S.C. 6801, et seq.

R277-716-3. Superintendent Responsibilities.

(1) The Superintendent shall make available in Utah's approved Title III plan identification and placement procedures to support evidence-based language instruction education programs for students learning English.

(2) The Superintendent shall develop and require all LEAs to administer a Board approved annual English language proficiency assessment to measure fluency level and progress in:

(a) listening;

(b) speaking;

(c) reading; and

(d) writing.

(3) The Superintendent shall apply a formula and distribute funds to LEAs for identification and services to students learning English and their families.

(a) The formula shall provide an amount based upon eligible students and available funds, to be distributed to all eligible LEAs and consortia consistent with Title III requirements.

(b) The formula shall provide for an additional amount to qualifying LEAs based on numbers of immigrant children and youth.

(4) An LEA that receives Title III funds under this rule shall provide the following to the Superintendent:

(a) assurances and documentation maintained of services or a program used to serve students; and

(b) assurances and documentation maintained of required parent notification.

(7) The Superintendent shall provide timelines to LEAs for meeting Title III requirements.

(8) The Superintendent shall assist and provide training to LEAs in development of ALS and Title III services to students learning English who do not meet the state designated annual growth goals in both increased English proficiency and academic standards.

(9) An LEA shall maintain:

(a) an ALS budget plan;

(b) a plan for delivering student instruction as a

requirement in the monitoring section of the Utah Grants Management System;

(c) ALS assessments to date;

(d) a sample of parent notification required under Subsection R277-716-4(7); and

(e) documentation or evidence of progress in the state accountability system.

(10) The Superintendent shall conduct on-site monitoring of all funded ALS programs at least once every five years.

(11) The Superintendent shall provide technical assistance during on-site monitoring and as the Superintendent deems necessary.

R277-716-4. LEA Responsibilities.

(1) An LEA that receives funds under Title III shall assure that the LEA has a written plan that:

(a) includes an identification process for students learning English, including a home language survey and a language proficiency for program placement, that is implemented with student registration;

(b) uses a valid and reliable assessment of a student's English proficiency in:

(i) listening;

(ii) speaking;

(iii) reading; and

(iv) writing;

(c) provides an evidence-based language instruction educational program based on Board-approved Utah English Language Proficiency Standards;

(d) establishes student exit criteria from ALS programs or services; and

(e) includes the count of students learning English, by classification, prior to July 1 of each year.

(2) Following receipt of Title III funds, an LEA shall:

(a) determine what type of Title III ALS services are available and appropriate for each student identified in need of ALS services, including:

(i) dual immersion;

(ii) ESL content-based; and

(iii) sheltered instruction;

(b) implement an approved language instruction educational program designed to achieve English proficiency and academic progress of an identified student;

(c) ensure that all identified students learning English receive English language instructional services, consistent with Subsection (1)(c);

(d) provide adequate staff development to assist a teacher and staff in supporting students learning English; and

(e) provide necessary staff with:

(i) curricular materials approved by the Instructional Materials Commission consistent with Rule R277-469; and

(ii) facilities for adequate and effective training.

(3) Following evaluation of student achievement and services, an LEA shall:

(a) analyze results and determine the program's success or failure; and

(b) modify a program or services that are not effective.

(4) An LEA shall have a policy to identify and serve students who qualify for services under IDEA, including:

(a) implementing procedures and training, consistent with federal regulations and state special education rules, that ensure students learning English are not misidentified as students with disabilities due to their inability to speak and understand English;

(b) reviewing the assessment results of a student's language proficiency in English and other language prior to initiating evaluation activities, including selecting additional assessment tools;

(c) conducting assessments for IDEA eligibility determination and educational programming in a student's native language when appropriate;

(d) using nonverbal assessment tools when appropriate;

(e) ensuring that accurate information regarding a student's language proficiency in English and another language is considered in evaluating assessment results;

(f) considering results from assessments administered both in English and in a student's native language;

(g) ensuring that all required written notices and communications with a parent who is not proficient in English are provided in the parent's preferred language, including utilizing interpretation services; and

(h) coordinating the language instruction educational program and special education and related services to ensure that the IEP is implemented as written.

(5) An LEA shall provide information and training to staff that:

(a) limited English proficiency is not a disability; and

(b) if there is evidence that a student with limited English proficiency has a disability, the staff shall refer the student for possible evaluation for eligibility under IDEA.

(6)(a) An LEA shall notify a parent who is not proficient in English of the LEA's required activities.

(b) A school shall provide information about required and optional school activities in a parent's preferred language.

(c) An LEA shall provide interpretation and translation services for a parent at:

(i) registration;

(ii) an IEP meeting;

(iii) an SEOP meeting;

(iv) a parent-teacher conference; and

(v) a student disciplinary meeting.

(d) An LEA shall provide annual notice to a parent of a student placed in a language instruction educational program at the beginning of the school year or no later than 30 days after identification.

(e) If a student has been identified as requiring ALS services after the school year has started, the LEA shall notify the student's parent within 14 days of the student's identification and placement.

(7) A required notice described in Subsection (6) shall include:

(a) the student's English proficiency level;

(b) how the student's English proficiency level was assessed;

(c) the status of the student's academic achievement;

(d) the methods of instruction proposed to increase language acquisition, including using both the student's native language and English if necessary;

(e) specifics regarding how the methods of instruction will help the child learn English and meet age-appropriate academic achievement standards for grade promotion and graduation; and

(f) the specific exit requirements for the program including:

(i) the student's expected rate of transition from the program into a classroom that is not tailored for a student learning English; and

(ii) the student's expected high school graduation date if funds appropriated consistent with this rule are used for a secondary school student.

R277-716-5. Teacher Qualifications.

(1) A Utah educator who is assigned to provide instruction in a language acquisition instructional program shall comply with state ESL endorsement requirements.

(2) A Utah educator whose primary assignment is to provide English language instruction to a student learning

English shall have:

(a) an ESL endorsement, through an approved program based on the TESOL Standards;

(b) an advanced degree or certification in teaching English as a Second Language, including an approved competency program consistent with Board rule; or

(c) a bilingual endorsement consistent with the educator's assignment.

R277-716-6. Miscellaneous Provisions.

(1)(a) An LEA that generates less than $10,000 from the LEA's count of students learning English, may form a consortium with other similar LEAs.

(b) A consortium described in Subsection (1)(a) shall designate a fiscal agent and shall submit all budget and reporting information from all of the member LEAs of the consortium.

(c) Each member of a consortium shall submit plans and materials to the fiscal agent of the consortium for final reporting submission to the Superintendent.

(d) A fiscal agent of a consortium described in Subsection (1)(a) shall assume all responsibility of an LEA under Section R277-716-4.

(2) No LEA or consortium may withhold more than two percent of Title III funding for administrative costs in serving students learning English.

KEY: alternative language services
July 31, 2019 Art X Sec 3
Notice of Continuation February 16, 2016 53E-3-401(4)

R277. Education, Administration.
R277-926. Certification of Residential Treatment Center Special Education Program.
R277-926-1. 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 of Utah law.

(2) The purpose of this rule is to provide a certification process and procedure for residential treatment centers where IEP teams place an in-state or out-of-state special education students for purposes of receiving a free and appropriate public education.

R277-926-2. Definitions.

(1) "Nonsectarian" means a nonpublic school or agency that is not owned, operated, controlled by, or formally affiliated with a religious group or sect, whatever might be the actual character of the education program or the primary purpose of the facility.

(2)(a) "Residential Treatment Center" or "RTC" means a private, or nonsectarian establishment that provides related services necessary for a student with special needs to benefit educationally from the student's IEP.

(b) "Residential Treatment Center" or "RTC" does not include an organization or agency that operates as a public agency or offers public service, including:

(i) a state or local agency;

(ii) an affiliate of a state or local agency including:

(A) a private, nonprofit corporation established or operated by a state or local agency;

(B) a public university or college; or

(C) a public hospital.

(3) "Qualified personnel" means an in-classroom staff member who:

(a) provides assistance with a student's education;

(b) has met requirements for federal and state certification, licensing, registration, or other comparable training requirements that apply to the area in which the staff member is providing related services, including board approved or recognized requirements; and

(c) actively adheres to the standards of professional practice established in federal and State of Utah law or regulation.

R277-926-3. Certification of a Residential Treatment Center.

(1) An RTC shall have the RTC's special needs program certified by the Superintendent before providing services for a free and appropriate public education to in-state or out-of-state students with special education needs and a current IEP from an LEA.

(2) An RTC seeking certification shall apply for an initial or renewal certification in a form prescribed by the Superintendent.

(3) An RTC's application shall include:

(a) a detailed description of the RTC's special education program provided, including:

(i) minimum instructional minutes for each grade level served;

(ii) specially designed instruction for:

(A) social skills;

(B) counseling; and

(C) parent training;

(iii) evidence of age appropriate core curriculum that aligns with the Utah core standards or aligns with the core standards of the student's state of origin;

(iv) for grades K-8, evidence showing the use of at least one resource, including a textbook or curricular program, adopted by the student's state of origin or Utah for each core standard subject including:

(A) English language arts;

(B) Math; and

(C) Science;

(v) for grades 9-12, evidence showing alignment of curriculum for core standard subjects with an LEA's curriculum in Utah or the student's state of origin;

(b) evidence, including educator licenses or employee resumes, of qualified personnel for each subject area including:

(i) English language arts;

(ii) Math; and

(iii) Science;

(c) evidence that each aide assisting in a student's education has received training in appropriate behavior as regulated by the Utah Department of Human Services and academic content areas specific to an aide's classroom assignment, including training required by state of Utah and federal law;

(d) an assurance that each student, aged 14 years and above, has a transition plan as described in Subsection R277-926-4(3)(a);

(e) evidence that an RTC is collaborating with a student's LEA of origin's fully constituted IEP team to:

(i) carry out the specific requirements of the student's IEP, including the general requirements described in Subsection R277-926-4(3)(b);

(ii) facilitate an annual IEP review; and

(iii) when necessary, participate in the student's triennial evaluation, including:

(A) an outlined process for the evaluation;

(B) the ability to allow on-site accessibility to third parties required for evaluation participation; and

(C) collaborate with the LEA of origin for the administration of the assessment.

(f) a description of the RTC's behavior intervention plan, including the incident management procedures and reporting requirements described in Subsection R277-926-4(3)(c);

(g) evidence of how meaningful parental involvement is facilitated;

(h) documentation showing all staff at the RTC have been fingerprinted and have passed state and federal criminal background checks before being allowed to have contact with any student;

(i) an assurance showing participation in the LEA of origin with federal Child Find mandates as outlined in 20 U.S.C. 1412(a)(3);

(j) an assurance that the RTC is a nonsectarian RTC; and

(k) if applicable, a copy of the Private School Affidavit filed with a student's state of origin.

(4) Except as provided in Subsection (7), an RTC may apply for an initial certification and receive notification of certification approval or denial within 60 days.

(5) An RTC shall apply for certification renewal no later than June 1st for the upcoming school year.

(6) Except as provided in Subsection (7), the Superintendent shall provide the RTC notice of the Superintendent's approval or denial of the RTC's application for certification within 60 days of receipt of the RTC's application.

(7) For an application received before January 1, 2020, the Superintendent shall notify an RTC of the Superintendent's approval or denial of the RTC's request for

certification within 45 days.

(8) An RTC with a pending application shall be subject to an on-site review by the Superintendent within 45 days of the RTC submitting the RTC's application.

(9) An RTC's application for certification and on-site review shall be reviewed collectively by the Superintendent in considering approval or denial of certification.

(10) If approved, an RTC's certification lasts for two years from the date of approval and is subject to monitoring protocols as described in Subsection R277-926-4.

(11) If the Superintendent denies an RTC's application for certification, the Superintendent shall provide the reason for the denial in writing to the RTC.

(12) If an RTC operates a special needs program at more than one site, the RTC shall submit a separate certification application for each site.

R277-926-4. Certification Maintenance and General Monitoring.

(1) An RTC that has been certified is subject to periodic monitoring and review.

(2) An RTC shall ensure general compliance with the requirements of this rule, state law, and federal law by providing the Superintendent with:

(a) documentation, including:

(i) applicable student and program records; and

(ii) information for which the Board is responsible;

(b) access to on-site visits at any time; and

(c) any combination of Subsections (a) and (b).

(3) An RTC that has been certified shall comply with all requirements of this rule, State of Utah law and federal law, including the following requirements:

(a) collaborating with an LEA of origin to maintain and facilitate a transition plan for each student served by the RTC that includes:

(i) a list of a relevant course of study related to needs and ability of the student;

(ii) a list of all required transition assessments needed;

(iii) a plan for transitions to and from restrictive placement; and

(iv) age of majority documentation in a form approve by the Superintendent;

(b) collaborating with the LEA of origin on a student's IEP through:

(i) timely and appropriate IEP progress monitoring;

(ii) documentation of a student's specially designed instruction and related services including:

(A) service provisions;

(B) treatment notes; and

(C) service logs;

(iii) sign-in or attendance sheets for each IEP meeting held for a student; and

(iv) adhering to all other applicable state and federal laws;

(c) when appropriate, establishing a discipline guide consistent with IDEA that includes a behavior intervention plan with the following minimum components:

(i) general behavior goals;

(ii) crisis de-escalation and restraint training and training frequency;

(iii) restraint and seclusion policies and procedures consistent with state and federal law; and

(iv) parental notification policies requiring notice within at least 24-hours.

(4) An RTC shall notify the Superintendent within 30 days if the RTC makes any material change to the RTC's special education program.

(5) If a certified RTC is found to be noncompliant with a provision of R277-926, State of Utah law, or federal law, the Superintendent may suspend or revoke the RTC's certification as outlined in Subsection R277-926-5.

R277-926-5. Revocation of Certification.

(1) The Superintendent may revoke an RTC's certification at any time if the RTC fails to comply with the requirements of R277-926, State of Utah law, or federal law.

(2) The Superintendent shall provide the reason for revocation of the RTC's certification in writing to the RTC and provide a 30-day cure period before revocation may occur.

(3) If an RTC does not cure identified non-compliance described in Subsection (2) within the 30-day cure period, the Superintendent shall revoke the RTC's certification.

(4) If an RTC's certification is revoked, the RTC:

(a) may not receive new students into the RTC's special education program; and

(b) may maintain the students currently attending the RTC's special education program.

(5) An RTC may reapply for certification within 12 months following the RTC's completed corrective action in response to the Superintendent's reasons for revocation described in Subsection (2).

R277-926-6. Request for Review.

(1) A public education agency that contracts with a certified RTC may request the Superintendent to review the status of the RTC's certification.

(2) The Superintendent shall establish a mechanism for referrals, complaints, and information related to the status of an RTC's certification.

(3) The Superintendent shall conduct a review pursuant to this in accordance with all requirements in Sections R277-926-4 and R277-926-5.

R277-926-7. RTC Appeal of Certification Application Denial or Certification Revocation.

(1) An RTC may file an appeal to the Board of an adverse decision of the Superintendent resulting in the denial of application or revocation of a certification.

(2) An appeal pursuant to this rule shall be an informal adjudication.

(3) An appeal described in Subsection (1) shall be made in writing and within 30 days of the date of the Superintendent's action.

(4) The Board may:

(a) review the appeal as a full board; or

(b) refer the appeal to the Board's audit committee to make a recommendation to the Board for action.

KEY: residential treatment centers, special education, certification

July 2, 2019 **Art X Sec 3**
53E-3-401(4)

R357. Governor, Economic Development.
R357-24. Utah Works Program.
R357-24-101. Title.

This rule is known as the "Utah Works Program Rule."

R357-24-102. Purpose and Goals.

(1) The Talent Ready Utah Center's Utah Works Program promotes partnerships between companies and post-secondary institutions to fill high demand positions and/or provide skills training. This program teams industry, post-secondary institutions, and state agencies to address specific workforce gaps identified by companies.

(2) The goal of UWP is to accelerate hiring and skills training that will lead to economic growth.

R357-24-103. Definitions.

The following terms are defined as follows:

(1) "Applicant" means a collaboration between one or more companies and one or more post-secondary institutions for a particular hiring program.

(2) "Awardee(s)" means an applicant that has been awarded a UWP grant.

(3) "Collaboration" means the strategic coordination between a company and post-secondary institution to address a skilled labor gap.

(4) "Company" means a corporation, limited liability company, partnership, association, or other business entity and may include a federal military installation when such entity otherwise meets UWP eligibility requirements and does not include an individual, sole proprietorship, or educational institution.

(5) "Company representative" means a representative from a company that is designated to support the efforts of the collaboration.

(6) "High demand position" means a position in which there are hard to fill jobs with a lack of skilled labor employees or a large number of skilled labor positions needed in a short amount of time.

(7) "Pre-hire program" means an applicant's plan to vet potential hires prior to the skills training. The pre-hire program will typically consist of a training lasting from two days to two weeks.

(8) "Post-secondary institution" means an entity under the Utah System of Higher Education or the Utah System of Technical Colleges.

(9) "Skilled labor" means jobs that require skills training and a level of skill.

(10) "Skilled labor gap" means the disparity between a company's existing or future skill need.

(11) "Skills training program" means a training plan developed and agreed upon between the post-secondary institution and a company.

(12) "TRU" means the Talent Ready Utah Center.

(13) "UWP" means the Utah Works Program.

(14) "UWP grant" means the competitive grants awarded and administered under this Rule.

R357-24-104. Authority.

This rule is adopted by the office under the authority of subsection 63N-12-505(3).

R357-24-105. Eligibility Criteria.

(1) Proposal must be jointly developed by a company and a post-secondary institution.

(2) Applicants must submit proposals as outlined in section 106 below, and otherwise specified in TRU.

(3) A company representative must certify that:

(a) the company has a skilled labor gap;

(b) the proposed post-secondary institution partnership will meet that gap need;

(c) the company has significant one time or ongoing hiring demands; and

(d) the company commits to provide a cost-share contribution as outlined in subsection (5) below.

(4) The company must have a substantial presence in Utah.

(a) A substantial presence, for purposes of UWP requires the following:

(i) the company must be properly registered with the Utah Division of Corporations as an active, for-profit business entity, in good standing; and

(ii) the company must be properly licensed in the appropriate city or county.

(b) Additionally, TRU shall, according to its judgment and discretion, determine whether a company has a substantial presence for purposes of a UWP grant by weighing the following factors:

(i) total workforce and percentage of company's workforce in Utah;

(ii) amount of business taxes paid to the State of Utah;

(iii) relative size of the company;

(iv) whether the company's principal place of business is Utah;

(v) likelihood that the company will maintain a significant presence in the state of Utah;

(vi) a commitment of capital expenditure and/or new job creation in the state; and

(vii) the degree to which the company's activities and operations positively impact Utah's economy.

(5) The company must fulfill the following cost-sharing requirements:

(a) provide a company representative to support the collaboration;

(b) provide an "in-kind" contribution, approved by TRU, which may include:

(i) company representative's time spent on the collaboration;

(ii) materials and equipment;

(iii) work/research space;

(iv) travel and other company expenses budgeted for the collaboration; or

(v) other contributions approved by TRU.

(c) make available for audit all reported cost-share activities.

(6) The skills training must be met with a minimum of two weeks of training.

(7) Applicants may coordinate with the Department of Workforce Services when building pre-hire program objectives.

R357-24-106. Proposal and Submission Process.

(1) TRU will accept proposals for UWP grants on an ongoing basis subject to available funds.

(2) Applicants shall submit proposals in a form and manner specified by TRU.

(3) The proposal must include the following:

(a) a description of the applicant's eligibility as outlined in section 105 above;

(b) a detailed description of pre-hire program, if applicable, and skills training program;

(c) description of skilled labor positions;

(d) projected number of individuals who will start the program, finish the program and be successfully hired;

(e) potential economic impact on the Utah economy;

(f) an executed collaboration agreement between the company and post-secondary institution; and

(g) outlined budget for total program cost, including;

(i) a description of any funds already secured for

activities related to the program;

(ii) breakdown of costs to complete the scope of work;

(iii) an itemized budget detailing planned use of grant funds, including how the funding will be allocated, tracked, and reported;

(iv) awardee must use grant funds for expenses specific to the program and may include:

(A) instructors;

(B) marketing;

(C) equipment;

(D) tuition reimbursements;

(E) curriculum and program development;

(F) program management; and

(G) US security clearances as outlined in subsection 108(4)(b).

(4) All completed proposals will be reviewed and awardees selected via the criteria and method outlined in this Rule.

R357-24-107. Method for Selecting Awardees.

(1) TRU will evaluate grant proposals and recommend grant amounts.

(2) TRU will, according to its discretion and judgment, review the applicant's proposal by considering the following factors:

(a) statewide or regional importance of the industry to Utah's economy;

(b) relative size of the sector, its stability, and growth potential;

(c) characteristics of the state's workforce including education and training;

(d) the current availability of other sources of funding;

(e) the potential for the industry to develop new jobs and business opportunities in the state;

(f) likelihood that skilled labor in this sector will result in the creation of a company in Utah or growth of existing Utah company;

(g) number of positions to be trained and filled;

(h) impact on the local economy; and

(i) any other factor TRU deems relevant, considering the mission of UWP and the purpose of the UWP grant.

(3) The criteria will be designed to assess each proposal and may include:

(a) completeness of proposal;

(b) thorough pre-hire program and skills training program;

(c) reasonableness of proposal;

(d) reasonableness of the proposed timeline;

(e) reasonableness of the proposed budget (e.g., size and allocation of budget is appropriate for the work proposed and matching funds available);

(f) availability of UWP grant funds;

(g) potential for economic impact, as measured by:

(i) skilled labor gap mitigation;

(ii) meeting target head count;

(iii) potential revenue due to expansion of current business or development of new businesses;

(iv) projected time to fill job needs;

(v) market need or industry impact;

(h) any other factor of the applicant's ability to produce measurable and timely benefits to the state; and

(i) any factor relating to eligibility requirements outlined in section 105.

(4) UWP grants must be used to mitigate gaps and meet company hiring demands. The program proposals referenced in section 106 must identify specific pre-hire program and skills training.

(5) In the event of a favorable recommendation by TRU the proposal will be reviewed by the talent ready Utah board using the same criteria.

(6) An applicant will become an awardee only upon approval by TRU and the talent ready Utah board.

R357-24-108. Grant Amount, Award, and Required Contract.

(1) TRU will have the discretion to limit the maximum amount of funding that may be awarded for each UWP grant based on available funds, scope of the collaboration, and quality of proposal.

(2) TRU reserves the right to award funding for any proposal in full or in part, to request additional information, or to reject any or all proposals based on the eligibility and evaluation criteria set forth in these Rules, Utah law, and according to the judgment and discretion of TRU. TRU also reserves the right to certify any agreements between post-secondary institution and company on IP terms and confidentiality.

(3) Upon award of a UWP grant, and prior to disbursement of any funds, awardee must enter into a contract with GOED governing the use of UWP grant funding.

(4) Unless addressed in the terms and conditions of the contract between awardee and GOED the following provisions shall apply:

(a) UWP grant funding may not be used to provide a primary benefit to any state other than Utah;

(b) Subject to TRU approval, TRU may, via supplemental contract, allocate grant funds directly to an awardee company to pay for the cost of US security clearances for UWP grant program hires where a US security clearance is required as a condition of the position; and

(c) for all other eligibility requirements, awardees must maintain eligibility status for UWP program until the collaboration is complete, scope of work requirements have been met, final disbursement of funding has been made, and first year reporting has been completed.

(5) Any misrepresentation to TRU, violations of subsection (4) above, or this Rule may result in forfeiture of UWP grant funding and require repayment of all or a portion of the funding received as part of UWP grant and/or disqualification from continued funding.

(6) TRU reserves the right to audit the use of any UWP grant funding.

R357-24-109. Contract Modifications.

(1) Awardee may request a modification to the terms of a UWP contract.

(2) TRU may deny a modification request for any reason.

(3) TRU shall have discretion to agree to reasonable, nonsubstantive changes.

(a) Non-substantive changes may include the following:

(i) changes to timelines within the scope of work;

(ii) corrections to clerical errors in the proposal materials; and

(iii) technical changes to conditions that do not alter the budget, company's eligibility status, or violate any state or federal law.

(4) Substantive changes must be approved by TRU in consultation with the talent ready Utah board.

(5) All approved changes shall be made in writing and through an amendment modifying the terms of the grant contract.

(6) Awardees refusal or failure to sign contract within 90 days of receipt of contract constitutes a rejection of the UWP grant and a waiver of any rights and benefits.

R357-24-110. Funding Distribution.

(1) TRU shall reimburse the awardee for no more than

the total amount specified in the contract.

(2) Payment will only be made for those costs authorized and approved by TRU after providing sufficient documentation in accordance with the terms and conditions provided in the contract.

(3) After execution of the contract between GOED and awardee:

(a) awardee may receive up to fifty percent of the total grant amount, subject to TRU approval;

(b) remaining funds to be disbursed on a reimbursement basis, as outlined in scope of work and after company provides sufficient evidence of initial expenditures.

(4) Failure to successfully complete the scope of work requirements may result in a recapture of all or part of the grant funding and will be grounds to terminate the contract and any future funding.

R357-24-111. Reporting and Cooperation Requirements.

(1) The awardee shall report to TRU and provide documentation evidencing the following metrics for inclusion in the annual report described in section 63N-1-301:

(a) the number of participants in the program;

(b) the number of participants who have completed training offered by the program;

(c) the number of participants who have been hired by a business participating in the program; and

(d) any additional data needed as required and outlined in the terms of the contract.

(2) Awardee shall submit to any audit, by TRU or a third-party, to verify reported data.

KEY: economic development, Talent Ready Utah, Utah Works Program

July 8, 2019 63N-12-505

R384. Health, Disease Control and Prevention, Health Promotion.
R384-201. School-Based Vision Screening for Students in Public Schools.
R384-201-1. Authority.

(1) This rule is authorized by section 53G 9-404 and 26-1-30 (33).

(2) The Department of Health is authorized under the rule to set standards and procedures for vision screening required by this chapter, which shall include a process for notifying the parent or guardian of a student who fails a vision screening or is identified as needing follow-up care.

R384-201-2. Definitions.

(1) "Eye care professional" means an ophthalmologist or optometrist.

(2) IEP means an Individualized Education Plan.

(3) "Instrument based screening" means an automated screening technique that facilitates vision screening in students who are difficult to screen such as children with developmental delays.

(4) LEA means local education agency.

(5) "Screening certificate" means written documentation of vision screening or comprehensive eye examination by a health care professional as defined in 53G-9-404 (1)(a)done within one year of entering a public school.

(6) "Significant visual impairment" means a visual impairment severe enough to interfere with learning. The term is the designation required for a child to be eligible for services from a teacher of students with visual impairments in an LEA or USDB.

(7) "Screener" means those trained to support vision screening programs for students.

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

(9) UDOH means Utah Department of Health.

(10) "Vision Screening" means a way to identify students with visual impairment.

R384-201-3. Purpose.

The purpose of school-based vision screening is to set standards and procedures for vision screening for students in public schools. This is necessary to detect vision difficulties in students so that follow-up for potential concerns may be done by the student's parent or guardian. Vision screening is not a substitute for a complete eye exam and vision evaluation by an eye care professional.

R384-201-4. Free Screening.

The following students in an LEA shall receive free vision screenings to include tier 1 screening.

(1) Vision screening shall be conducted for all students in grades pre-kindergarten, kindergarten, 1, 3, 5, 7 or 8, and 9 or 10 and any student referred by school personnel, parent or guardian or self to rule out vision as an obstacle to learning;

(2) Tenth grade students may be screened as part of their driver education class; and

(3) Students who are currently receiving services from USDB or LEA vision specialist who have a diagnosed significant visual impairment will be exempt from screening.

(4) Students may be referred for mandatory or optional tier 2 vision screening under the following circumstances in (a) and (b).

(a) Mandatory tier 2 screening may be done for students requiring education intervention such as special education referral or failing benchmark reading assessment as defined by R277-404.

(b) Optional tier 2 vision screening may be done based on parent or teacher concern.

(c) Students failing a tier 1 screening who have been referred to an eye care professional are not required to complete a tier 2 screening.

(d) Instead of performing a tier 2 vision screening, the LEA may automatically refer the student being referred to a tier 2 vision screening to an eye care professional.

(e) If the LEA does not have a school nurse or other approved tier 2 screener, the student being referred for a tier 2 vision screening should be automatically referred to an eye care professional.

R384-201-5. Required Screening for Students with an Individualized Education Plan.

Required screening for students identified with an IEP in an LEA are as follows:

(1) Vision issues have to be ruled out as an obstacle to learning before Specific Learning Disability can be used as eligibility criteria and

(2) Every three years, a student must be reevaluated for eligibility for special education in all areas of suspected disability, including vision.

R384-201-6. Proof of Screening.

Certificate or health form documenting a vision screening or examination given within one year of entering a public school are acceptable for school entry. All students less than age 9 entering a public school in Utah for the first time without proof of screening mentioned above, shall be screened during that school year.

R384-201-7. Training of Screeners.

(1) The LEA shall provide training annually to all vision screeners prior to the start of vision screenings.

(a) The school nurse shall provide training shall be provided to the vision screeners; or

(b) Vision screeners shall view the online module developed by UDOH referred to in 53G-9-404 (4)(b).

(2) The LEA will provide trainings in compliance with UDOH materials.

(3) The LEA will share vision screening training materials with qualified outside entities that provide free vision screening services in Utah schools.

(4) UDOH will create online training modules on:

(a) Tier 1 vision screening; and

(b) Training for tier 1 vision screeners; and

(c) Tier 2 vision screening for school nurses or other approved tier 2 screeners.

R384-201-8. Screening.

(1) Screenings are to be performed following criteria developed by UDOH.

(2) Screeners should do vision screenings early in the school session to provide time in that school year for adequate referral and follow-up to be done.

(3) A Parent or guardian of a student has the right not to have their student participate in vision screening. All parents or guardians must be notified of scheduled vision screenings by the public school to provide an opportunity to opt out of screening for their student. Parent or guardian choosing to opt out of vision screening for their student must do so annually and in writing.

(4) A public school staff member should be present at all times during vision screenings including those done by qualified outside entities.

(5) Screenings are to be done using material and procedures approved by UDOH. Standards and procedures are based on recommendations of American Academy of Pediatrics, the American Academy of Ophthalmology, the American Optometric Association, the National Center for Children's Vision and Eye Health, and National School Nurse

Association.

(6) School vision screening is comprised of tier 1 and tier 2 screening.

(a) Tier 1 vision screening is a lower-level vision screening such as basic distance vision screening.

(b) Tier 2 vision screening is a higher-level evaluation that should include screening of distance and near vision. It may also include eye focusing or tracking problems, color screening, and screening for convergence insufficiency.

(i) The approved tier 2 screener may automatically refer the student to an eye care professional in lieu of performing the tier 2 screening.

(ii) If the LEA does not have an approved tier 2 screener the LEA should automatically refer the student to an eye care professional.

(7) Approved vision screeners include the following:

(a) Approved tier 1 vision screeners can be school nurses, qualified outside entities, trained volunteers, or health care professionals as defined in 53G-9-404 (1)(a) who have completed UDOH training for tier 1 vision screening.

(b) Approved tier 2 vision screeners can only be school nurses or health care professionals as defined in 53G-9-404 (1)(a) who have completed UDOH training for tier 2 vision screening.

(c) Persons assisting with vision screening:

(i) May not profit financially from school vision screening; and

(ii) May not market, advertise, or promote a business in connection with assisting with vision screening.

(8) Any qualified outside entity that provides free vision screening services in the LEA will provide results of vision screening to the public school.

(9) Students who are not candidates for regular vision screening may be screened using an approved instrument-based screening device. Only devices approved by UDOH should be used for screening, and then only when screening with a chart is not an option. Devices are not a substitute for clinical judgement and a visual acuity test.

(10) The LEA shall document all vision screening results including referrals and follow-up results in the student's permanent school record.

R384-201-9. Requirements for Referral.

(1) A school nurse may rescreen students who fail initial age appropriate school vision screening to confirm results before notification to student's parent or guardian of any impairment disclosed by the vision screening recommending further evaluation by an eye care professional.

(2) The LEA shall notify, in writing within 30 days from vision screening, a student's parent or guardian of any impairment disclosed by the vision screening recommending further evaluation by an eye care professional.

R384-201-10. Symptoms Questionnaire.

(1) The UDOH will provide schools a vision symptoms questionnaire that includes questions for classroom teachers to potentially identify eye focusing or tracking problems as well as convergence insufficiency. The UDOH will update the questionnaire as needed.

(2) For students who fail to achieve benchmark status on the benchmark reading assessment in grades 1-3:

(a) The LEA shall notify the student's teacher within 30 calendar days of student performance on the benchmark reading assessment.

(b) Teachers must complete the vision symptoms questionnaire within 45 calendar days of the administration of the assessment and submit to the school nurse.

(c) Teachers need only complete the vision symptoms questionnaire once per school year.

(d) School nurses or other approved tier 2 vision screeners shall use the vision symptoms questionnaire to perform a secondary assessment and/or refer to an eye care professional.

(3) For students who are being referred to special education for a suspected disability affected by vision difficulties:

(a) Teachers must complete the vision symptoms questionnaire and submit to the school nurse.

(b) School nurses or other approved tier 2 vision screeners shall use the vision symptoms questionnaire to perform a secondary assessment and/or refer to an eye care professional.

(4) For students who are being referred by parent or guardian for vision concern:

(a) Parent or guardian should complete the vision symptoms questionnaire and submit to the school nurse.

(b) School nurses or other approved tier 2 vision screeners shall use the vision symptoms questionnaire to perform a secondary assessment and/or refer to an eye care professional.

R384-201-11. Aggregate Reporting Requirements.

(1) All LEAs shall report aggregate numbers annually to UDOH to include:

(a) Total number of students receiving tier 1 vision screening; and

(b) Total number of students referred to an eye care professional following a tier 1 vision screening; and

(c) Total number of students referred to school nurse for tier 2 screening; and

(d) Total number of students referred to an eye care professional following a tier 2 vision screening; and

(e) Other information as requested by UDOH.

(2) This report may be submitted on the annual vision screening report, or as part of the annual school health workload census, and shall be due on or before June 30 of each year.

(3) No personally identifiable information will be collected.

KEY: eye exams, school vision, vision evaluations
August 1, 2019 53G-9-404
Notice of Continuation June 7, 2018

R384. Health, Disease Control and Prevention; Health Promotion.
R384-203. Prescription Drug Database Access.
R384-203-1. Authority and Purpose.

This rule establishes procedures and application processes pursuant to Title 58-37f-301(2)(f) for Utah Department of Health Executive Director to allow access to the Prescription Drug database by a designated and assigned person to conduct scientific studies regarding the use or abuse of controlled substances, who is not an employee of the Department of Health.

R384-203-2. Definitions.

The following definitions apply to this rule:

(1) "Department" means the Utah Department of Health.

(2) "Director" means the Utah Department of Health Executive Director.

(3) "Prescription Drug Database" means the Utah Controlled Substance Database.

(4) "Research facility" means a research facility associated with a university or college in the state accredited by one or more regional or national accrediting agencies recognized by the United States Department of Education.

(5) "Institutional Review Board" means a board that is approved for human subject research by the United States Department of Health and Human Services.

(6) "Designee" means a person designated and assigned by the Director to have access to data from the Prescription Drug database in order to conduct scientific studies regarding the use or abuse of controlled substances, who is not an employee of the Department.

(7) "Business associate" means a business associate as defined under the HIPAA privacy, security, and breach notification rules in 45 CFR 164.502(a), 164.504(e), and 164.532(d) and (e).

(8) "De-identified" means information as defined in 45 CFR 164.502(d) and 164.514(a), (b), and (c).

R384-203-3. Criteria for Application to Access Prescription Drug Database.

(1) The study must fit within the responsibilities of the Department for health and welfare.

(2) De-identified prescriber, patient and pharmacy data will meet the research needs.

(3) The research facility designee must provide:

(a) written assurances that the studies are not conducted for and will not be used for profit or commercial gain;

(b) written assurances that the designee shall protect the information as a business associate of the Department of Health; and

(c) documentation of an Institutional Review Board approval.

R384-203-4. Research Application Process.

(1) The research facility designee will prepare and submit for Department approval an application as designated by the Department detailing explicit information regarding the scientific studies to be conducted including the:

(a) purpose of the study;

(b) research protocol for the project;

(c) description of the data needed from the database to conduct that research;

(d) plan that demonstrates all database information will be maintained securely, with access being strictly restricted to the designee and research study staff; and

(e) provisions for electronic data to be stored on a secure database computer system with access being strictly restricted to the designee and research study staff.

(2) Application will be reviewed by the Department's Institutional Review Board and recommendation made to the director for or against approval.

(3) Director will determine approval status of the application.

R384-203-5. Data Provision and Fees.

(1) Department will send signed copy of application and Institutional Review Board approval to the Division of Occupational and Professional Licensing (DOPL).

(2) DOPL will de-identify and provide the data set requested in the application, unless a written agreement is signed by DOPL requesting the Department to provide the data set.

(2) Research facility and designee shall pay all relevant expenses for data transfer, manipulation, and analysis.

R384-203-6. Audit Provisions.

Research facility and designee shall submit, upon request, to a Department audit of the recipients' compliance with the terms of the data sharing agreement.

KEY: prescription drug database, controlled substances, substance abuse database
July 23, 2019 58-37f-301(2)(f)
Notice of Continuation February 25, 2019

R392. Health, Disease Control and Prevention, Environmental Services.
R392-110. Food Service Sanitation in Residential Care Facilities.
R392-110-1. Authority and Purpose.

(1) This rule is authorized by Sections 26-15-2, 26-1-30(9), 26-1-30(23), 26-1-5, 26-7-1, and 26-39-301(1).

(2) This rule establishes uniform food service inspection standards for residence-based group care facilities.

R392-110-2. Applicability.

(1)(a) This rule applies to food service provided in certified or licensed child care facilities, including residences, that provide care for 16 or fewer children, notwithstanding the provisions of R392-100.

(b) Rule R392-100 governs food service provided in facilities that care for more than 16 children.

(2)(a) This rule applies to food service provided in facilities with a 24-hour group living environment for between four and 12 individuals unrelated to the owner, or provider, such as the following:

(i) residential treatment programs;

(ii) residential support programs; and

(iv) recovery residences.

(b) Rule R392-100 governs food service in a facility as described in R392-110-2(2)(a) that provides care for more than 12 individuals.

R392-110-3. Definitions.

For the purposes of this rule, the following terms, phrases, and words shall have the meanings herein expressed:

(1) "Department" means the Utah Department of Health.

(2) "FDA Food Code" or "Food Code" means the most recent FDA Model Food Code as adopted by reference with amendments in Rule R392-100.

(3) "Food handler" means a person who works with unpackaged food, food equipment or utensils, or food-contact surfaces for a food establishment as defined in FDA Food Code.

(4) "Food handler permit" means a permit issued by a local health department to allow a person to work as a food handler.

(5) "Food processing facility" means a commercial operation that manufactures, packages, labels, or stores food for human consumption, but does not provide food directly to a consumer, including any establishment that cans food, or packages food in packaging with a modified atmosphere, and is inspected by the local, state, or federal food regulatory agency having jurisdiction.

(6) "Local health department" has the same meaning as provided in Section 26A-1-102(5).

(7) "Local health officer" means the health officer of the local health department having jurisdiction, or designated representative.

(8) "Nuisance" means a condition or hazard, or the source thereof, which may be deleterious or detrimental to the health, safety, or welfare of the public.

(9) "Operator" means any person who owns, leases, manages or controls, or who has the duty to manage or control a residential care facility.

(10) "Provider" means a person with ownership or overall responsibility for managing or operating a residential care facility in Utah.

(11) "Recovery residence" has the same meaning as provided in Subsection 62A-2-101(33)(a).

(12) "Residential support" has the same meaning as provided in Subsection 62A-2-101(35).

(13) "Residential treatment" has the same meaning as provided in Subsection 62A-2-101(36).

(14) "Service animal" has the same meaning as provided in Section 35.104 of the Americans with Disabilities Act Title II Regulations.

(15) "Time/temperature control for safety food (TCS)" means a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation, along with all inclusions and exclusions defined in FDA Food Code.

R392-110-4. Facility Inspection and General Requirements.

(1) After a provider requests an inspection and pays the inspection fee, a local health officer shall inspect a residential care facility based on the food safety standards established in Section R392-110-5.

(2) A local health officer shall use an inspection form approved by the Department.

(3) Upon satisfactory completion of the inspection, the local health officer shall issue a written report to the provider stating that the facility food services comply with Rule R392-110.

(4) This rule does not require a construction change in any portion of a residential care facility if the facility was in compliance with the law in effect at the time the facility was constructed, except as in R392-110-4(4)(a).

(a) The local health officer may require construction changes if it is determined the residential care facility or portion thereof is dangerous, unsafe, unsanitary, or a nuisance.

(5) The operator shall carry out the provisions of this rule.

(6) Severability - If any provision of this rule or its application to any person or circumstance is declared invalid, the application of such provision to other persons or circumstances, and the remainder of this rule, shall not be affected thereby.

(7) The operator shall comply with all applicable building, zoning, electrical, health, fire codes and all local ordinances.

R392-110-5. Food Safety Standards.

(1) When conducting an inspection, a local health officer shall verify that the provider is maintaining a residential care facility according to the following standards:

(a) Potable water supply systems for use by group home facility caregivers and clients are designed, installed, and operated according to the requirements set forth by:

(i) Plumbing Code;

(ii) The Utah Department of Environmental Quality, Division of Drinking Water under Title R309; and

(iii) Local health department regulations.

(b) Food is obtained from a grocery store, permitted food establishment, or food processing facility. Whole produce may be obtained from a farmer's market

(c) Food has not been adulterated, as defined in Section 402 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 342.

(d) Food is protected from contamination by storing the food in a clean, dry location where it is not exposed to splash, dust, or other contamination, and is stored at least six inches above the floor.

(e) Food is not stored in toilet rooms or mechanical rooms, under sewer lines, under leaking water lines or under any source of contamination.

(f) Food brought in by friends or relatives to serve to other individuals in the facility is obtained from approved sources that comply with Rule R392-100.

(g) Food brought in by a parent or guardian for specific use of that person's child is labeled with the name of the

child.

(h) Bottled or canned baby food, upon opening, is labeled on the outside of the container with the date and time of opening.

(i) Time/temperature control for safety (TCS) food products stored inside a refrigerator, including canned or bottled opened baby food containers, are stored at 41 degrees F or below.

(j) Canned or bottled baby food, except for dry products, is discarded if not used within 24 hours of opening.

(k) Infant formula or breast milk is discarded after feeding or within two hours of initiating a feeding.

(l) A refrigerator used to store food for children or residents is maintained and cleaned to prevent contamination of stored food.

(m)(i) A calibrated thermometer is conspicuously placed in the refrigerator.

(ii) In addition, a calibrated metal stem food temperature measuring device is provided and readily accessible.

(n) Time/temperature control for safety (TCS) food prepared at the residential care facility meets the critical cooking, reheating, hot holding, cold holding, and cooling temperatures as required in Rule R392-100.

(o) Each caregiver or client who works as a food handler:

(i) has a copy of a current food handler permit on file at the facility; and

(ii) abides by the employee health requirements described in Section 2-2 of FDA Food Code.

(p) Food is served on clean and sanitized plates, single service plates, or a clean and sanitized high chair tray.

(q) Properly laundered, or single-service napkins are used.

(r) Clean and sanitized cups or single service cups are provided at each beverage service.

(s) Before each use, reusable food holders, utensils, and preparation surfaces are cleaned and sanitized as required in Sections 4-5 and 4-6 of FDA Food Code.

(t) Food handlers clean their hands and exposed portions of their arms:

(i) immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unpackaged single service and single use articles;

(ii) after touching bare human body parts other than clean hands and clean exposed portions of arms;

(iii) after using the toilet room;

(iv) after caring for or handling any animal, including service animals;

(v) when switching between working with raw food and ready to eat food; and

(vi) as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks.

(u) Hand washing facilities are located to allow convenient use by food handlers in food preparation, food dispensing, and ware washing areas; and in or immediately adjacent to toilet rooms.

(v) When preparing food, food handlers wear hair restraints, such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens, and unwrapped single service and single use articles.

(w) Food handlers wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single service and single use articles.

(x) Poisonous or toxic chemicals are:

(i) properly identified;

(ii) safely stored to prevent access by children, or at-risk youth or adults; and

(iii) stored so they cannot contaminate food, equipment, utensils, linens, and single service and single use articles.

(y) Only those poisonous or toxic materials that are required for the operation and maintenance of food storage, preparation, and service areas such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents are in the food storage, preparation, and service areas.

(2) The provider may elect to allow animals in a residential care facility when the following conditions are met:

(a) Only service animals assisting persons with disabilities are permitted in food storage and food preparation areas. Pets, emotional support animals, comfort animals, and therapy animals are not permitted in these areas.

(b) Except service animals, animals are only allowed in dining areas when food is not served, and only if surfaces are cleaned before the next food service.

(c) The provider removes animal hair, fur, feathers, feces, and soiled bedding as often as necessary to prevent unsanitary conditions or objectionable odors.

(b) Animal allergens, odors, noise, filth, and other nuisances do not cause a disturbance to residents.

KEY: child care providers, food service, residential support, residential treatment

July 16, 2019	**26-15-2**
Notice of Continuation April 26, 2016	**26-1-30(9)**
	26-1-30(23)
	26-1-5
	26-7-1
	26-39-301(1)

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 July 12, 2019 26-10-1(2)
26-10-2
26-25-1

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-61. Home and Community-Based Services Waivers.
R414-61-1. Introduction and Authority.

(1) This rule establishes authority for the Department of Health to administer all Section 1915(c) waivers.

(2) The rule is authorized by Section 26-18-3 and Section 1915(c) of the Social Security Act.

R414-61-2. Incorporation by Reference.

The Department incorporates by reference the following home and community-based services waivers:

(1) Waiver for Technology Dependent/Medically Fragile Individuals, effective July 1, 2018;

(2) Waiver for Individuals Age 65 or Older, effective July 1, 2015;

(3) Waiver for Individuals with Acquired Brain Injuries, effective July 1, 2014;

(4) Waiver for Individuals with Physical Disabilities, effective July 1, 2016;

(5) Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, effective July 1, 2015;

(6) New Choices Waiver, effective July 1, 2015;

(7) Medicaid Autism Waiver, effective October 1, 2015; and

(8) Medically Complex Children's Waiver, effective October 1, 2018.

These documents are available for public inspection during business hours at the Utah Department of Health, Division of Medicaid and Health Financing, located at 288 North 1460 West, Salt Lake City, UT, 84114-3102.

KEY: Medicaid
February 15, 2019 26-18-3
Notice of Continuation July 2, 2019

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-510. Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program and Education.
R414-510-1. Introduction and Authority.

(1) This rule implements the Intermediate Care Facility for Persons with Intellectual Disabilities (ICF) Transition Program, and the education process required for individuals currently residing in ICFs and those considering ICF admission. ICF Transition Program participation is voluntary and allows an individual to transition from a privately-owned ICF to the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions.

(2) This rule is authorized by Section 26-18-3. Waiver services are optional and provided in accordance with 42 CFR 440.225.

R414-510-2. Definitions.

(1) "Departments" means the Utah Department of Health and the Utah Department of Human Services.

(2) "Division of Services for People with Disabilities (DSPD)" means the entity within the Department of Human Services that has responsibility to plan and deliver an appropriate array of services and supports to persons with disabilities in accordance with Section 62a-5-102.

(3) "Guardian" means an individual, who is legally authorized to make decisions on an individual's behalf.

(4) "Interested individual" means an individual who meets eligibility requirements and expresses interest, either directly or through a guardian, in participating in the Transition Program.

(5) "Intermediate Care Facilities" means privately-owned intermediate care facilities for individuals with intellectual disabilities.

(6) "Length of stay" means the length of time an individual has continuously resided in ICFs in the state of Utah. The Departments consider a continuous stay to include a stay in which an individual has a temporary break in stay of no more than 31 days due to inpatient hospitalization, admission to a nursing facility, or a temporary leave of absence.

(7) "Representative" means an individual, who is not a guardian, and does not have decision-making authority, but is identified as an individual who assists a potential Transition Program participant.

(8) "State staff" means employees of the Division of Medicaid and Health Financing or the Division of Services for People with Disabilities.

(9) "Transition Program" means the Intermediate Care Facility for Persons with Intellectual Disabilities Transition Program.

(10) "Waiver" means the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions (CSW).

R414-510-3. Eligibility Requirements for the Transition Program.

Waiver services are potentially available to an individual who:

(1) receives ICF benefits under the Medicaid State Plan;

(2) has been diagnosed with an intellectual disability or a related condition;

(3) meets ICF level of care criteria defined in Section R414-502-8;

(4) meets state funding eligibility criteria for the Division of Services for People with Disabilities (DSPD) found in Subsection 62A-5-102(4); and

(5) has at least a 12-month length of stay in any Medicaid-certified, privately-owned ICF located in Utah.

R414-510-4. Transition Program Access.

(1) Each state fiscal year, the Departments shall identify the number of people projected to participate in the Transition Program.

(2) Based on the funds available for the Transition Program in a given state fiscal year, the Departments shall enroll individuals into the Waiver through the Transition Program until available funds are exhausted.

(3) In a given state fiscal year, if the funds available for the Transition Program are sufficient to enroll all individuals who have expressed interest in participating in the Transition Program, and meet the requirements in Section R414-510-3, the Departments shall enroll all identified individuals. The Departments shall prioritize community transition to all individuals under 22 years of age.

(4) In a given state fiscal year, if the funds available for the Transition Program are not sufficient to allow transition of all individuals who express interest and who meet the requirements in Section R414-510-3, the Departments shall:

(a) Prioritize community transition to all individuals under 22 years of age;

(b) For individuals over 22 years of age, each interested individual will receive a weighted-score, and be ranked based on that score, from highest to lowest score. Scores shall be based on:

(i) The number of years the person has expressed interest in participating in the Transition Program since State Fiscal Year 2013;

(ii) Whether the applicant has applied for home and community based services and is currently on the DSPD waiting list;

(iii) Length of consecutive stay in an ICF in the state of Utah; and

(iv) If there are multiple individuals with the same weighted-score, the Departments shall rank individuals based on greatest length of stay.

(c) If an individual is selected for the Transition Program and has a spouse who also resides in a Utah ICF and who meets the eligibility criteria in Section R414-510-3, the Departments shall include the spouse in the Transition Program that same year.

(5) Individuals or their guardians will be informed that they can express interest in participating in the Transition Program at any time in writing, or by any other means through which a reasonable person would believe that the individual is interested in living in the community. Interest can be expressed at any time prior to or after state staff make direct contact with the individual or their guardian and the individual retains the right to amend his or her choice at any time.

(6) In cases where an individual does not initially express a choice to transition to the community or to remain in the ICF, the Departments will identify the individual as "undecided." For individuals identified as "undecided," the Departments will engage in additional in-reach and education to build relationships with the individual, the guardian or representative;

(a) After engaging in additional education, the Departments will re-determine whether individuals are interested in moving to the community or continuing to reside in ICFs; and

(b) For remaining individuals who are incapable of expressing choice, the Departments will identify the individuals as "undetermined";

(7) In cases where an individual has been identified as "undetermined," the Departments will utilize a formal assisted decision-making process to support the individual and their

guardian to make an informed choice.

R414-510-5. ICF Transition Program Education for Current ICF Residents.

(1) Education about the ICF Transition Program and home and community based services shall be provided by state staff to all individuals residing in ICFs. Education efforts shall be provided on an ongoing basis by state staff and will include, but are not limited to:

(a) Displaying Transition Program and state staff contact information in conspicuous locations within each ICF;

(b) Meeting with individuals living in ICFs, and with their guardians or representatives on a recurring basis;

(c) Providing opportunities for individuals living in ICFs, their guardians or representatives to visit home and community based services settings; and

(d) Providing opportunities for individuals living in ICFs, their guardians or representatives to receive support from peers who have experienced moving from an ICF to home and community based services.

(2) Education about the ICF Transition Program and home and community based services shall be provided in multiple ways and in a manner that is responsive to each person's method of communication. Examples include in-person, one-on-one or group discussions, interactions in community based settings, and communication over the telephone or through email. Educational materials will be provided in print or other mediums.

(3) As ongoing education about community based services is provided to individuals without guardians, state staff will work with the individual and anyone the individual invites to participate. At recurring intervals, state staff will work with the individual and anyone the individual invites to participate to express whether he or she wants to participate in the Transition Program. At each interval, state staff shall document and act upon the individual's decision;

(4) As ongoing education about community based services is provided to individuals with guardians, state staff will work with the guardian and anyone the guardian invites to participate. State staff will rely on the decision rendered by the guardian regarding whether the guardian wants the individual to participate in the Transition Program.

(5) Individuals or their guardians will be informed that they can express interest in participating in the Transition Program at any time in writing, or by any other means through which a reasonable person would believe that the individual is interested in living in the community. Interest can be expressed at any time prior to or after state staff make direct contact with the individual or their guardian, and the individual retains the right to amend his or her choice at any time.

R414-510-6. Education and Referral for Individuals Seeking ICF Services.

(1) Prior to admission to an ICF, an individual or guardian must contact state staff to receive education of and referral to local resources.

(a) For individuals under 22 years of age, the state agencies shall perform an additional evaluation of services to determine whether community based services are available to assure informed choice before admission to an ICF. The Director of the Division of Medicaid and Health Financing (or designee) and the Director of the Division of Services for People with Disabilities (or designee) shall authorize in writing all ICF admissions of individuals under 22 years of age.

(b) ICFs shall not admit an individual under 22 years of age, unless the admission has been authorized as stated in Subsection R414-510-6(1)(a) above. After admission, the ICF shall keep a copy of the written authorization in the individual's medical record. An individual who admits to an ICF, who meets the requirements described in Section R414-510-3, is eligible to participate in the Transition Program.

(c) Upon completing education and referral with state staff, individuals who are over 22 years of age and decide to move into an ICF, shall be given a written confirmation to demonstrate that the education process occurred prior to admission.

(d) ICFs shall not admit an individual who has not received the required state staff education and referral. After admission, the ICF shall keep a copy of the written confirmation form in the individual's medical record.

(2) Due to an urgent or emergency need, an individual may be admitted to an ICF immediately, and education and assistance with resources shall be provided after the placement.

(a) The ICF must:

(i) notify the Departments of the admission;

(ii) explain the reason the admission was considered urgent or emergency; and

(iii) provide contact information for the individual, guardian, or representative.

(3) Education shall be provided within 30 days of ICF admission unless an individual's health or other external factors make it necessary to provide the education at a later date.

(4) Once education has been provided, the Departments will provide the ICF with a written confirmation of education form, and the ICF will keep a copy of the form in the individual's medical record.

R414-510-7. Service Coverage.

Services and limitations of the Transition Program may be found in the Waiver State Implementation Plan.

R414-510-8. Reimbursement Methodology.

The Department of Human Services (DHS) contracts with the Department to set rates for waiver-covered services. The DHS rate-setting process is designed to comply with the requirements of Subsection 1915(c) of the Social Security Act and other applicable Medicaid rules. Medicaid requires that rates for services not exceed customary charges.

KEY: Medicaid
July 15, 2019 26-1-5
Notice of Continuation October 12, 2016 26-18-3

R495. Human Services, Administration.
R495-885. Employee Background Screenings.
R495-885-1. Authority and Purpose.

(1) This Rule is authorized by Sections 62A-1-118 and 62A-2-120.

(2) This Rule clarifies the standards for Department of Human Services' employee and volunteer background screening.

(3) This Rule is created to hold DHS employees and volunteers to high standards of conduct, protect children and vulnerable adults, and promote public trust.

(4) This rule does not apply to Department of Human Services Employees and Volunteers whose clearances are performed and maintained by the Department of Health for the Utah State Hospital and the Utah State Developmental Center.

R495-885-2. Definitions.

(1) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(2) "Child" is defined in Section 62A-2-101.

(3) "Department" or "DHS" means the Department of Human Services.

(4) "Direct Access" is defined in Section 62A-2-101.

(5) "Director" means the Director of each DHS Office or Division, and includes the Director's designee.

(6) "Directly Supervised" is defined in 62A-2-101.

(7) "Employee" means a prospective employee who has received a job offer from DHS or a current employee of DHS, and includes paid interns.

(8) "Executive Director" means the Executive Director of DHS or the Deputy Director designated by the Executive Director.

(9) "FBI Rap Back" is defined in Section 53-10-108.

(10) "Fingerprints" means an individual's fingerprints as copied electronically through a live-scan fingerprinting device or on two ten-print fingerprint cards.

(11) "Volunteer" means an individual who donates services without pay or other compensation, except expenses actually and reasonably incurred and pre-approved by the supervising agency, and includes unpaid interns.

(12) "Vulnerable Adult" is defined in Section 62A-2-101.

(13) "Youth Residential Program" also known as "congregate care program" means a 24-hour living environment serving 4 or more youth.

R495-885-3. Employees and Volunteers with Direct Access.

(1) The Department finds that a criminal history or identification as a perpetrator of abuse or neglect is directly relevant to an individual's employment or volunteer activities within DHS.

(2) All Department employees and volunteers who may have direct access and who are not directly supervised at all times must have an annual background screening clearance in accordance with Sections 62A-1-118 and 62A-2-120, which shall include retention of fingerprints by BCI for FBI Rap Back.

(3) Department employees and volunteers who may have direct access and are not directly supervised at all times shall:

(a) submit a background screening application to their respective Division or Office on a form created by the Department; and

(b) submit fingerprints to the Department via a DHS-operated live-scan machine or

two ten-print fingerprint cards produced by a law enforcement agency, an agency approved by the BCI, or another entity pre-approved by the Department; or

(c) not be required to submit fingerprints to DHS if they have submitted fingerprints for retention to:

(i) BCI for an Office or Division clearance, and the Office or Division ensures that the minimum standards set forth in Section 62A-2-120 are enforced; or

(ii) to the Department of Health for employees and volunteers of the Utah State Developmental Center per code; or

(iii) to the Office of Licensing as an individual associated with a license as long as the fingerprints are retained by BCI for FBI Rap Back.

(d) in accordance with R501-14-3(4) submit out of state child abuse and neglect registry records for each state resided in during the 5 years immediately preceding the date of the screening application if applying to work in a youth residential program.

(i) instructions for obtaining out of state child abuse and neglect registry records from each state may be found on the OL website: https://hslic.utah.gov/Out-of-state-registries

(ii) DHS employees and contracted employees currently working in a youth residential program at the time this rule goes into effect are responsible for submitting child abuse and neglect registry records for all states resided in during the 5 years immediately preceding the effective date of this rule. They may continue working under their DHS background screening clearance unless the out of state child abuse and neglect registry records contain information that constitutes denial under R501-14 or 62A-2-120.

(4) The DHS Office of Licensing shall access information to perform the background checks described in Sections 62A-1-118 and 62A-2-120:

(a) the DHS Office of Licensing will not duplicate fingerprint-based criminal background checks on Department employees or volunteers who have a current fingerprint-based criminal background clearance pursuant to R495-885-3(3);

(b) the fingerprints submitted by DHS employees who are required to obtain a background screening pursuant to Section 62A-2-120 as an individual associated with a licensee shall be utilized to perform the screening required by this R495-885.

(5) Screening results shall be reviewed in accordance with both the standards outlined by Section 62A-2-120 and this R495-885.

(6) Except as described in R495-885-5, Department employees and volunteers who would automatically be denied a background screening approval as described in Section 62A-2-120(5)(a) are not eligible for work with the Department.

(7) Except as described in R495-885-5, Department employees and volunteers who have any offense or finding described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

R495-885-4. Employees and Volunteers with No Direct Access.

(1) The Department finds that a criminal history is directly relevant to an individual's employment activities within DHS.

(2) The Department is not authorized to perform the checks described in Sections 62A-1-118 and 62A-2-120 for employees with no direct access.

(3) Each Division and Office will identify which of their positions includes no potential for direct access that is not directly supervised.

(4) Each employee who does not potentially have direct

access shall submit an "Authorization and Waiver for Criminal History Check" form to a Department of Human Resources Management, DHS Field Office authorizing DHRM to perform name-based background checks.

(5) Except as described in R495-885-5, Department employees who would automatically be denied a background screening approval based upon the offenses described in Section 62A-2-120(5)(a) are not eligible for work with the Department.

(6) Except as described in R495-885-5, Department employees who have any offense described in Section 62A-2-120(6)(a) are not eligible for work with the Department.

(7) Volunteers who do not have a background screening clearance pursuant to R495-885-3 will be directly supervised.

R495-885-5. Background Screening Review.

(1) The Office of Licensing or the Department of Human Resources Management, DHS Field Office shall notify the Director of the employment eligibility status of each prospective employee, employee, and volunteer.

(2) The Director shall review the background screening results of each prospective employee, employee, and volunteer when there are any offenses present as outlined in 62A-2-120.

(3) Review process for prospective or probationary employees and volunteers:

(a) Following a review of the background screening results for a prospective or probationary employee or volunteer, the Director may deny or terminate the employment of the prospective or probationary employee or refuse acceptance of the volunteer; or

(b) the Director may request further review of the background screening results by the Comprehensive Review Committee established under 62A-2-120. Review of background screening results for prospective or probationary employees or volunteers by the Comprehensive Review Committee is strictly related to the employment or volunteer eligibility of that person with DHS and is not related to the licensure of that individual by DHS, nor does it entitle any party to any of the rights granted to an applicant for licensure as defined in 62A-2-120.

(i) the Director shall notify the prospective or probationary employee that further review by the Comprehensive Review Committee has been requested.

(ii) the review for prospective employees and volunteers by the Comprehensive Review Committee shall follow the criteria outlined in 62A-2-120 and R501-14 as it relates to the process for review, the items or methods of consideration and the process and criteria used in making determinations.

(iii) Following the review, the Comprehensive Review Committee shall make one of the following findings:

(A) A determination to deny the background screening which will result in the Director denying or terminating the employment of the prospective or probationary employee or refuse the acceptance of the volunteer; or

(B) A determination of employment eligibility or to permit acceptance of the volunteer.

(iv) the determination of the Comprehensive Review Committee to deny the background screening will result in the Director denying or terminating the employment of the prospective or probationary employee or refuse acceptance of the volunteer and is final.

(v) Upon receiving the Comprehensive Review Committee determination of employment eligibility or to accept a volunteer A Director, in their sole discretion may;

(A) approve the employment or continued employment of the prospective or probationary employee or approve the acceptance of the volunteer; or

(B) deny or terminate the employment of the prospective or probationary employee or refuse the acceptance of the volunteer.

(vi) the determinations of the Director and the DHS Employee and Volunteer Comprehensive Review Committee are final, and a prospective or probationary employee or volunteer has no right to appeal.

(4) Review process for non-probationary employees:

(a) the following background screening findings shall be submitted to the Director:

(i) automatic denial offenses outlined in 62A-2-120(5)(a);

(ii) all other circumstances outlined in 62A-2-120(6)(a); and

(iii) any MIS supported or substantiated findings;

(b) the Director may consult with the Office of Licensing and shall consult with the Executive Director to evaluate whether the non-probationary employee may present a risk of harm to a child or vulnerable adult, or does not meet DHS high standards of conduct or promote public trust; the Director, Executive Director and Office of Licensing, if consulted, shall consider the factors and information outlined in 62A-2-120(6) (b).

(c) the Executive Director may, in his/her sole discretion, approve the non-probationary employee for continued employment, including defining permissible and impermissible DHS-wide work-related activities, or consult the Department of Human Resource Management regarding termination of employment. The determination of the Executive Director is final.

R495-885-6. Division/Office Responsibilities.

(1) The Department shall notify the DHS Office of Licensing within five months of the termination of each employee for whom fingerprints have been retained under Section 62A-2-120 to enable the Office of Licensing to notify BCI and ensure the destruction of fingerprints.

(2) Each Division and Office shall ensure that an employee or volunteer who previously was screened based upon having no direct access shall, prior to having any direct access, be screened and approved in accordance with R495-885.

R495-885-7. Compliance.

The Department will be required to initiate steps toward compliance with this rule immediately upon the effective date.

KEY: background, employees, human services, screenings
July 18, 2019 62A-1-118
62A-2-120

R501. Human Services, Administration, Administrative Services, Licensing.
R501-14. Human Service Program Background Screening.
R501-14-1. Authority and Purpose.

(1) This Rule is authorized by Sections 62A-2-106, 62A-2-120, 62A-2-121, and 62A-2-122.

(2) This Rule clarifies the standards for approving, denying, or revoking an applicant's background screening.

R501-14-2. Definitions.

(1) "Abuse" is defined in Sections 78A-6-105 and 62A-3-301, and may include "Severe Abuse", "Severe Neglect", and "Sexual Abuse", as these terms are defined in Sections 78A-6-105 and 62A-3-301.

(2) "Adult-only Substance Use Disorder Program" is a program serving substance use disorder related clients that has declared to the Office of Licensing that they do not serve the following:

(a) clients under the age of 18; or

(b) those with any serious mental illness or cognitive impairments.

(3) "Applicant" means a person whose identifying information is submitted to the Office under Sections 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-128, and 78B-6-113. Applicant includes the legal guardian of an individual described in Section 62A-2-120-1(a).

(a) "Applicant" does not mean an individual, including an adult, who is in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services.

(4) "Background Screening Agent" means the applicable licensing specialist, human services program, Area Agency on Aging (for Personal Care Attendant applicants only), and adoption service provider, an attorney representing a prospective adoptive parent as defined in Section 78B-6-103(25), or DHS Division or Office. The background screening agents are the point of contact with the Office for the purpose of background screening.

(5) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(6) "Child" is defined in Section 62A-2-101.

(7) "Child Placing" is defined in Section 62A-2-101.

(8) "Comprehensive Review Committee" means the committee appointed to conduct reviews in accordance with Section 62A-2-120.

(9) "DAAS Statewide Database" is the Division of Aging and Adult Services database created by Section 62A-3-311.1 to maintain reports of vulnerable adult abuse, neglect, or exploitation.

(10) "Direct Access" is defined in Section 62A-2-101.

(11) "Direct Service Worker" is defined in Section 62A-5-101.

(12) "Directly Supervised" is defined in 62A-2-101.

(13) "FBI Rap Back System" is defined in Section 53-10-108.

(14) "Fingerprints" means an individual's fingerprints as copied electronically through a fingerprint scanning device or on two ten-print fingerprint cards by a law enforcement agency, an agency approved by the BCI, or background screening agent.

(15) "Foster Home" is defined in Section 62A-2-101.

(16) "Harm" is defined in R501-1-2(14) and for the purpose of background screenings also includes causing or threatening to cause financial damage or fraud.

(17) "Human Services Program" is defined in Section 62A-2-101.

(18) "Licensee" is defined in Section 62A-2-101.

(19) "Licensing Information System" is created by Section 62A-4a-1006, as a sub-part of the Division of Child and Family Services' Management Information System created by Section 62A-4a-1003.

(20) "Neglect" may include "Severe Neglect", as these terms are defined in Sections 78A-6-105 and 62A-3-301.

(21) "Office" is defined in Section 62A-2-101(30) and is also referred to as "OL".

(22) "Personal Care Attendant" is defined in Section 62A-3-101.

(23) "Personal Identifying Information" is defined in Section 62A-2-120, and shall include:

(a) a current, valid state driver's license or state identification card bearing the applicant's photo, current name, and address;

(b) any current, valid government-issued identification card bearing the applicant's name and photo, including passports, military identification and foreign government identification cards; or

(c) other records specifically requested in writing by the Office.

(24) "Substance Abuse Treatment Program" is defined in Section 62A-2-101.

(25) "Substantiated" is defined in Section 62A-4a-101.

(26) "Supported" is defined in Sections 62A-3-301 and 62A-4a-101.

(27) "Vulnerable Adult" is defined in Section 62A-2-101.

(28) "Youth Residential Program" is also known as "congregate care" and means a 24-hour group living environment serving 4 or more youth. This does not include foster homes or child placing agency certified homes.

R501-14-3. Initial Background Screening Procedure.

(1) An applicant for initial background screening shall legibly complete, date and sign a background screening application and consent on a form provided by the Office.

(2) An applicant shall disclose all criminal charges, including pending charges, and all supported or substantiated findings of abuse, neglect or exploitation on the background screening application.

(3) An applicant may provide disclosure statements and related documents as direct attachments to the application or directly attached in a sealed envelope. If the applicant submits a sealed envelope, the background screening agent shall forward it unopened.

(4) An applicant applying to work in a youth residential program who has resided outside of the state of Utah within the 5 years immediately preceding the date of the background screening application shall provide a child abuse and neglect registry record for each State in which the applicant has resided within those 5 years.

(a) instructions for obtaining out of state child abuse and neglect registry records from each state may be found on the OL website at: https://hslic.utah.gov/Out-of-state-registries.

(b) out of state child abuse and neglect registry records are not required to be produced to the Office of Licensing a second time for license renewal, screening transfer or screening renewal as long as a record from every state resided in over the past 5 years has been previously submitted and reviewed by the Office of Licensing.

(i) a current employee in a youth residential setting at the time this rule goes into effect shall submit all out of state registry records for all states resided in for the 5 years immediately preceding their background screening renewal application.

(c) applicants experiencing delays in receiving

requested out of state(s) registry record(s) must be supervised while record(s) are pending, unless:

(i) documentation is obtained from the state(s) providing the record giving a time frame for expected receipt of record(s). This documentation may not be authored by anyone but the sending state(s)authorized personnel and;

(ii) the Office otherwise approves the applicant's background screening with no comprehensive review committee review required.

(d) any out of state registry record that contains information that constitutes background screening denial under this rule, shall result in a denial or revocation of background screening and the employee direct access to clients and client records must be terminated immediately upon notification.

(5)An applicant must present valid government-issued identification.

(6) An applicant who presents only a foreign country identification card may be required to submit an original or official copy of a government issued criminal history report from that country.

(7) The background screening application, personal identifying information, including fingerprints, and applicable fee shall be submitted to the background screening agent. The background screening agent shall:

(a) inspect the applicant's government-issued identification card and determine that it does not appear to have been forged or altered;

(b) review for completeness and accuracy and sign the application; and

(c) forward the background screening application, and applicable fee to the Office background screening unit.

(d) The background screening agent may withdraw a background screening application at any point in the process.

R501-14-4. Renewal Background Screening Procedure.

(1) An applicant for background screening renewal shall legibly complete, date and sign a background screening application and consent on a form provided by the Office.

(2) An applicant shall disclose all criminal charges, including pending charges, and all supported or substantiated findings of abuse, neglect or exploitation on the background screening application. The applicant may provide disclosure statements and related documents as direct attachments to the application or directly attached in a sealed envelope. If the applicant submits a sealed envelope, the background screening agent shall forward it unopened.

(3) The background screening application and personal identifying information shall be submitted to the background screening agent.

(a) Notwithstanding R501-14-4(3), an applicant for a background screening renewal who is not currently enrolled in the FBI Rap Back System is not required to submit fingerprints for a FBI Rap Back System search and applicable FBI Rap Back System fees unless:

(i) the applicant's most current background screening has lapsed as described in part 7 of this Section;

(ii) the human services program or background screening agent with which the applicant is associated requires a FBI Rap Back System search;

(iii) the applicant wishes to provide services with an additional licensee and has not submitted fingerprints for a FBI Rap Back System search and applicable FBI Rap Back System fees; or

(iv) the renewal application is submitted on or after July 1, 2018 and the applicant is not already enrolled in the FBI Rap Back System.

(4) A background screening agent wishing to submit background screening renewal applications for multiple applicants may submit a summary log of the renewing applicants in lieu of individuals' applications.

(a) A summary log may only be used for applicants:

(i) who are enrolled in the FBI Rap Back System with the Office;

(ii) with a current approval;

(iii) whose name and address have not changed since their last background screening approval;

(iv) who have not had any of the following since their last background screening approval:

(A) criminal arrests or charges;

(B) supported or substantiated findings of abuse, neglect or exploitation; or

(C) any pending or unresolved criminal issues.

(b) Summary logs shall contain:

(i) applicant full legal name,

(ii) applicant date of birth,

(iii) the last four numbers of each applicant's social security number;

(iv) program name; and

(v) name of program representative completing summary form.

(c) A background screening agent choosing to submit a summary log of the renewing applicants in lieu of individuals' applications shall maintain current documentation signed by each applicant, in which they attest to the accuracy of the information described in R501-14-4(4)(a) and (b).

(5) An application shall be submitted each time an applicant may have direct access to a child or vulnerable adult at any human services program other than the program identified on the initial application.

(6) The background screening agent shall:

(a) inspect the applicant's government-issued identification card and make a determination as to whether or not it appears to have been forged or altered; and

(b) review for completeness and accuracy and sign the application.

(7) Renewal applications from background screening agent and applicant shall be submitted to the Office no later than one year from the date of their most recent background screening approval. A screening that has lapsed for 30 days beyond that time is void and a new initial application must be submitted.

R501-14-5. General Background Screening Procedure.

(1) An application that is illegible, incomplete, unsigned, undated, or lacks a signed consent or required identifying information, may be returned to the individual who submitted it without further action.

(a) Personal identifying information submitted pursuant to Sections 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-113, and 78B-6-128 shall be used to perform a search in accordance with Sections 62A-2-120(3) and (13).

(2) Except as permitted by Section 62A-2-120(9), an applicant for an initial background screening shall submit an application no later than two weeks from becoming associated with the licensee and shall be directly supervised in regards to a child or vulnerable adult prior to receiving written confirmation of background screening approval from the Office.

(a) Except as permitted by Section 62A-2-120(9), an applicant seeking background screening renewal shall submit renewal application within one year of the previous clearance date.

(b) If the screening approval lapses beyond 30 days, the applicant shall be directly supervised in regard to direct access of a child or vulnerable adult prior to receiving written confirmation of background screening approval from the Office.

(c) An applicant whose background screening has been denied shall have no further supervised or unsupervised direct access to clients unless the Office approves a subsequent application.

(3) The applicant or background screening agent shall promptly notify the Office of any change of address while the application remains pending.

(4) A background screening agent may roll fingerprints of applicants for submission to the Office only after it has received and applied training in the proper methods of taking fingerprints.

(a) The background screening agent shall verify the identity of the applicant via government-issued identification card at the time that fingerprints are taken.

(b) In the event that 10% or more of the fingerprints submitted by a background screening agent are rejected for quality purposes, the Office may thereafter require that a program utilize law enforcement or BCI to roll prints.

(c) A minor applicant that submitted a youth application with no fingerprint cards and is not currently on the FBI Rap Back System must submit fingerprints within 30 days prior to the minor's 18th birthday.

R501-14-6. Background Screening Fees.

(1) The applicant and background screening agent are responsible for ensuring the accuracy of information submitted with fee payments.

(2) Fees shall only be made by cashiers' check, corporate check, money order, or internal DHS transfer. Personal checks and credit or debit card payments shall not be accepted.

(3) A background screening agent may choose to submit one payment for any number of applicants.

(4) Fees are not refundable or transferable for any reason.

R501-14-7. Application Processing and Results.

(1) The Office shall approve an application for background screening in accordance with Section 62A-2-120(7).

(a) The Office shall notify the applicant or the background screening agent or contractor when an applicant's background screening application is approved.

(i) Upon receiving notice from the Office, the background screening agent shall provide notice of approval to the applicant as required under Section 62A-2-120 (12)(a)(i).

(b) The approval granted by the Office shall be valid until a renewal approval is issued or the prior approval lapses.

(c) An approval granted by the Office shall not be transferable, except as provided in R501-14-10.

(2) The Office may conditionally approve an application for background screening in accordance with Section 62A-2-120(8).

(a) Conditional approvals are prohibited for initial applicants who are residents of child placing foster or adoption homes.

(b) A background screening agent seeking the conditional approval of an applicant shall not request conditional approval unless 10 business days have passed after the applicant's background screening application is received by the Office without receiving notification of the approval or denial of the application.

(c) A written request for conditional approval shall include the applicant's full name, the last four digits of the applicant's social security number, and the date the application was submitted to the Office.

(d) Upon receipt of a written request for conditional approval that complies with R501-14-7(2)(b), the Office shall make a conditional determination within three business days.

(e) Conditional approvals shall have expiration dates not to exceed 60 days.

(f) If the Office does not provide a standard approval before the expiration date of the conditional approval, the applicant shall be directly supervised until such an approval is granted.

(g) The Office may revoke the conditional approval prior to the expiration date.

(3) The Office shall deny an application for background screening in accordance with Section 62A-2-120.

(4) An applicant whose background screening has been denied shall have no further supervised or unsupervised direct access.

(5) The Office shall refer an application to the comprehensive review committee in accordance with Section 62A-2-120(6).

(a) Per Section 62A-2-120 (6)(a)(ii), all misdemeanor convictions except those listed in R501-14-7(5)(b), within the five years prior to submission of the application to the Office shall be reviewed by the comprehensive review committee.

(b) The following misdemeanors will not be reviewed except as described in (xiv) as listed below:

(i) violation of local ordinances related to animal licenses, littering, dogs at large, noise, yard sales, land uses, storm water, utilities, business licenses, zoning, building, construction and park/access hours;

(ii) all misdemeanors listed in 41-6a except:

(A) part 4 accident responsibility Sections 401.3, 401.5 and 401.7;

(B) part 5 driving under the influence;

(C) part 17 miscellaneous rules Section 1716 if charged as a misdemeanor B and Section 1717;

(D) part 18 Section 1803;

(iii) all misdemeanors listed in 76-10-2, 76-10 part 1 Section 105, 76-10-21 and 76-10-27;

(iv) Failure to Appear: A misdemeanor charge under 77-7-22;

(v) Unauthorized Hunting of Protected Wildlife: A misdemeanor resulting from unauthorized hunting under 23-20-3;

(vi) Fishing Licenses: A misdemeanor resulting from a failure to have the appropriate fishing license under 23-19-1;

(vii) Boating Safety: A misdemeanor resulting from a failure to comply with the boating safety requirements outlined in 73-18-8;

(viii) Business License: A misdemeanor resulting from failure to have a business license as required under 76-8-410;

(ix) all juvenile misdemeanors except those listed in 62A-2-120(5)(a) unless there is a pattern of at least three or more similar offenses within the five years prior to the submission of the application.

(c) The Office shall refer an applicant to the comprehensive review committee upon learning of a potentially disqualifying offense or finding described in Section 62A-2-120(6)(a) not previously considered by the comprehensive review committee.

(6) The Office may provide the status of an application to the sponsoring background screening agent, but shall not share any specific criminal history information.

R501-14-8. Comprehensive Review Committee.

(1) The Director of the following Department of Human Services divisions and offices shall appoint one member and one alternate to serve on the comprehensive review committee:

(a) the Executive Director's Office;

(b) the Division of Aging and Adult Services;

(c) the Division of Child and Family Services;

(d) the Division of Juvenile Justice Services;
(e) the Division of Services for People with Disabilities;
(f) the Division of Substance Abuse and Mental Health; and
(g) the Office of Licensing.
(2) Comprehensive review committee members and alternates shall be professional staff persons who are familiar with the programs they represent.
(3) The appointed Office member shall chair the comprehensive review committee as a non-voting member.
(4) Four voting members shall constitute a quorum, not including the representatives from the Office of Licensing.
(5) The comprehensive review committee shall conduct a comprehensive review of an applicant's background screening application, criminal history records, outstanding warrants for any offenses that require a committee review, abuse, neglect or exploitation records, applicant submitted child abuse and neglect registry record(s) from other state(s) and related circumstances, in accordance with Section 62A-2-120(6).

R501-14-9. Comprehensive Review Investigation.
(1) The comprehensive review committee shall not review a background screening application without the Office first sending the applicant a written notice that:
(a) the Office is investigating the applicant's criminal history or findings of abuse, neglect or exploitation;
(b) the applicant is encouraged to submit any written statements or records that the comprehensive review committee needs to make a determination of risk of harm including but not limited to:
(i) original police reports;
(ii) investigatory and charging documents;
(iii) proof of any compliance with court orders;
(iv) any evidence of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed;
(v) personal statements;
(vi) reference letters specific to the potential risk of harm and;
(vii) any other information that specifically addresses the criteria established in Section 62A-2-120(6)(b);
(c) the comprehensive review committee evaluates information using the criteria established by Section 62A-2-120(6)(b); and
(d) submissions must be received within 15 calendar days of the written notice unless an extension has been requested by the background screening agent or applicant and granted by the Office.
(2) The Office shall gather information described in Section 62A-2-120(6)(b) from the applicant and provide available information to the comprehensive review committee.
(3) The Office may request additional information from any available source, including the applicant, victims, witnesses, investigators, the criminal justice system, law enforcement agencies, the courts and any others it deems necessary for the comprehensive evaluation of an application.
(4) A denied application may be re-submitted to the Office after 6 months or upon substantial change to circumstances.

R501-14-10. Comprehensive Review Determination.
(1) The comprehensive review committee shall only consider applications and information presented by the Office. The comprehensive review committee shall evaluate the applications and information provided to the committee through the Office.
(a) A background screening approval may be transferred to other human service programs when providing the same service under the same statutory screening requirements.
(b) the committee shall re-consider all previously cleared or denied screenings when the applicant requires a new clearance for a new type of service.
(2) Each application that goes to the comprehensive review committee requires individual review by the comprehensive review committee.
(3) The comprehensive review committee shall recommend approval of the background screening of an applicant only after a simple majority of the voting members of the comprehensive review committee determines that approval will not likely create a risk of harm to a child or vulnerable adult.
(4) The comprehensive review committee shall recommend denial of the background screening of an applicant when it finds that approval will likely create a risk of harm as defined in 501-14-2(16) to a child or vulnerable adult.
(5) If the applicant fails to provide additional information requested by the Office, the comprehensive review committee may consider and weigh only what was submitted to them and only consider additional information that is publicly available in making their evaluation of the risk of harm to clients.
(6) The Office shall make the final determination to approve or deny the application after considering the comprehensive review committee's recommendation.
(7) An applicant whose background screening has been denied shall have no further supervised or unsupervised direct access.

R501-14-11. Background Screening Approval Transfer or Concurrent Use.
(1) An applicant is eligible to have their current background screening approval shared with or transferred to another human services program only if the applicant is currently enrolled in the FBI Rap Back System and the screening was run under the same statutory authority as the original screening.
(2) An applicant who wishes to have their current background screening shared with or transferred to another human services program shall complete a background screening application and identify the name of the original program and youth residential status in boxes indicated.
(i) transfers between youth residential programs is permitted. Transfers from a non-youth residential to a youth residential program shall require submission of out of state registry records when the applicant has resided in another state(s) within 5 years of the application.
(3) An applicant shall be directly supervised until the program receives written confirmation from the Office that the background screening is current and valid.
(4) A background screening approval that has been transferred or shared shall have the same expiration date as the original approval.

R501-14-12. Post-Approval Responsibilities.
(1) An applicant and background screening agent shall immediately notify the Office if the applicant is charged with any felony, misdemeanor, or infraction, or has a new finding in the Licensing Information System, juvenile court records, or the DAAS Statewide Database after a background screening application is approved.
(2) An applicant who has received an approved background screening shall resubmit an application and personal identifying information to the Office within ten calendar days after being charged with any felony, misdemeanor, or infraction, or being listed in the Licensing Information System, the DAAS Statewide Database, or

juvenile court records.

(3) An applicant who has been charged with any felony, misdemeanor, or infraction listed in Section 62A-2-120(5)(a) or has a new finding in the Licensing Information System or the DAAS Statewide Database, after a background screening application is approved shall be directly supervised until after an application and personal identifying information have been resubmitted to the Office and a current background screening approval is received from the Office.

(4) An applicant charged with an offense for which there is no final disposition and no comprehensive review committee denial, shall inform the Office of the current status of each case every 90 days.

(a) The Office shall determine whether the pending charge could require a denial or committee review, and if so, notify the applicant to submit an official copy of judicial documentation that indicates the current status of the case at least once every 3 months or until final disposition, whichever comes first.

(b) An applicant shall submit an official copy of judicial documentation that indicates the current status of the case at least once every 3 months or until final disposition, whichever comes first.

(5) The Office may revoke the background screening approval of an applicant who:

(a) has been charged with any felony, misdemeanor, or infraction or is listed in the Licensing Information System, the DAAS Statewide Database, or juvenile court records; and fails to provide required current status information as described in (4) of this Rule or;

(b) has been convicted of any felony, misdemeanor or infraction listed in 62A-2-120(5) after a background screening approval had already been granted by the Office while charges were pending.

(6) The Office shall process identifying information received pursuant to R501-14-12(2) in accordance with R501-14.

(7) The background screening agent shall notify the Office of the termination of each employee for whom fingerprints have been retained under Section 62A-2-120. The Office shall report the termination to BCI within five months if the individual has not transferred the clearance to a transfer-eligible program within that time frame.

R501-14-13. Confidentiality.

(1) The Office may disclose criminal background screening information, including information acknowledging the existence or non-existence of a criminal history, only to the applicant in accordance with the Government Records Access and Management Act, Section 63G-2-101, et seq.

(2) Except as described in R501-14-11 and below, background screening information may not be transferred or shared between human service programs.

(a) A licensed child-placing adoption agency may provide the approval granted by the Office to the person who is the subject of the approval, another licensed child-placing agency, or the attorney for the adoptive parents, in accordance with Section 53-10-108(4).

R501-14-14. Retention of Background Screening Information.

(1) A human services program or department contractor shall retain the background screening information of all associated individuals for a minimum of seven years after the termination of the individual's association with the program.

R501-14-15. Expungement.

(1) An applicant whose background screening application has been denied due to the applicant's criminal record may submit a new application with an official copy of an Order of Expungement.

R501-14-16. Administrative Hearing.

(1) A Notice of Agency Action that denies the applicant's background screening application or revokes the applicant's background screening approval shall inform the applicant of the right to appeal in accordance with Administrative Rule R497-100 and Section 63G-4-101, et seq.

R501-14-17. Exemption.

(1) Section 62A-2-120(13) provides an exemption for substance abuse programs providing services to adults only. In order to claim this exemption, an applicant, human services program, or department contractor may request this exemption on a form provided by the Office, and demonstrate that they meet exemption criteria. Final determination shall be made by the Office.

(2) The substance abuse program exemption limits the exemption with regard to program directors and members. Ownership and management of a human services program, as included in the definition of member, for purposes of this rule means a person or entity who alone or in conjunction with other persons or entities has a majority voice in the decision-making and administration of the program.

KEY: licensing, background screening, fingerprinting, human services
July 18, 2019 62A-2-108 et seq.
Notice of Continuation September 29, 2015

R527. Human Services, Recovery Services.
R527-38. Unenforceable Cases.
R527-38-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to establish the criteria which a support case must satisfy to be categorized as unenforceable pursuant to 45 CFR 303.11.

R527-38-2. Unenforceable Case Criteria.

1. All of the following criteria must be met for a support case to be categorized as unenforceable:

a. The case is currently not a paying case; in that payments shall not have been posted to the case during the last 12 months; and payments are not expected to be posted in the near future.

b. No federal offset money has been received by the Office of Recovery Services (ORS) during the last two years.

c. No state tax money shall have been received by ORS within the most recent two years.

d. ORS shall have collected $1,000 or less on the case over the last two years by methods other than federal offset or state tax.

e. There are no financial institution accounts belonging to the non-custodial parent that can be attached.

f. No executable assets belonging to the non-custodial parent have been identified.

g. If the matter concerns a Title IV-E case, all of the children identified as being part of the case shall have been out of state custody for at least one year or parental rights shall have been terminated.

KEY: child support
July 18, 2019 **45 CFR 303.11**
Notice of Continuation November 26, 2018 **62A-1-111**
62A-11-107

R539. Human Services, Services for People with Disabilities.
R539-2. Service Coordination.
R539-2-1. Purpose.

(1) The purpose of this rule is to provide standards for the Division service system, including planning, developing and managing an array of services for Persons with disabilities and their families throughout the state as required by Subsection 62A-5-103(2)(a).

R539-2-2. Authority.

(1) This rule establishes standards as required by Subsection 62A-5-103(2)(b).

R539-2-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-3.

(2) In addition:

(a) "Quality Assurance" means the Family, Provider, and Division management's role to assure accountability in areas of fiscal operations, health, safety, and contract compliance.

(b) "Quality Improvement" means the Provider's role to evaluate and improve the internal delivery of services.

(c) "Quality Enhancement" means the Division and the Team members' role in supporting a Person to experience personal life satisfaction in accordance with the Person's preferences.

R539-2-4. Waiting List.

(1) Pursuant to Subsection 62A-5-102(3), the Division shall determine a Person's eligibility for service, followed by a determination of that Person's priority relative to others who are also eligible. The Division shall use a standardized Needs Assessment to score and prioritize the Person's level of need. Persons with the highest scores shall receive support first. The Support Coordinator shall assess with the Person the array of services that may be needed. If funding is not immediately available, the Person shall be placed on a waiting list for support. Persons who have been determined eligible for the Division's Medicaid Waivers can choose to wait for Division Support services or seek services available through Medicaid in an approved facility.

(2) If the Person requires, and could use, support services on the day of intake, the Person has an immediate need; otherwise, the Person has a future need.

(3) A Needs Assessment Form shall be completed for all Persons with an immediate need for support services. The Needs Assessment calculates the score of each Person by using the following criteria:

(a) severity of the disabling condition;
(b) needs of the Person and/or family;
(c) urgency of need
(d) appropriate alternatives available; and
(e) other factors determined by the Division to reflect accurately on the Person's need:
(i) household composition and size;
(ii) parental/caregiver ability;
(iii) finances and insurances;
(iv) unmet medical needs;
(v) problem behaviors;
(vi) protective service issues;
(vii) resources/supports needed;
(viii) time on immediate or future need waiting list.

(4) The Division determines the Person's score, rank orders the scores, and enters the Person's name and score on the statewide waiting list.

(5) A Person's ranking may change if the Person's needs change or as Needs Assessments are completed for new Applicants.

(6) No age limitations apply to a Person placed on the waiting list for community living support or family support.

(7) To preserve the Medicaid Waiver and state-wide service infrastructure, exceptions may be made to the person's ranking on the waiting list when authorized by the Division Director and the Department of Health.

R539-2-5. Person-Centered Process.

(1) The Division supports Person-Centered Planning, which includes assessing, planning, implementing, and evaluating. This process shall have an individualized focus and incorporate the principles of Person-Centered Planning, self-determination, informed choice, and equity. Input from the Person and the Person's Team should guide and direct this process.

(a) The Person's Team shall work with the Person to identify goals.

(i) The Person receiving supports determines the membership of the Team, which shall include the Support Coordinator.

(ii) The Team meets at least annually within the month in which the previous meeting occurred, or more often as the Person or other members of the Team determine necessary.

(b) The Person, Provider, and Family shall assess, plan, implement, and evaluate goals and supports for which they are responsible, as agreed upon and listed on Division Form 1-16 in the planning meeting.

(c) The Team shall decide the level of detail required to describe the actions involved in the assessing, planning, implementing, and evaluating needs for the supports based on the experience and expertise of the staff providing the Person's supports. The use of the philosophical Person-Centered Planning approach shall be demonstrated and documented in the Person's file.

(d) Any interested party who believes that Person-Centered Planning is not being implemented as outlined or receives a request from the Person, should contact the Support Coordinator immediately to resolve the issue informally, and, if necessary, through the administrative hearing process outlined in R539-3-8 Notice of Agency Action and Administrative Hearings.

R539-2-6. Entry Into and Movement Within Service System.

(1) The Division shall assure that an appropriate choice of supports and Providers exist for Persons entering or moving within the support system in accordance with Subsections 62A-5-103(1) and 62A-5-103(2). The Division shall coordinate, approve, and oversee all out-of-home placements.

(2) Entry into Division-funded supports:

(a) Once a Person's application for waiver services is processed by the Division, the Person is referred to the local financial eligibility office.

(b) Prior to the provision of community living supports, a Person may be required to complete a medical examination and, if under the age of 18, provide a current immunization record.

(c) Admission to Division programs from a nursing facility will be coordinated by the Division with the Person, the nursing facility social worker, the Support Coordinator, and the prospective Provider.

(d) The Division shall provide Persons with a choice of Providers by:

(i) sending Providers notice and invitation to submit offers to provide services via use of Division Form 1-6; and

(ii) assisting the Person to make an informed choice of Provider.

(e) Interested Providers may schedule and coordinate a service entry meeting that involves the Person, the Representative, Support Coordinator, and invited guests, (e.g., Developmental Center staff, school representative, and Division staff). The meeting should be held at the prospective site of placement whenever possible.

(f) The Provider shall submit an acceptance or denial letter within ten business days of the service entry meeting to the Support Coordinator and the Person. An acceptance letter shall include a written description of the following:

(i) services to be provided;

(ii) location of the service;

(iii) name and address of the primary care physician, or other medical specialists, including, for example, neurologist or dentist, if applicable;

(iv) a training and in-service schedule for the staff to meet with the Person;

(v) proposed date services will begin; and

(vi) agreed upon rate and level of support.

(g) The physical move of the Person shall be the responsibility of the Provider who is accepting the Person.

(h) The Division shall send the Person's information to the Provider five business days prior to the move.

(3) Any Team Member may initiate a request to change Provider or Developmental Center residence by asking the Support Coordinator to arrange a meeting.

(4) If a Person requests a change of Provider, the Support Coordinator shall arrange a discharge meeting that provides a ten-business-day written notice to the Person, present Provider, and Support Coordinator.

(a) The present Provider may request the opportunity to make changes in the existing relationship to address the concerns that initiated the discharge meeting.

(b) The Director shall make the final decision concerning the discharge if the parties cannot come to agreement.

(5) A Provider initiated request for discharge of a Person shall require 90 calendar days prior notification to the Person and the Division.

(6) Emergency Services Management Committee (ESMC):

(a) An Emergency Services Management Committee chairperson shall be appointed by the Division Director. Membership shall include:

(i) Division Specialists;

(ii) a representative from the Division who is skilled in crisis intervention and knowledgeable of local resources;

(iii) a representative from the Developmental Center; and

(iv) others as appointed by the Division Director.

(b) The Emergency Services Management Committee shall ensure that Persons are placed in the least restrictive most appropriate living situation as per Sections 62A-5-302 through 62A-5-312 and Subsection 62A-5-402(2)(a). Exceptions to the statute requiring children under age 11 to live only in family-like environments, as per Section 62A-5-403, require Emergency Services Management Committee review and recommendation to the Division Director for final written approval.

R539-2-7. Quality Management Procedures.

(1) The Division will oversee the three distinct functional roles of quality management, which are Quality Assurance, Quality Improvement, and Quality Enhancement.

(a) Necessary quality assurances are specified by contract with the Division. The Division may work with other offices and bureaus of the Department of Human Services and the Department of Health to assure quality.

(b) Providers are responsible to develop and implement an internal quality management system, which shall:

(i) Evaluate the Provider's programs; and

(ii) Establish a system of self-correcting feedback.

(c) The implementation of the Person's Action Plan shall be designed to enhance the Person's life. The Person and Person's Team shall:

(i) Identify and document the Person's preferences;

(ii) Plan how to support the Person's life satisfaction; and

(iii) Implement the plan with supports from the Division, such as;

(A) Technical Assistance, which involves training, mentoring, consultation, and referral through Division staff.

(B) Quality Enhancement Resource Brokerage, which involves identification and compilation of community resources, including other consumers and families, and referral to and prior approval of payment for these supports.

(C) Consumer empowerment, which involves rights education, leadership training.

(D) Team and System Process Enhancement, which involves facilitation and negotiation training, community education, and consumer satisfaction surveys.

(2) The Division shall evaluate the Person's satisfaction and statistical statewide system indicators of life enhancement.

(3) Division staff shall promote enhancement of the Person's life; support improvement efforts undertaken by Providers, Persons, and families; and assure accountability.

R539-2-8. Request for New Support Coordinator.

(1) A Person may request a new Support Coordinator by submitting a written request to the Region Office Supervisor.

KEY: services, people with disabilities
February 13, 2013 62A-5-102
Notice of Continuation July 15, 2019 62A-5-103

R539. Human Services, Services for People with Disabilities.
R539-3. Rights and Protections.
R539-3-1. Purpose.

(1) The purpose of this rule is to support Persons in exercising their rights as Persons receiving funding from the Division. The procedures of this rule constitute the minimum rights for Persons receiving Division funded services and supports.

R539-3-2. Authority.

(1) This rule establishes procedures and standards for the protection of Persons' constitutional liberty interests as required by Subsection 62A-5-103(2)(b).

R539-3-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-3.

R539-3-4. Human Rights Committee.

(1) This rule applies to the Division, Persons funded by the Division, Providers, Providers' Human Rights Committees, and the Division Human Rights Council.

(2) All Persons shall have access to a Provider Human Rights Committee with the exception of the following:

(a) Persons receiving physical disabilities services.

(b) Families using the Self-Administered Model.

(c) Persons receiving only family supports or respite.

(3) The Provider Human Rights Committee approves the services agencies provide relating to rights issues, such as rights restrictions and the use of intrusive behavior supports. In addition, the Committee provides recommendations relating to abuse and neglect prevention, rights training, and supporting people in exercising their rights.

(4) Any interested party may request that the rights of a Person be reviewed by a Provider Human Rights Committee by contacting the Person's Provider agency verbally or in writing.

(5) Any interested party may request an appeal of the Provider Human Rights Committee decision by sending a request to the Division, 195 North 1950 West, Salt Lake City, UT 84116. The Division shall make a decision whether there will be a review and shall notify the Person, Provider, and Support Coordinator concerning the decision within eight business days. The notification shall contain a statement of the issue to be reviewed and the process and timeline for completing the review.

R539-3-5. Representative Payee Services.

(1) Unless a Person voluntarily signs the Division Voluntary Financial Support Agreement Form 1-3 or a Provider Human Rights Committee has approved restriction on the use and access to personal funds, the Person shall have access to and control over such funds.

(2) The Representative Payee shall follow all Social Security Administration requirements outlined in 20CFR416.601-665.

(3) The Division shall review Provider records for a sample of Representative Payee files on an annual basis.

(4) If the Department does not have guardianship or conservatorship and the Division has not been named as Representative Payee by the Social Security Administration, the Person may sign a Voluntary Financial Support Agreement, Division Form 1-3, allowing the Department to act as Representative Payee.

(5) If the Division is acting as the Representative Payee for a Person, the Division may initiate termination of a Representative Payee relationship through written notification to the Person and the funding agency.

(a) The Division shall initiate termination of a Representative Payee arrangement when:

(i) a Person with a voluntary arrangement requests termination of Representative Payee status;

(ii) a funding agency requests termination of Representative Payee status;

(iii) Person with a Representative Payee becomes ineligible for funding; or

(iv) a Person moves out of the service area.

R539-3-6. Personal Property.

(1) Restrictions to property that are implemented by the Division or Provider shall be part of a written plan or as an Emergency Behavior Intervention in accordance with Division Administrative Rule. Restrictions shall be approved by the Team and Provider Human Rights Committee.

R539-3-7. Privacy.

(1) Persons shall have privacy, including private communications (i.e. mail, telephone calls and private conversations), personal space, personal information, and self-care practices (i.e. dressing, bathing, and toileting).

(2) Restrictions to privacy that are implemented by the Division or Provider shall be part of a written plan and approved by the Team and Provider Human Rights Committee. Circumstances that require assistance in self-care due to functional limitations do not require a written plan.

(3) No Person shall be subject to electronic surveillance of any kind without:

(a) express written consent from the Person to be under surveillance or the Person's guardian;

(b) approval of both the Person's Team and the Provider Human Rights Committee;

(c) certification by the Provider Human Rights Committee that the electronic surveillance meets a necessary health or safety concern and is done in the least intrusive manner possible; and

(d) submission of Electronic Surveillance Certification to the Division Quality Manager.

(4) Electronic surveillance shall not be placed in common areas without:

(a) express written consent from all Persons who live at the site, or the guardians of those Persons;

(b) approval of the Provider Human Rights Committee;

(c) certification by the Provider Human Rights Committee that the electronic surveillance meets a necessary health or safety concern and is done in the least intrusive manner possible; and

(d) submission of Electronic Surveillance Certification to the Division Quality Manager.

(5) Under no circumstances shall electronic surveillance be used by administrative or supervisory staff as a substitute for supervision of employees providing direct care to Persons.

(6) Visitors shall be provided with notice of electronic surveillance upon entering the premises.

(a) Notice shall be provided by placing a sign of substantial size, in a conspicuous location, so as to attract the attention of visitors as they enter.

(7) The Person's Team and the Provider Human Rights Committee shall conduct reviews of electronic surveillance:

(a) at least annually; and

(b) in response to specific requests for review from the Person under surveillance or that Person's guardian.

(8) Electronic surveillance at the Utah State Developmental Center shall comply with federal regulations outlined in 42 C.F.R. 483.420(a)(7) (2011), 42 C.F.R. 483.440(f)(3)(i)-(iii) (2011) and 42 C.F.R. 483.470(d)(2) (2011).

R539-3-8. Notice of Agency Action and Administrative Hearings.

(1) Persons have the right to receive adequate written Notice of Agency Action and to present grievances about agency action by requesting a formal or informal administrative hearing in accordance with R497-100 for Persons receiving non-Waiver services, and R410-14 for Persons receiving Waiver services.

(2) Pursuant to Utah Code Annotated, Title 63G, Chapter 4, the Division shall notify a Person in writing before taking any agency action, such as changes in funding, eligibility, or services.

(3) At least 30 calendar days before the Division terminates or reduces a Person's services or benefits, the Division shall send the Person a written Notice of Agency Action.

(4) The Notice of Agency Action shall comply with Subsection 63G-4-201 and R497-100-4(2)(a).

(5) To assist a Person in requesting an administrative hearing, the Division shall send the Person a Hearing Request Form 490S when the Division sends the Notice of Agency Action Form 522.

(6) To request an informal hearing with the Department of Human Services for non-waiver services, the Person must file a Hearing Request Form 490S with the Division within 30 calendar days of the mailing date shown on the Notice of Agency Action Form 522.

(7) To request a formal hearing with the Department of Health for Waiver services, the Person must file the Medicaid Standard Hearing Request Form with the Division and Department of Health, Division of Health Care Finance within 30 calendar days of the mailing date shown on the Notice of Agency Action Form 522.

(8) This 30-day deadline for formal and informal hearings applies regardless of whether the Person also wishes to participate in the Division's conflict resolution process.

(a) If the Person files the Hearing Request within ten calendar days of the mailing date of the Notice of Agency Action, the Person's services shall continue unchanged during the formal or informal hearing process.

(b) If the Person files the Hearing Request Form between 11 and 30 calendar days after the mailing date of the Notice of Agency Action, the Person is entitled to an administrative hearing, but the Person's services and benefits shall be discontinued or reduced according to the Notice of Agency Action during the formal or informal hearing process.

(9) A Person may file a Request for Hearing Form for a formal or informal hearing and choose to still participate in the Division's conflict resolution process prior to the formal or informal hearing.

(10) If the Person requests an informal hearing and also chooses the conflict resolution process, the conflict resolution process must be completed before the informal hearing can begin, unless the Person submits a written request to the Division to end the conflict resolution process prematurely.

R539-3-9. Participation in Hospice Services.

(1) Persons expected by their physicians to live fewer than six months have the right to pursue hospice services as their choice of end-of-life care. A Person who is expected by two physicians to live fewer than six months and who receives Division funding for services and supports may request to continue to receive their Division-funded services and supports while participating in hospice services.

(2) If a Person has not executed a Durable Power of Attorney for Health Care and is incapable of making an informed decision about hospice services or signing a Hospice Agreement, choices related to end-of-life care shall be made on behalf of the Person by the Team upon approval of the Provider Human Rights Committee unless a guardian has been appointed by the Court with the legal authority to make end-of-life decisions for the Person.

(3) If a Person receives Waiver services through the Division and elects the Medicaid hospice benefit and meets the program eligibility requirements in accordance with R414-14A-3, hospice shall become the primary service delivery program, including the primary case management program, for the care of the Person. All other Medicaid programs serving the Person at the time of hospice election, including Waivers, shall coordinate with the hospice case management team to determine the full scope of services that shall be provided from that point forward.

(a) Pursuant to R414-14A-7(A), a Person can continue to receive Division services through the Waiver program that are necessary to prevent institutionalization, are not duplicative of services covered by the hospice benefit, and do not conflict with the hospice plan of treatment.

(b) The Medicaid hospice benefit shall determine the actual number of times a Person can revoke and re-elect hospice services, which hospice Providers and services are available, and which Waiver services may continue concurrently with hospice services.

(c) If the Division wishes to initiate disenrollment of a Medicaid-funded Person from the Waiver based on the Person's election of hospice services, it shall be considered an involuntary disenrollment and will be subject to review and approval by the Department of Health, Division of Health Care Finance.

R539-3-10. Prohibited Procedures.

(1) The following procedures are prohibited for Division staff and Providers, including staff hired for Self-Administered Services, in all circumstances in supporting Persons receiving Division funding:

(a) Physical punishment, such as slapping, hitting, and pinching.

(b) Demeaning speech to a Person that ridicules or is abusive.

(c) Locked confinement in a room.

(d) Denial or restriction of access to assistive technology devices, except where removal prevents injury to self, others, or property as outlined in Section R539-3-6.

(e) Withholding or denial of meals, or other supports for biological needs, as a consequence or punishment for problems.

(f) Any Level II or Level III Intervention, as defined in R539-4-3(n) and R539-4-3(o), used as coercion, as convenience to staff, or in retaliation.

(g) Any procedure in violation of R495-876, R512-202, R510-302, 62A-3-301 thru 62A-3-321, and 62A-4a-402 thru 62A-4a-412 prohibiting abuse.

KEY: people with disabilities, rights

May 10, 2013	**62A-5-102**
Notice of Continuation July 15, 2019	**62A-5-103**

R539. Human Services, Services for People with Disabilities.
R539-4. Behavior Interventions.
R539-4-1. Purpose.

(1) The purpose of this rule is to define and establish standards for Behavior Interventions, to protect Persons' rights, and prevent abuse and neglect.

R539-4-2. Authority.

(1) This rule establishes procedures and standards for Persons' constitutional liberty interests as required by Subsection 62A-5-103.

R539-4-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-3.

(2) In addition:

(a) "Behavior Intervention" means a specific technique designed to teach the Person skills and address their problems. Techniques are based on principles from the fields of Positive Behavior Supports and applied behavior analysis.

(b) "Behavior Peer Review Committee" means a group consisting of at least three specialists with experience in the fields of Positive Behavior Supports and applied behavior analysis. One of the three members must be outside the Provider agency. The Committee is primarily responsible for evaluating the quality, effectiveness, and least intrusiveness of the Person's Behavior Support Plan.

(c) "Behavior Support Plan" means a written document used by Provider staff and others, designed to address the Person's specific problems.

(d) "Contingent Rights Restrictions" means a Level III Intervention resulting in the temporary loss of rights based upon the occurrence of a previously identified problem.

(e) "Emergency Behavior Intervention" means the use of Level II Interventions not outlined in the Behavior Support Plan, but used in Emergency Situations.

(f) "Emergency Rights Restriction" means a Level II Intervention temporarily denying or restricting access to personal property, privacy, or travel in order to prevent imminent injury to the Person, others, or property. Rights are reinstated when immediate danger is resolved.

(g) "Emergency Situations" means one or more of the following:

(i) Danger to others: physical violence toward others with sufficient force to cause bodily harm.

(ii) Danger to self: abuse of self with sufficient force to cause bodily harm.

(iii) Danger to property: physical abuse or destruction of property.

(iv) Threatened abuse toward others, self, or property which, with an evidence of past threats, result in any of the items listed above.

(h) "Enforced Compliance" means a Level II Intervention in which a Person is physically guided through completion of a request or command that the Person is resisting.

(i) "Exclusionary Time-out" means a Level II Intervention removing the Person from a specific setting that exceeds 10 minutes or requires Enforced Compliance to move the Person to or prevent from leaving a designated area.

(j) "Extinction" means a Level I Intervention that withholds reinforcement from a previously reinforced behavior.

(k) "Functional Behavior Assessment" means a written document prepared by the Provider behavior specialist to determine why problems occur and develop effective interventions. The results of the assessment are a clear description of the problem, situations that predict when the problem will occur, consequences that maintain the problem, and a summary statement or hypothesis.

(l) "Highly Noxious Stimuli" means a Level III Intervention applying an extremely undesirable, but not harmful, sensory event that exceeds the criteria of Mildly Noxious Stimuli.

(m) "Level I Intervention" means positive, unregulated procedures such as prevention strategies, reinforcement strategies, positive teaching and training strategies, redirecting, verbal instruction, withholding reinforcement, Extinction, Non-exclusionary Time-out/Contingent Observation, and simple correction.

(n) "Level II Intervention" means intrusive procedures that may be used in pre-approved Behavior Support Plans or as Emergency Behavior Interventions. Approved interventions include Enforced Compliance, Manual Restraint, Exclusionary Time-out, Mildly Noxious Stimuli, and Emergency Rights Restrictions.

(o) "Level III Intervention" means intrusive procedures that are only used in pre-approved Behavior Support Plans. Approved interventions include Time-out rooms, Mechanical Restraint, Highly Noxious Stimuli, overcorrection, Contingent Rights Restrictions, Response Cost, and Satiation.

(p) "Manual Restraint" means a Level II Intervention using physical force in order to hold a Person to prevent or limit movement.

(q) "Mechanical Restraint" means a Level III Intervention that is any device attached or adjacent to the Person's body that cannot easily be removed by the Person and restricts freedom of movement. Mechanical restraint devices may include, but are not limited to, gloves, mittens, helmets, splints, and wrist and ankle restraints. For purposes of this Rule, Mechanical Restraints do not include:

(i) Safety devices used in typical situations such as seatbelts or sporting equipment.

(ii) Medically prescribed equipment used as positioning devices, during medical procedures, to promote healing, or to prevent injury related to a health condition (i.e. helmets used for Persons with severe seizures).

(r) "Mildly Noxious Stimuli" means a Level II Intervention applying a slightly undesirable sensory event such as a verbal startle or loud hand clap.

(s) "Non-exclusionary Time-out/Contingent Observation" means a Level I Intervention in which a Person voluntarily moves to a designated area for less than ten minutes for the purpose of regaining self-control or observing others demonstrating appropriate actions.

(t) "Positive Behavior Supports" means the use of Behavior Interventions that achieve socially important behavior change. The supports address the functionality of the problem and result in outcomes that are acceptable to the Person, the family, and the community. Supports focus on prevention and teaching replacement behavior.

(u) "Overcorrection" means a Level III Intervention requiring a Person to repeatedly restore an environment to its original condition or repeating an alternate behavior.

(v) "Reinforcer" means anything that occurs following a behavior that increases or strengthens that behavior.

(w) "Response Cost" means a Level III Intervention removing previously obtained rewards, such as tokens, points, or activities, upon the occurrence of a problem. Removal of personal property is not approved.

(x) "Satiation" means a Level III Intervention that presents an overabundance of a reinforcer to promote a reduction in the occurrence of the problem. Satiation is not used with Enforced Compliance.

(y) "State Behavior Review Committee" means a group of professionals with training and experience in Positive Behavior Supports and applied behavior analysis. The

committee reviews and approves Behavior Support Plans to ensure the least intrusive and most effective interventions are used.

(z) "Time-out Room" means a Level III Intervention placing a Person in a specifically designed, unlocked room. The Person is prevented from leaving the room until pre-determined time or behavior criteria are met.

R539-4-4. Levels of Behavior Interventions.

(1) The remainder of this rule applies to all Division staff and Providers, but does not apply to employees hired for Self-Administered Services.

(2) All Behavior Support Plans shall be implemented only after the Person or Guardian gives consent and the Behavior Support Plan is approved by the Team.

(3) All Behavior Support Plans shall incorporate Positive Behavior Supports with the least intrusive, effective treatment designed to assist the Person in acquiring and maintaining skills, and preventing problems.

(4) Behavior Support Plans must:

(a) Be based on a Functional Behavior Assessment.

(b) Focus on prevention and teach replacement behaviors.

(c) Include planned responses to problems.

(d) Outline a data collection system for evaluating the effectiveness of the plan.

(5) All Provider staff involved in implementing procedures outlined in the Behavior Support Plan shall be trained and demonstrate competency prior to implementing the plan.

(a) Completion of training shall be documented by the Provider.

(b) The Behavior Support Plan shall be available to all staff involved in implementing or supervising the plan.

(6) Level I interventions may be used informally, in written support strategies, or in Behavior Support Plans without approval.

(7) Behavior Support Plans that only include Level I Interventions do not require approval or review by the Behavior Peer Review Committee or Provider Human Rights Committee.

(8) Level II Interventions may be used in pre-approved Behavior Support Plans or emergency situations.

(9) Level III Interventions may only be used in pre-approved Behavior Support Plans.

(10) Behavior Support Plans that utilize Level II or Level III Interventions shall be implemented only after Positive Behavior Supports, including Level I Interventions, are fully implemented and shown to be ineffective. A rationale on the necessity for the use of intrusive procedures shall be included in the Behavior Support Plan.

(11) Time-out Rooms shall be designed to protect Persons from hazardous conditions, including sharp corners and objects, uncovered light fixtures, and unprotected electrical outlets. The rooms shall have adequate lighting and ventilation.

(a) Doors to the Time-out Room may be held shut by Provider staff, but not locked at any time.

(b) Persons shall remain in Time-out Rooms no more than 2 hours per occurrence.

(c) Provider staff shall monitor Persons in a Time-out Room visually and auditorially on a continual basis. Staff shall document ongoing observation of the Person while in the Time-out Room at least every fifteen minutes.

(12) Time-out Rooms shall be used only upon the occurrence of problems previously identified in the Behavior Support Plan.

(a) Persons shall be placed in the Time-out Room immediately following a previously identified problem. Time delays are not allowed.

(b) Persons shall not be transported to another location for placement in a Time-out Room.

(c) Behavior Support Plans must outline specific release criteria that may include time and behavior components. Time asleep must count toward time-release criteria.

(13) Mechanical restraints shall ensure the Person's safety in breathing, circulation, and prevent skin irritation.

(a) Persons shall be placed in Mechanical Restraints immediately following the identified problem. Time delays are not allowed.

(b) Persons shall not be transported to another location for Mechanical Restraints.

(14) Mechanical Restraints shall be used only upon the occurrence of problems previously identified in the Behavior Support Plan.

(a) Behavior Support Plans must outline specific release criteria that may include time and behavior components. Time asleep must count toward time-release criteria. The plan shall also specify maximum time limits for single application and multiple use.

(b) Behavior Support Plans shall include specific requirements for monitoring the Person, before, during, and after application of the restraint to ensure health and safety.

(c) Provider staff shall document their observation of the Person as specified in the Behavior Support Plan.

(15) Manual restraints shall ensure the Person's safety in breathing and circulation. Manual restraint procedures are limited to the Mandt System (Mandt), the Professional Assault Response Training (PART), or Supports Options and Actions for Respect (SOAR) training programs. Procedures not outlined in the programs listed above may only be used if pre-approved by the State Behavior Review Committee.

(16) Behavior Support Plans that include Manual Restraints shall provide information on the method of restraint, release criteria, and time limitations on use.

R539-4-5. Review and Approval Process.

(1) The Behavior Peer Review Committee shall review and approve the Behavior Support Plan annually. The plan may be implemented prior to the Behavior Peer Review Committee's review; however the review and approval must be completed within 60 calendar days of implementation.

(2) The Behavior Peer Review Committee's review and approval process shall include the following:

(a) A confirmation that appropriate Positive Behavior Supports, including Level I Interventions, were fully implemented and revised as needed prior to the implementation of Level II or Level III Interventions.

(b) Ensure the technical adequacy of the Functional Behavior Assessment and Behavior Support Plan based on principles from the fields of Positive Behavior Supports and applied behavior analysis.

(c) Ensure plans are in place to attempt reducing the use of intrusive interventions.

(d) Ensure that staff training and plan implementation are adequate.

(3) The Provider Human Rights Committee shall approve Behavior Support Plans with Level II and Level III Interventions annually. Review and approval shall focus on rights issues, including consent and justification for the use of intrusive interventions.

(4) The State Behavior Review Committee must consist of at least three members, including representatives from the Division, Provider, and an independent professional having a recognized expertise in Positive Behavior Supports. The Committee shall review and approve the following:

(a) Behavior Support Plans that include Time-out Rooms, Mechanical Restraints or Highly Noxious Stimuli.

(b) Behavior Support Plans that include forms of Manual Restraint or Exclusionary Time-out used for long-term behavior change and not used in response to an emergency situation.

(c) Behavior Support Plans that include manual restraint not outlined in Mandt, PART, SOAR, Safety Care, or CPI training programs.

(5) The Committee shall determine the time-frame for follow-up review.

(6) Behavior Support Plans shall be submitted to the Division's state office for temporary approval prior to implementation pending the State Behavior Review Committee's review of the plan.

(7) Families participating in Self-Administered Services may seek State Behavior Review Committee recommendations, if desired.

R539-4-6. Emergency Behavior Interventions.

(1) Emergency Behavior Interventions may be necessary to prevent clear and imminent threat of injury or property destruction during emergency situations.

(2) Level I Interventions shall be used first in emergency situations, if possible.

(3) The least intrusive Level II Interventions shall be used in emergency situations. The length of time in which the intervention is implemented shall be limited to the minimum amount of time required to resolve the immediate emergency situation.

(4) Each use of Emergency Behavior Interventions and a complete Emergency Behavior Intervention Review shall be documented by the Provider on Division Form 1-8 and forwarded to the Division, as outlined in the Provider's Service Contract with the Division.

(a) The Emergency Behavior Intervention Review shall be conducted by the Provider supervisor or specialist and staff involved with the Emergency Behavior Intervention. The review shall include the following:

(i) The circumstances leading up to and following the problem.

(ii) If the Emergency Behavior Intervention was justified.

(iii) Recommendations for how to prevent future occurrences, if applicable.

(5) The Person's Support Coordinator shall review Form 1-8 received from Providers and document the follow-up action.

(6) If Emergency Behavior Interventions are used three times, or for a total of 25 minutes, within 30 calendar days, the Team shall meet within ten business days of the date the above criteria are met to review the interventions and determine if:

(a) A Behavior Support Plan is needed;

(b) Level II or III Interventions are required in the Behavior Support Plan;

(c) Technical assistance is needed;

(d) Arrangements should be made with other agencies to prevent or respond to future crisis situations; or

(e) Other solutions can be identified to prevent future use of Emergency Behavior Interventions.

(7) The Provider's Human Rights Committee shall review each use of Emergency Behavior Interventions.

KEY: people with disabilities, behavior
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Notice of Continuation July 15, 2019 62A-5-103

R539. Human Services, Services for People with Disabilities.
R539-5. Self-Administered Services.
R539-5-1. Purpose.

(1) The purpose of this rule is to establish procedures and standards for Persons and their families receiving Self-Administered Services.

R539-5-2. Authority.

(1) This rule establishes procedures and standards for Self-Administered Services as required by Subsection 62A-5-103(8).

R539-5-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-2.

(2) In addition:

(a) "Direct Services" means services delivered by an employee in the physical presence of the Person.

(b) "Employee" means any individual hired to provide services to a Person receiving Self-Administered Services.

(c) "Fiscal Agent" means an individual or entity contracted by the Division to perform fiscal, legal, and management duties.

(d) "Grant" means a budget allocated by the Division to the Person through which Self-Administered Services are purchased.

(e) "Grant Agreement" means a written agreement between the Person and the Division that outlines requirements the Person must follow while receiving Self-Administered Services.

(f) "Self-Administered Services" means a structure for a Person or Representative to administer Division paid services. This program allows the Person to hire, train, and supervise employees who will provide direct services from selected services as outlined in the current State of Utah Home and Community Based Services Waivers (Medicaid 1915C). Once the Person is allocated a budget, a Grant is issued for the purpose of purchasing specific services. Grant funds are only disbursed to pay for actual services rendered. All payments are made through a Fiscal Agent under contract with the Division. Payments are not issued to the Person, but to and in the name of the Employee.

R539-5-4. Participant Requirements.

(1) In addition to Division Rule, a Person receiving Self-Administered Services must adhere to the terms of their Grant Agreement.

(2) If the Person does not meet the requirements in Rule and the Grant Agreement, the Division may require the Person to use a contracted Provider.

(3) The Person shall ensure that each Employee completes the requirements outlined in R539-5-5.

(4) The Person shall provide the Fiscal Agent with the following documents for each Employee hired to provide services:

(a) Original Form W-4;

(b) Original Form I-9 (including supporting documentation);

(c) Copy of the signed Employment Agreement; and

(d) Original signed Timesheets, verifying the time worked is true and accurate.

(5) The Person or Representative shall complete a Monthly Summary of services for each month in which services are rendered and submit it to the Support Coordinator by the 15th of the month following the month of services.

(a) If the Person does not provide this information to the Division for a three month period, the fourth month's payment shall be withheld until the monthly summaries are submitted.

(b) If the Person submits all required monthly summaries within the fourth month, payment will be reinstated.

(c) If monthly summaries are not provided for the fifth month, then at the sixth month, the Division will require the Person to use a contracted Provider and not participate in Self-Administered Services.

(6) The Division may require the Person to use some form of technical assistance, if needed (i.e. Behaviorist, Accountant, Division Supervisor, etc.). Technical assistance is available to the Person, even if not required by the Division.

(7) The Person's Representative shall notify the Support Coordinator if any of the following occurs:

(a) If the Person moves;

(b) If the Person is in the hospital or nursing home; or

(c) Death of the Person.

R539-5-5. Employee Requirements.

(1) All Employees hired by the Person must be 16 years of age or older. Employees under age 18 must have the Employee Agreement co-signed by their parent/Guardian.

(2) Parents, Guardians, or step-parents shall not be paid to provide services to the Person, nor shall an individual be paid to provide services to a spouse with the exception that spouses who were approved by the Division to provide reimbursed support for a Person in a non-Medicaid funded program prior to May 17, 2005 may continue to be reimbursed. This exception is only valid for support of the current spouse receiving Division services and shall not be allowed by the Division in the event that the spouses divorce or if one spouse dies. A spouse who is approved by the Division to provide support under this provision is limited to a maximum of $15,000 during the State Fiscal year, which begins on July 1st and ends the following year on June 30th.

(3) Employees must complete the following prior to working with the Person and receiving payment from the Fiscal Agent:

(a) Complete and sign Form W-4;

(b) Complete and sign Form I-9 (including supporting documentation);

(c) Complete and sign the Employee Agreement Form;

(d) Read and sign the Department and Division Code of Conduct (Department Policy 05-03 and Division Directive 1.20); and

(e) Review the approved and prohibited Behavior Supports as identified in R539-3-10, the Support Book, and other best practice sources recommended by the Division, if applicable. Behavior Supports shall not violate R495-876, R512-202, Sections 62A-3-301 through 62A-3-321, and Sections 62A-4a-402 through 62A-4-412 prohibiting abuse.

(f) Review the Person's Support Book.

(g) Complete any screenings and trainings necessary to provide for the health and safety of the Person (i.e., training for any specialized medical needs of the Person).

(h) If applicable, be trained on the Person's Behavior Support Plan.

(i) Complete and sign the Application for Certification Form.

R539-5-6. Incident Reports.

(1) The Person or Representative shall notify the Division by phone, email, or fax of any reportable incident that occurs while the Person is in the care of an Employee, within 24 hours of the occurrence.

(2) Within five business days of the occurrence of an incident, the Person or Representative shall complete a Form 1-8, Incident Report, and file it with the Division.

(3) The following incidents require the filing of a report:

(a) Actual and suspected incidents of abuse, neglect, exploitation, or maltreatment per the DHS/DSPD Code of Conduct and Sections 62-A-3-301 through 321 for adults and Sections 62-4a-401 through 412 for children;

(b) Drug or alcohol abuse;

(c) Medication overdoses or errors reasonably requiring medical intervention;

(d) Missing Person;

(e) Evidence of seizure in a Person with no seizure diagnosis;

(f) Significant property destruction (Damage totaling $500.00 or more is considered significant);

(g) Physical injury reasonably requiring a medical intervention;

(h) Law enforcement involvement;

(i) Use of mechanical restraints, time-out rooms or highly noxious stimuli that is not outlined in the Behavior Support Plan, as defined in R539-4; or

(j) Any other instances the Person or Representative determines should be reported.

(4) After receiving an incident report, the Support Coordinator shall review the report and determine if further review is warranted.

R539-5-7. Service Delivery Methods.

(1) Persons authorized to receive Self-Administered Services may also receive services through a Provider Agency in order to obtain the array of services that best meet the Person's needs.

R539-5-8. Limitation.

(1) The amount allowed for direct services (all self-administered services are allowed other than Fiscal Management) is limited to no more than $50,000 for each fiscal year. If a Self-Administered Services program exceeds this amount the method of service delivery must change to either a contracted provider service delivery method or a combination of Self-Administered Services and contracted provider service delivery method. If it is determined by the Division that a contracted provider service delivery method is not possible, the Division Director can grant a waiver to the cost limit for a Self-Administered method of service delivery.

KEY: disabilities, self administered services
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R590. Insurance, Administration.
R590-146. Medicare Supplement Insurance Standards.
R590-146-1. Authority.

This rule is issued pursuant to the authority vested in the commissioner under Section 31A-22-620 requiring the commissioner to adopt rules to establish minimum standards for individual and group Medicare supplement insurance.

R590-146-2. Purpose.

The purpose of this rule is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare; and to establish rating and reporting requirements.

R590-146-3. Applicability and Scope.

A. Except as otherwise specifically provided in Sections 7, 13, 14, 17 and 22, this rule shall apply to:

(1) all Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this rule; and

(2) all certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state.

B. This rule shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

R590-146-4. Definitions.

For purposes of this rule:

A. "Applicant" means:

(1) in the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and

(2) in the case of a group Medicare supplement policy, the proposed certificateholder.

B. "Bankruptcy" means when a Medicare Advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

C. "Certificate" means any certificate delivered or issued for delivery in this state under a group Medicare supplement policy.

D. "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

E. "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than 63 days.

F. "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. Section 1002, Employee Retirement Income Security Act.

G. "Insolvency" means when an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

H. "Issuer" means an insurance company, fraternal benefit society, health care service plan, health maintenance organization, and any other entity delivering or issuing for delivery in this state a Medicare supplement policy or certificate.

I. "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

J. "Medicare Advantage plan" means a plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. 1395w-28(b)(1), and includes:

(1) coordinated care plans which provide health care services, including but not limited to health maintenance organization plans, with or without a point-of-service option, plans offered by provider-sponsored organizations, and preferred provider organization plans;

(2) medical savings account plans coupled with a contribution into a Medicare Advantage plan medical savings account; and

(3) Medicare Advantage private fee-for-service plans.

K.(1) "Medicare supplement policy" means a group or individual policy of accident and health insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, 42 U.S.C. Section 1395 et seq., or an issued policy under a demonstration project specified in 42 U.S.C. Section 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.

(2) "Medicare supplement policy" does not include Medicare Advantage plans established under Medicare Part C, Outpatient Prescription Drug plans established under Medicare Part D, or any Health Care Prepayment Plan, HCPP, that provides benefits pursuant to an agreement under Section 1833(a)(1)(A) of the Social Security Act.

L. "Newly eligible" means those individuals who become eligible for Medicare due to age, disability or end-stage renal disease on or after January 1, 2020.

M. "Pre-Standardized Medicare supplement benefit plan," "Pre-Standardized benefit plan" or "Pre-Standardized plan" means a group or individual policy of Medicare supplement insurance issued prior to December 12, 1994.

N. "1990 Standardized Medicare supplement benefit plan," "1990 Standardized benefit plan" or "1990 plan" means a group or individual policy of Medicare supplement insurance issued on or after July 30, 1992 and with an effective date of coverage prior to June 1, 2010 and includes Medicare supplement insurance policies and certificates renewed on or after that date which are not replaced by the issuer at the request of the insured.

O. "2010 Standardized Medicare supplement benefit plan," "2010 Standardized benefit plan" or "2010 plan" means a group or individual policy of Medicare supplement insurance issued with an effective date of coverage on or after June 1, 2010.

P. "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

Q. "Secretary" means the Secretary of the United States Department of Health and Human Services.

R590-146-5. Policy Definitions and Terms.

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms, which conform to the requirements of this section.

A. "Accident," "accidental injury," or "accidental means" shall be defined to employ result language and shall not include words, that establish an accidental means test or use words such as external, violent, visible wounds, or similar

words of description or characterization.

(1) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(2) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.

B. "Benefit period" or "Medicare benefit period" shall not be defined more restrictively than as defined in the Medicare program.

C. "Convalescent nursing home," "extended care facility," or "skilled nursing facility" shall not be defined more restrictively than as defined in the Medicare program.

D. "Health care expenses" means, for purposes of Section 14, expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

E. "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program.

F. "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

G. "Medicare eligible expenses" shall mean expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

H. "Physician" shall not be defined more restrictively than as defined in the Medicare program.

I. "Sickness" shall not be defined to be more restrictive than the following:

"Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force."

The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

R590-146-6. Policy Provisions.

A. Except for permitted preexisting condition clauses as described in Subsections 7.A.(1), 8.A.(1), and 8a.A.(1) of this rule, no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

B. No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

C. No Medicare supplement policy or certificate in force in the state shall contain benefits that duplicate benefits provided by Medicare.

D.(1) Subject to Subsections 7.A.(4), (5) and (7) and 8.A.(4) and (5) of this rule, a Medicare supplement policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006 shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(2) A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005.

(3) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:

(a) The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan, and;

(b) Premiums are adjusted to reflect the elimination of outpatient prescription coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.

R590-146-7. Minimum Benefit Standards for Pre-Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery Prior to July 30, 1992.

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this rule.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes.

(4) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

(a) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(b) be canceled or nonrenewed by the issuer solely on the grounds of deterioration of health.

(5)(a) Except as authorized by the commissioner of this state, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(b) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in this Subsection (5)(d), the issuer shall offer certificateholders an individual Medicare supplement policy. The issuer shall offer the certificateholder at least the following choices:

(i) an individual Medicare supplement policy currently offered by the issuer having comparable benefits to those

contained in the terminated group Medicare supplement policy; and

(ii) an individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Subsection 8a.B. of this rule.

(c) If membership in a group is terminated, the issuer shall:

(i) offer the certificateholder the conversion opportunities described in Subsection (b); or

(ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(d) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(7) If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subsection.

B. Minimum Benefit Standards. Every issuer shall include the following benefits:

(1) coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(3) coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(4) upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90% of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(5) coverage under Medicare Part A for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations or already paid for under Part B;

(6) coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible, $100; and

(7) effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

R590-146-8. Benefit Standards for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery on or After July 30, 1992 and with an Effective Date for Coverage Prior to June 1, 2010.

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after July 30, 1992 and with an effective date for coverage prior to June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this rule.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, co-payment, or coinsurance amounts. Premiums may be modified to correspond with such changes.

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable.

(a) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(b) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(c) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subsection (5)(e), the issuer shall offer certificateholders an individual Medicare supplement policy which, at the option of the certificateholder:

(i) provides for continuation of the benefits contained in the group policy; or

(ii) provides for benefits that otherwise meet the requirements of this subsection.

(d) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) offer the certificateholder the conversion opportunity described in Subsection (5)(c); or

(ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(e) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(f) If a Medicare supplement policy eliminates an

outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of this subsection.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(7)(a) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period, not to exceed 24 months, in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within 90 days after the date the individual becomes entitled to assistance.

(b) If suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted, effective as of the date of termination of entitlement, if the policyholder or certificateholder provides notice of loss of entitlement within 90 days after the date of loss and pays the premium attributable to the period.

(c) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for the period provided by federal regulation, at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act and is covered under a group health plan, as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act. If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy shall be automatically reinstituted, effective as of the date of loss of coverage, if the policyholder provides notice of loss of coverage within 90 days after the date of the loss.

(d) Reinstitution of coverages as described in Subsections (b) and (c):

(i) shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstitution of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

(iii) shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

(8) If an issuer makes a written offer to the Medicare supplement policyholders or certificateholders of one or more of its plans, to exchange during a specified period from his or her 1990 plan, as described in Section 9 of this rule, to a 2010 plan, as described in Section 9a of this rule, the offer and subsequent exchange shall comply with the following requirements:

(a) An issuer need not provide justification to the commissioner if the insured replaces a 1990 Plan policy or certificate with an issue age rated 2010 Plan policy or certificate at the insured's original issue age and duration. If an insured's policy or certificate to be replaced is priced on an issue age rate schedule at the time of such offer, the rate charged to the insured for the new exchanged policy shall recognize the policy reserve buildup, due to the pre-funding inherent in the use of an issue age rate basis, for the benefit of the insured. The method proposed to be used by an issuer shall be filed with the commissioner.

(b) The rating class of the new policy or certificate shall be the class closest to the insured's class of the replaced coverage.

(c) An issuer may not apply new pre-existing condition limitations or a new incontestability period to the new policy for those benefits contained in the exchanged 1990 plan policy for certificate of the insured, but may apply pre-existing condition limitations of no more than six months to any added benefits contained in the new 2010 plan policy or certificate not contained in the exchanged policy.

(d) The new policy or certificate shall be offered to all policyholders or certificateholders within a given plan, except where the offer or issue would be in violation of state or federal law.

B. Standards for Basic, Core, Benefits Common to All Benefit Plans A through J.

Every issuer shall make available a policy or certificate including only the following basic core package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.

(2) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used.

(3) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system, PPS, rate or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance.

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations.

(5) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans B through J only as provided by Section 9 of this rule.

(1) Medicare Part A Deductible: Coverage for all the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period

for post hospital skilled nursing facility care eligible under Medicare Part A.

(3) Medicare Part B Deductible: Coverage for all the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) 80% of the Medicare Part B Excess Charges: Coverage for 80% of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(5) 100% of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Basic Outpatient Prescription Drug Benefit: Coverage for 50% of outpatient prescription drug charges, after a $250 calendar year deductible, to a maximum of $1,250 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(7) Extended Outpatient Prescription Drug Benefit: Coverage for 50% of outpatient prescription drug charges, after a $250 calendar year deductible to a maximum of $3,000 in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006.

(8) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for 80% of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(9) Preventive Medical Care Benefit.

(a) Coverage for the following preventive health services not covered by Medicare:

(i) an annual clinical preventive medical history and physical examination that may include tests and services from Subsection (b) and patient education to address preventive health care measures; and

(ii) preventive screening tests or preventive services, the selection and frequency of which is determined to be medically appropriate by the attending physician.

(b) Reimbursement shall be for the actual charges up to 100% of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology, AMA CPT, codes, to a maximum of $120 annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(10) At-Home Recovery Benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(a) For purposes of this benefit, the following definitions shall apply:

(i) "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(ii) "Care provider" means a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(iii) "Home" shall mean any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(iv) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.

(b) Coverage Requirements and Limitations

(i) At-home recovery services provided shall be primarily services, which assist in activities of daily living.

(ii) The insured's attending physician shall certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(iii) Coverage is limited to:

(I) no more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(II) the actual charges for each visit up to a maximum reimbursement of $40 per visit;

(III) $1,600 per calendar year;

(IV) seven visits in any one week;

(V) care furnished on a visiting basis in the insured's home;

(VI) services provided by a care provider as defined in this section;

(VII) at-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded; and

(VIII) at-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight weeks after the service date of the last Medicare approved home health care visit.

(c) Coverage is excluded for:

(i) home care visits paid for by Medicare or other government programs; and

(ii) care provided by family members, unpaid volunteers or providers who are not care providers.

D. Standards for Plans K and L.

(1) Standardized Medicare supplement benefit plan K shall consist of the following:

(a) coverage of 100% of the part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period;

(b) coverage of 100% of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period;

(c) upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system, PPS, rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Medicare Part A Deductible: Coverage for 50% of the Medicare Part A inpatient hospital deductible amount per

benefit period until the out-of-pocket limitation is met as described in Subsection (j);

(e) skilled Nursing Facility Care: Coverage for 50% of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subsection (j);

(f) hospice Care: Coverage for 50% of the cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Subsection (j);

(g) coverage for 50%, under Medicare Part A or B, of the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in Subsection (j);

(h) except for coverage provided in Subsection (i) below, coverage for 50% of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in Subsection (j) below;

(i) coverage of 100% of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(j) coverage of 100% of all cost sharing under Medicare Part A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Part A and B of $4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(2) Standardized Medicare supplement benefit plan "L" shall consist of the following:

(a) The benefits described in Subsections D.(1)(a), (b), (c) and (i);

(b) The benefits described in Subsections D.(1) (d), (e), (f), (g) and (h), but substituting 75% for 50%; and

(c) The benefit described in Subsection D.(1)(j), but substituting $2000 for $4000.

R590-146-8a. Benefit Standards for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery with an Effective Date for Coverage on or After June 1, 2010.

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state with an effective date of coverage on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any 1990 plan for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued with an effective date for coverage prior to June 1, 2010 remain subject to the requirements of Section 9 of this rule.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this rule.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than 6 months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within 6 months before the effective date of coverage.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from a sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes.

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable.

(a) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual.

(b) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(c) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subsection A.(5)(e), the issuer shall offer certificateholders an individual Medicare supplement policy which (at the option of the certificateholder):

(i) provides for continuation of the benefits contained in the group policy; or

(ii) provides for benefits that otherwise meet the requirements of this subsection.

(d) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) offer the certificateholder the conversion opportunity described in Subsection (A)(5)(c); or

(ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(e) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(7)(a) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period, not to exceed 24-months, in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within 90-days after the date the individual becomes entitled to assistance.

(b) If suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted, effective as of the date of termination of entitlement, as of the

termination of entitlement if the policyholder or certificateholder provides notice of loss of entitlement within 90-days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(c) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended, for any period that may be provided by federal regulation, at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan, as defined in Section 1862(b)(1)(A)(v) of the Social Security Act. If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy shall be automatically reinstituted, effective as of the date of loss of coverage if the policyholder provides notice of loss of coverage within 90-days after the date of the loss.

(d) Reinstitution of coverages as described in Subsections (7)(b) and (c):

(i) shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension; and

(iii) shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

B. Standards for Basic, Core, Benefits Common to Medicare Supplement Insurance Benefit Plans A, B, C, D, F, F with High Deductible, G, M, N. Every issuer of Medicare supplement insurance benefit plans shall make available a policy or certificate including only the following basic core package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period.

(2) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used.

(3) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system, PPS, rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance.

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first 3 pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations.

(5) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

(6) Coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare supplement benefit Plans B, C, D, F, F with High Deductible, G, M, N as provided by Section 9a.

(1) Medicare Part A Deductible: Coverage for 100% of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Medicare Part A Deductible: Coverage for 50% of the Medicare Part A inpatient hospital deductible amount per benefit period.

(3) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(4) Medicare Part B Deductible: Coverage for 100% of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(5) One hundred percent, 100%, of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for 80% of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of $250, and a lifetime maximum benefit of $50,000. For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

R590-146-9. Standard Medicare Supplement Benefit Plans for 1990 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery After July 30, 1992 and with an Effective Date for Coverage Prior to June 1, 2010.

A. An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic core benefits, as defined in Subsection 8.B. of this rule.

B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this section may be offered for sale in this state, except as may be permitted in Subsection 9.G. and Section 10 of this rule.

C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans A through L listed in this section and conform to the definitions in Section 4 of this rule. Each benefit shall be structured in accordance with the format provided in Subsections 8.B. and 8.C., or 8.D. and list the benefits in the order shown in this subsection. For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.

D. An issuer may use, in addition to the benefit plan designations required in Subsection C, other designations to the extent permitted by law.

E. Make-up of benefit plans:

(1) Standardized Medicare supplement benefit plan A shall be limited to the basic, core, benefits common to all benefit plans, as defined in Subsection 8.B. of this rule.

(2) Standardized Medicare supplement benefit plan B shall include only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible as defined in Subsection 8.C.(1).

(3) Standardized Medicare supplement benefit plan C shall include only the following: The core benefit as defined

in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as defined in Subsections 8.C.(1), (2), (3) and (8) respectively.

(4) Standardized Medicare supplement benefit plan D shall include only the following: The core benefit, as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and the at-home recovery benefit as defined in Subsections 8.C.(1), (2), (8) and (10) respectively.

(5) Standardized Medicare supplement benefit plan E shall include only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as defined in Subsections 8.C.(1), (2), (8) and (9) respectively.

(6) Standardized Medicare supplement benefit plan F shall include only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8.C.(1), (2), (3), (5) and (8) respectively.

(7) Standardized Medicare supplement benefit high deductible plan F shall include only the following: 100% of covered expenses following the payment of the annual high deductible plan F deductible. The covered expenses include the core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8.C.(1), (2), (3), (5) and (8) respectively. The annual high deductible plan F deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan F policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan F deductible shall be $1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of $10.

(8) Standardized Medicare supplement benefit plan G shall include only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, 80% of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in Subsections 8.C.(1), (2), (4), (8) and (10) respectively.

(9) Standardized Medicare supplement benefit plan H shall consist of only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as defined in Subsections 8.C.(1), (2), (6) and (8) respectively. The prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(10) Standardized Medicare supplement benefit plan I shall consist of only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as defined in Subsections 8.C.(1), (2), (5), (6), (8) and (10) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(11) Standardized Medicare supplement benefit plan J shall consist of only the following: The core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100% of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as defined in Subsections 8.C.(1), (2), (3), (5), (7), (8), (9) and (10) respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(12) Standardized Medicare supplement benefit high deductible plan J shall consist of only the following: 100% of covered expenses following the payment of the annual high deductible plan J deductible. The covered expenses include the core benefit as defined in Subsection 8.B. of this rule, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100% of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as defined in Subsections 8.C.(1), (2), (3), (5), (7), (8), (9) and (10) respectively. The annual high deductible plan J deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan J policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be $1500 for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of $10. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.

(F) Make-up of two Medicare supplement plans mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, MMA.

(1) Standardized Medicare supplement benefit plan K shall consist of only those benefits described in Subsection 8.D.(1).

(2) Standardized Medicare supplement benefit plan L shall consist of only those benefits described in Subsection 8.D.(2).

(G) New or Innovative Benefits: An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner that is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefit shall not include an outpatient prescription drug benefit.

R590-146-9a. Standard Medicare Supplement Benefit Plans for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery with an Effective Date for Coverage on or After June 1, 2010.

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state with an effective date for coverage on or

after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates with an effective date of coverage before June 1, 2010 remain subject to the requirements of Sections 8a and 9 of this rule.

A.(1) An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic core benefits, as defined in Subsection 8a.B. of this rule.

(2) If an issuer makes available any of the additional benefits described in Subsection 8a.C., or offers standardized benefit Plan K or L, as described in Subsections 9a.E.(8) and (9) of this rule, then the issuer shall make available to each prospective policyholder and certificateholder, in addition to a policy form or certificate form with only the basic core benefits as described in Subsection (1), a policy form or certificate form containing either standardized benefit Plan C, as described in Subsection 9a.E.(3) of this rule, or standardized benefit Plan F, as described in Subsection 9a.E.(5) of this rule.

B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this Subsection shall be offered for sale in this state, except as may be permitted in Subsection 9a.F. and in Section 10 of this rule.

C. Benefit plan shall be uniform in structure, language, designation and format to the standard benefit plans listed in this subsection and conform to the definitions in Section 4 of this rule. Each benefit shall be structured in accordance with the format provide in Subsections 8a.B. and C. of this rule; or, in the case of plans K or L, in Subsections 9a.E.(8) or (9) of this rule and list the benefits in the order shown. For purposes of this subsection, "structure, language, and format" means style, arrangement and overall content of a benefit.

D. In addition to the benefit plan designations required in Subsection C, an issuer may use other designations to the extent permitted by law.

E. Make-up of 2010 Standardized Benefit Plans:

(1) Standardized Medicare supplement benefit Plan A shall include only the following: The basic core benefits as defined in Subsection 8a.B. of this rule.

(2) Standardized Medicare supplement benefit Plan B shall include only the following: the basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible as defined in Subsection 8a.C.(1) of this rule.

(3) Standardized Medicare supplement benefit Plan C shall include only the following: The basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B deductible, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3), (4), and (6) of this rule, respectively.

(4) Standardized Medicare supplement benefit Plan D shall include only the following: The basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3), and (6) of this rule, respectively.

(5) Standardized Medicare supplement benefit Plan F shall include only the following: The basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3), (4), (5), and (6) of this rule, respectively.

(6) Standardized Medicare supplement benefit Plan F With High Deductible shall include only the following: 100% of covered expenses following the payment of the annual deductible set forth in Subsection (b).

(a) The basic core benefit as defined in Subsection 8a.B. of this rule, 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3), (4), (5), and (6) of this rule, respectively.

(b) The annual deductible in Plan F With High Deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by Plan F, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be $1500 and shall be adjusted annually from 1999 by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the consumer Price Index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars.

(7) Standardized Medicare supplement benefit Plan G shall include only the following: The basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible, skilled nursing facility care, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3), (5), and (6) of this rule, respectively. Effective January 1, 2020, the standardized benefit plans described in Section 9b.A.(4) of this rule, Redesignated Plan G High Deductible, may be offered to any individual who was eligible for Medicare prior to January 1, 2020.

(8) Standardized Medicare supplement benefit Plan K is mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following:

(a) Part A Hospital Coinsurance 61st through 90th days: Coverage of 100% of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period:

(b) Part A Hospital Coinsurance, 91st through 150th days: Coverage of 100% of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period:

(c) Part A Hospitalization After 150 Days: Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100% of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system, PPS, rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance:

(d) Medicare Part A Deductible: Coverage for 50% of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Subsection (j):

(e) Skilled Nursing Facility Care: Coverage for 50% of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subsection (j):

(f) Hospice Care: Coverage for 50% of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in

Subsection(j):

(g) Blood: Coverage for 50%, under Medicare Part A or B, of the reasonable cost of the first 3 pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in Subsection (j):

(h) Part B Cost Sharing: Except for coverage provided in Subsection (i), coverage of 50% of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in Subsection (j):

(i) Part B Preventive Services: Coverage of 100% of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(j) Cost Sharing After Out-of-Pocket Limits: Coverage of 100% of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of $4000 in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(9) Standardized Medicare supplement benefit Plan L is mandated by The Medicare Prescription Drug Improvement and Modernization Act of 2003, and shall include only the following:

(a) The benefits described in Subsections (8)(a), (b), (c) and (i);

(b) The benefit described in Subsections (8)(d), (e), (f), (g) and (h), but substituting 75% for 50%; and

(c) The benefit described in Subsection (8)(j), but substituting $2000 for $4000.

(10) Standardized Medicare supplement benefit Plan M shall include only the following:

The basic core benefit as defined in Subsection 8a.B. of this rule, plus 50% of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign county as defined in Subsections 8a.C.(2), (3) and (6) of this rule, respectively.

(11) Standardized Medicare supplement benefit Plan N shall include only the following: The basic core benefit as defined in Subsection 8a.B. of this rule, plus 100% of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Subsections 8a.C.(1), (3) and (6) of this rule, respectively, with copayments in the following amounts;

(a) the lesser of $20 or the Medicare Part B coinsurance or copayment for each covered health care provider office visit, including visits to medical specialists; and

(b) the lesser of $50 or the Medicare Part B coinsurance or copayment for each covered emergency room visit, however, this copayment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense.

F. New or Innovative Benefits. An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not otherwise available, and are cost effective. Approval of new or innovative benefits shall not adversely impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan.

R590-146-9b. Standard Medicare Supplement Benefit Plans for 2020 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery to Individuals Newly Eligible for Medicare on or After January 1, 2020.

The Medicare Access and CHIP Reauthorization Act of 2015, MACRA, requires the following standards are applicable to all Medicare supplement polices or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare with an effective date of coverage on or after January 1, 2020. No policy or certificate that provides coverage of the Medicare Part B deductible may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. All polices must comply with the following benefit standards. Benefit plan standards applicable to Medicare supplement polices and certificates issued to individuals eligible for Medicare before January 1, 2020, remain subject to the requirements of Section 9 for policies issued after July 30, 1992 and prior to June 1, 2010; or 9a for policies issued after May 31, 2010 and prior to January 1, 2020.

A. Benefit Requirements. The standards and requirements of Section 9b shall apply to all Medicare supplement policies or certificates delivered or issued for delivery to individuals newly eligible for Medicare on or after January 1, 2020, with the following exceptions:

(1) Standardized Medicare supplement benefit Plan C is redesignated as Plan D and shall provide the benefits contained in Section 9a.E.(3) of this rule but shall not provide coverage for 100% or any portion of the Medicare Part B deductible.

(2) Standardized Medicare supplement benefit Plan F is redesignated as Plan G and shall provide the benefits contained in Section 9a.E.(5)of this rule but shall not provide coverage for 100% or any portion of the Medicare Part B deductible.

(3) Standardized Medicare supplement benefit plans C, F, and F With High Deductible may not be offered to individuals newly eligible for Medicare on or after January 1, 2020.

(4) Standardized Medicare supplement benefit Plan F With High Deductible is redesignated as Plan G With High Deductible and shall provide the benefits contained in Section 9a.E(6) of this regulation but shall not provide coverage for 100% or any portion of the Medicare Part B deductible; provided further that, the Medicare Part B deductible paid by the beneficiary shall be considered an out-of-pocket expense in meeting the annual high deductible.

(5) The reference to Plans C or F contained in Section 9a.A.(2) is deemed a reference to Plans D or G for purposes of this section.

B. Applicability to Certain Individuals. This Section 9b, applies to only individuals that are newly eligible for Medicare on or after January 1, 2020:

(1) By reason of attaining age 65 on or after January 1, 2020; or

(2) By reason of entitlement to benefits under part A pursuant to Section 226(b) or 226A of the Social Security Act, or who is deemed to be eligible for benefits under Section 226(a) of the Social Security Act on or after January 1, 2020.

C. Guaranteed Issue for Eligible Persons. For purposes of Section 12.E, in the case of any individual newly eligible for Medicare on or after January 1, 2020, any reference to a Medicare supplement policy C or F, including F With High Deductible, shall be deemed to be a reference to Medicare supplement policy D or G, including G With High Deductible, respectively, that meet the requirements of this

Section 9b.A.

D. Offer of Redesignated Plans to Individuals Other Than Newly Eligible. On or after January 1, 2020, the standardized benefit plans described in Subparagraph A(4), above may be offered to any individual who was eligible for Medicare prior to January 1, 2020, in addition to the standardized plans described in Section 9a.E of this rule.

R590-146-10. Medicare Select Policies and Certificates.

A.(1) This section shall apply to Medicare Select policies and certificates, as defined in this section.

(2) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

B. For the purposes of this section:

(1) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(2) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.

(3) "Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(4) "Medicare Select policy" or "Medicare Select certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(5) "Network provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

(6) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(7) "Service area" means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare Select policy.

C. The commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this section and Section 4358 of the Omnibus Budget Reconciliation Act, OBRA, of 1990 if the commissioner finds that the issuer has satisfied all of the requirements of this rule.

D. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner.

E. A Medicare Select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the commissioner. The plan of operation shall contain at least the following information:

(1) evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(a) services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community;

(b) the number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(i) to deliver adequately all services that are subject to a restricted network provision; or

(ii) to make appropriate referrals;

(c) there are written agreements with network providers describing specific responsibilities;

(d) emergency care is available 24 hours per day and seven days per week; and

(e) in the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This subsection shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate;

(2) a statement or map providing a clear description of the service area;

(3) a description of the grievance procedure to be utilized;

(4) a description of the quality assurance program, including:

(a) the formal organizational structure;

(b) the written criteria for selection, retention and removal of network providers; and

(c) the procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted;

(5) a list and description, by specialty, of the network providers;

(6) copies of the written information proposed to be used by the issuer to comply with Subsection I; and

(7) any other information requested by the commissioner.

F.(1) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing the changes.

(2) Any changes to the list of network providers shall be filed with the commissioner within 30 days of the change. The submission must include all network providers and clearly identify the new and discontinued providers.

G. A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:

(1) the services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and

(2) it is not reasonable to obtain services through a network provider.

H. A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

I. A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(1) an outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

(a) other Medicare supplement policies or certificates offered by the issuer; and

(b) other Medicare Select policies or certificates;

(2) a description, including address, phone number and hours of operation, of the network providers, including primary care physicians, specialty physicians, hospitals and other providers;

(3) a description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in plans K and L;

(4) a description of coverage for emergency and urgently needed care and other out-of-service area coverage;

(5) a description of limitations on referrals to restricted network providers and to other providers;

(6) a description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer; and

(7) a description of the Medicare Select issuer's quality assurance program and grievance procedure.

J. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection I of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

K. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(4) If a grievance is found to be valid, corrective action shall be taken promptly.

(5) All concerned parties shall be notified about the results of a grievance.

(6) The issuer shall report no later than March 31 of each calendar year to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

L. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

M.(1) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six months.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this subsection, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges.

N. Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(1) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this subsection, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges.

O. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

R590-146-11. Open Enrollment.

A. An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this section without regard to age.

B.(1) If an applicant qualifies under Subsection A and submits an application during the time period referenced in Subsection A and, as of the date of application, has had a continuous period of creditable coverage of at least six months, the issuer shall not exclude benefits based on a preexisting condition.

(2) If the applicant qualifies under Subsection A and submits an application during the time period referenced in Subsection A and, as of the date of application, has had a continuous period of creditable coverage that is less than six months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary shall specify the manner of the reduction under this subsection.

C. Except as provided in Subsection B and Sections 12 and 23, Subsection A shall not be construed as preventing the exclusion of benefits under a policy, during the first six months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six months before the coverage became effective.

R590-146-12. Guaranteed Issue for Eligible Persons.

A. Guaranteed Issue.

(1) Eligible persons are those individuals described in Subsection B who seek to enroll under the policy during the period specified in Subsection C, and who submit evidence of the date of termination, disenrollment, or Medicare Part D enrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in Subsection E that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare

supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

B. Eligible Persons.

An eligible person is an individual described in any of the following subsections:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual.

(2) The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a program of All-Inclusive Care for the Elderly, PACE, provider under Section 1894 of the Social Security Act, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare Advantage plan:

(a) the certification of the organization or plan has been terminated;

(b) the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(c) the individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act, where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856, or the plan is terminated for all individuals within a residence area;

(d) the individual demonstrates, in accordance with guidelines established by the Secretary, that:

(i) the organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) the organization, or producer or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(e) the individual meets such other exceptional conditions as the Secretary may provide.

(3)(a) The individual is enrolled with:

(i) an eligible organization under a contract under Section 1876 of the Social Security Act, Medicare cost;

(ii) a similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) an organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act, health care prepayment plan; or

(iv) an organization under a Medicare Select policy; and

(b) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage in Subsection 12B(2).

(4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(a)(i) of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(ii) of other involuntary termination of coverage or enrollment under the policy;

(b) the issuer of the policy substantially violated a material provision of the policy; or

(c) the issuer, or a producer or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(5)(a) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act, Medicare cost, any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act or a Medicare Select policy; and

(b) The subsequent enrollment under Subsection (a) is terminated by the enrollee during any period within the first 12 months of such subsequent enrollment, during which the enrollee is permitted to terminate such subsequent enrollment under Section 1851(e) of the federal Social Security Act; or

(6) The individual, upon first becoming eligible for benefits under part A of Medicare, enrolls in a Medicare Advantage plan under part C of Medicare, or in a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan or program by not later than 12 months after the effective date of enrollment.

(7) The individual enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in Subsection E(4).

(8) The individual is enrolled under medical assistance under Title XIX of the Social Security Act, Medicaid, and is involuntarily terminated outside of requirements of Subsections 8.A.(7)(a) and (b).

C. Guaranteed Issue Time Periods.

(1) In the case of an individual described in Subsection B(1), the guaranteed issue period begins on the later of:

(a) the date the individual receives a notice of termination or cessation of all supplemental health benefits or, if a noticed is not received, noticed that a claim has been denied because of a termination or cessation; or

(b) the date that the applicable coverage terminates or ceases; and ends sixty-three days thereafter;

(2) In case of an individual described in Subsections B(2), (3), (5) or (6), whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three days after the date applicable coverage is terminated;

(3) In the case of an individual described in Subsection B(4)(a), the guaranteed issue period begins on the earlier of:

(a) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any; and

(b) the date that the applicable coverage is terminated, and ends on the date that is sixty-three days after the date the coverage is terminated;

(4) In case of an individual described in Subsections B(2), (4)(b) and (c), (5) or (6) who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty days before the effective date of the disenrollment and ends on the day that is sixty-three days after the effective date;

(5) In the case of an individual described in Subsection B(7), the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement

issuer during the sixty-day period immediately preceding the initial Part D enrollment period ends on the date that is sixty-three days after the effective date of the individual's coverage under Medicare Part D; and

(6) In case of an individual described in Subsection B but not described in the preceding provisions of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on that date that is sixty-three days after the effective date.

D. Extended Medigap Access for Interrupted Trial Periods

(1) In the case of an individual described in Subsection B(5), or deemed to be so described, pursuant to this subsection, whose enrollment with an organization or provider described in Subsection B(5)(a) is involuntarily terminated within the first twelve-months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in Subsection B(5);

(2) In the case of an individual described in Subsection B(6), or deemed to be so described, pursuant to this subsection, whose enrollment with a plan or in a program described in Subsection B(6) is involuntarily terminated within the first twelve-months of enrollment, and who, without an intervening enrollments, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in Subsection B(6).

(3) For the purposes of Subsections B(5) and (6), no enrollment of an individual with an organization or provider described in Subsection B(5)(a), or with a plan or in a program described in Subsection B(6), may be deemed to be an initial enrollment under this subsection after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program.

E. Products to Which Eligible Persons are Entitled

The Medicare supplement policy to which eligible persons are entitled under:

(1) Subsections B(1), (2), (3), (4), and (8) is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, F, including F with a high deductible, K or L offered by any issuer.

(2)(a) Subject to Subsection (b), Subsection B(5) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Subsection (1);

(b) After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with a outpatient prescription drug benefit, a Medicare supplement policy described in this subsection is:

(i) the policy available from the same issuer but modified to remove outpatient prescription drug coverage; or

(ii) at the election of the policyholder, an A, B, C, F, including F with a high deductible, K or L policy that is offered by any issuer;

(3) Subsection B(6) shall include any Medicare supplement policy offered by any issuer;

(4) Subsection B(7) is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F, including F with a high deductible, K, or L, and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

F. Notification provisions.

(1) At the time of an event described in Subsection B because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Subsection A. Such notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in Subsection B because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Subsection A. Such notice shall be communicated within ten working days of the issuer receiving notification of disenrollment.

R590-146-13. Standards for Claims Payment.

A. An issuer shall comply with Section 1882(c)(3) of the Social Security Act, as enacted by Section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987, OBRA, 1987, Pub. L. No. 100-203, by:

(1) accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(2) notifying the participating physician or supplier and the beneficiary of the payment determination;

(3) paying the participating physician or supplier directly;

(4) furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(5) paying user fees for claim notices that are transmitted electronically or otherwise; and

(6) providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

B. Compliance with the requirements set forth in Subsection A above shall be certified on the Medicare supplement insurance experience reporting form.

R590-146-14. Loss Ratio Standards and Filing Requirements.

A. Loss Ratio Standards.

(1)(a) A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificateholders in the form of aggregate benefits, not including anticipated refunds or credits, provided under the policy form or certificate form:

(i) at least 75% of the aggregate amount of premiums earned in the case of group policies; or

(ii) at least 65% of the aggregate amount of premiums earned in the case of individual policies.

(b) The loss ratio shall be calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by a health maintenance organization shall not include:

(i) home office and overhead costs;

(ii) advertising costs;
(iii) commissions and other acquisition costs;
(iv) taxes;
(v) capital costs;
(vi) administration costs; and
(vii) claims processing costs.

(2) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards, and comply with the requirements of R590-85.

(3) For purposes of applying Subsections (1) and 15.D.(3) only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising, including both print and broadcast advertising, shall be deemed to be individual policies.

(4) For policies issued prior to July 30, 1992, expected claims in relation to premiums shall meet:

(a) the originally filed anticipated loss ratio when combined with the actual experience since inception;

(b) the appropriate loss ratio requirement from Subsections A(1)(a)(i) and (ii) when combined with actual experience beginning with the effective date of October 31, 1994 as set forth in Bulletin 94-8; and

(c) the appropriate loss ratio requirement from Subsections A(1)(a)(i) and (ii) over the entire future period for which the rates are computed to provide coverage.

B. Refund or Credit Calculation.

(1) An issuer shall collect and file with the commissioner by May 31 of each year each applicable form;

(a) Medicare Supplement Refund Calculation;

(b) Calculation of Benchmark Ratio Since Inception for Group Policies; and

(c) Calculation of the Benchmark Ratio Since Inception For Individual Policies.

(2) If on the basis of the experience as reported the benchmark ratio since inception, ratio 1, exceeds the adjusted experience ratio since inception, ratio 3, then a refund or credit calculation, is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) For the purposes of this section, policies or certificates issued prior to July 30, 1992, the issuer shall make the refund or credit calculation separately for all individual policies, including all group policies subject to an individual loss ratio standard when issued, combined and all other group policies combined for experience after the effective date of this rule. The first report shall be due by May 31 each year.

(4) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

C. Filing of Premium Rates.

(1) Annual Filing of Premium Rates Report.

(a) An issuer of Medicare supplement policies and certificates issued before or after the effective date of July 30, 1992 in this state shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by policy duration in accordance with the filing requirements and procedures prescribed by the commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio, which is greater than or equal to the applicable percentage, shall be demonstrated for policies or certificates in force less than three years.

(b) The Annual Filing of Premium Rates Report shall be filed no later than May 31 each year, and in compliance with R590-220.

(2) 2010 Medicare Supplement Rate and Enrollment Data.

(a) An issuer shall annually file by May 31 the Utah rate and enrollment information for 2010 Medicare Supplement plans as specified in the "2010MedSuppRateDataUT_v1.0.xlsx"spreadsheet.

(b) The Annual Filing of Rate and Enrollment Data shall be filed no later than May 31 each year, and in compliance with R590-220.

(3)(a) As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the commissioner, in accordance with the applicable filing procedures of this state, appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing.

(b) An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(c) If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this section.

(4) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

D. Public Hearings.

The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the commissioner.

R590-146-15. Filing of Policies, Certificates, and Premium Rates.

A. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy

form or certificate form has been filed for use in accordance with filing requirements and procedures prescribed by the commissioner.

B. An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the commissioner in the state in which the policy or certificate was issued.

C.(1) An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed for acceptance in accordance with the filing requirements and procedures prescribed by the commissioner, and Rule R590-85.

(2) During an applicant's open enrollment period described in Section 11, an issuer shall offer the lowest rate available to any applicant without regard to health or smoker status.

(3) A policy form issued under Section 9b is not considered a new policy form, and is not a permissible separate rating class.

D.(1) Except as provided in Subsection (2) an issuer shall not file more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(2) An issuer may offer, with the approval of the commissioner, up to four additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

(a) the inclusion of new or innovative benefits;

(b) the addition of either direct response or producer marketing methods;

(c) the addition of either guaranteed issue or underwritten coverage;

(d) the offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

E.(1) Except as provided in Subsection (1)(a), an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this rule that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous 12 months.

(a) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least 30 days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer may no longer offer for sale the policy form or certificate form in this state.

(b) An issuer that discontinues the availability of a policy form or certificate form pursuant to Subsection (a) shall not file a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(2) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(3) A change in the rating structure or methodology shall be considered a discontinuance under Subsection (1) unless the issuer complies with the following requirements:

(a) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

(b) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential, which is in the public interest.

F.(1) Except as provided in Subsection (2), the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Rule R590-146-14.

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

R590-146-16. Permitted Compensation Arrangements.

A. An issuer or other entity may provide commission or other compensation to a producer or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than 200% of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

B. The commission or other compensation provided in subsequent renewal years shall be the same as that provided in the second year or period and shall be provided for no fewer than five renewal years.

C. No issuer or other entity may provide compensation to its producers and no producer may receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced.

D. For purposes of this section, compensation includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finder's fees.

R590-146-17. Required Disclosure Provisions.

A. General Rules.

(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium

charge shall be set forth in the policy.

(3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate section of the policy and be labeled as "Preexisting Condition Limitations."

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6)(a) Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a Guide to Health Insurance for People with Medicare in the form developed jointly by the National Association of Insurance Commissioners and the Centers for Medicare and Medicaid Services, CMS, in a type size no smaller than 12 point type. Delivery of the Guide shall be made whether or not the policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this rule. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgment of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request but not later than at the time the policy is delivered.

(b) For the purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing.

B. Notice Requirements.

(1) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificateholders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the commissioner. The notice shall:

(a) include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate; and

(b) inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) The notices shall not contain or be accompanied by any solicitation.

C. MMA Notice Requirements.

Issuers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

D. Outline of Coverage Requirements for Medicare Supplement Policies.

(1) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgment of receipt of the outline from the applicant.

(2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage provided to applicants pursuant to this section consists of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than 12-point type. All plans shall be shown on the cover page, and the plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(4) The Outline of Medicare Supplement Coverage, from the National Association of Insurance Commissioners, dated 1998, or the Benefit Chart of Medicare Supplement Plans Sold on or After June 1, 2020, adopted August 2016, as incorporated by reference herein, is available for public inspection at the Insurance Department.

E. Notice Regarding Policies or Certificates Which Are Not Medicare Supplement Policies.

(1) Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy; a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act, 42 U.S.C. 1395 et seq.; a disability income policy; or other policy identified in Subsection 3B of this rule; issued for delivery in this state to persons eligible for Medicare, shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. The notice shall be in no less than 12-point type and shall contain the following language:

"THIS (POLICY OR CERTIFICATE) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CONTRACT). If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."

(2) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Subsection D(1) shall disclose, using the applicable statement in Subsection 25.E., the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

R590-146-18. Requirements for Application Forms and Replacement Coverage.

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant currently has Medicare supplement Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy

or certificate presently in force. A supplementary application or other form to be signed by the applicant and producer containing such questions and statements may be used.

TABLE I

(Statements)
(Boldface Type)
(1) You do not need more than one Medicare supplement policy.
(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.
(3) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.
(4) If, after purchasing this policy, you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy or, if that is no longer available, a substantially equivalent policy, will be reinstituted if requested within 90 days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.
(5) If you are eligible for, and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy or, if that is no longer available, a substantially equivalent policy, will be reinstituted if requested within 90 days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.
(6) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary(SLMB).

Questions
(Boldface Type)

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with the application. PLEASE ANSWER ALL QUESTIONS.
(Please mark Yes or No below with an "X")
To the best of your knowledge,
(1)(a) Did you turn age 65 in the last 6 months?
Yes No
(b) Did you enroll in Medicare Part B in the last 6 months?
Yes No(c) If yes, what is the effective date?
(2) Are you covered for medical assistance through the state Medicaid program?
(NOTE TO APPLICANT: If you are participating in a "Spend-Down Program" and have not met your "Share of Cost", please answer NO to
this question.)
YES NO
(a) If yes, will Medicaid pay your premiums for this Medicare
supplement policy?
YES NO
(b) Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?
YES NO
(3)(a) If you had coverage from any Medicare plan other than original Medicare within the past 63 days, for example, a Medicare Advantage plan, or a Medicare HMO or PPO, fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.
START / / END / /
(b) If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?
YES NO
(c) Was this your first time in this type of Medicare plan?
YES NO
(d) Did you drop a Medicare supplement policy to enroll in the Medicare plan?
YES NO
(4)(a) Do you have another Medicare supplement policy in force?
YES NO
(b) If so, with what company, and what plan do you have (optional for Direct Mailers)?
.....
(c) If so, do you intend to replace your current Medicare supplement policy with this policy?
YES NO
(5) Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union, or individual plan)
YES NO
(a) If so, with what company and what kind of policy?
.....
.....
.....
.....
(b) What are your dates of coverage under the other policy? If you are still covered under the other policy, leave "END" blank.
START / / END / /

B. Producers shall list any other health insurance policies they have sold to the applicant.

(1) List policies sold which are still in force.

(2) List policies sold in the past five years, which are no longer in force.

C. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

D. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its producer, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the producer, except where the coverage is sold without a producer, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

E. The notice required by Subsection D above for an issuer shall be provided in substantially the following form in no less than 12-point type:

TABLE II
NOTICE TO APPLICANT REGARDING REPLACEMENT
OF MEDICARE SUPPLEMENT INSURANCE
OR MEDICARE ADVANTAGE

(Boldface Type)
(Insurance company's name and address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.
(Boldface Type)

According to (your application) (information you have furnished), you intend to terminate existing Medicare supplement insurance or Medicare Advantage and replace it with a policy to be issued by (Company Name) Insurance Company. Your new policy will provide 30 days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement or Medicare Advantage coverage

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is a wise decision, you should terminate your present
Medicare supplement or Medicare Advantage coverage.

You should evaluate the need for other accident and sickness
coverage you have that may duplicate this policy.
STATEMENT TO APPLICANT BY ISSUER, PRODUCER (BROKER OR
OTHER REPRESENTATIVE):

I have reviewed your current medical or health insurance
coverage.  To the best of my knowledge, this Medicare
supplement policy will not duplicate your existing Medicare
supplement or, if applicable, Medicare Advantage coverage
because you intend to terminate your existing Medicare
supplement coverage or leave your Medicare Advantage plan.
The replacement policy is being purchased for the following
reason(s) (check one):
  ..... Additional benefits.
  ..... No change in benefits, but lower premiums.
  ..... Fewer benefits and lower premiums.
  ..... My plan has outpatient prescription drug coverage
        and I am enrolling in Part D.
  ..... Disenrollment from a Medicare Advantage plan.
        Please explain reason for disenrollment. (optional
        only for Direct Mailer.)
  ..... Other.  (please specify)

  1.  Note:  If the issuer of the Medicare supplement policy
being applied for does not, or is otherwise prohibited
from imposing pre-existing condition limitations, please skip to
statement 2 below.  Health conditions that you may presently
have  (preexisting  conditions)  may  not  be  immediately  or
fullycovered under the new policy.  This could result in denial
or
delay of a claim for benefits under the new policy, whereas
a  similar  claim  might  have  been  payable  under  your  present
policy.

  2.  State law provides that your replacement policy or
certificate may not contain new preexisting conditions,
waiting periods, elimination periods or probationary periods.
The insurer will waive any time periods applicable to
preexisting conditions, waiting periods, elimination periods,
or probationary periods in the new policy (or coverage)
for similar benefits to the extent such time was spent
(depleted) under the original policy.

  3.  If, you still wish to terminate your present policy
and replace it with new coverage, be certain to truthfully
and completely answer all questions on the application
concerning your medical and health history.  Failure to
include all material medical information on an application
may provide a basis for the company to deny any future
claims and to refund your premium as though your policy
had never been in force.  After the application has been
completed and before you sign it, review it carefully to
be certain that all information has been properly recorded.
(If the policy or certificate is guaranteed issue, this
paragraph need not appear.)

Do not cancel your present policy until you have received
your new policy and are sure that you want to keep it.

.....
(Signature of Producer, Broker or Other Representative)

(Typed Name and Address of Issuer, Producer or Broker)

.....
(Applicant's Signature)
.....
(Date)

Signature not required for direct response sales.
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F. Subsections 1 and 2 of the replacement notice, applicable to preexisting conditions, may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

R590-146-19. Filing Requirements for Advertising.

An issuer shall, upon specific request from the commissioner, file for use a copy of any Medicare supplement advertisement intended for use in this state whether through written, radio, electronic, or television medium.

R590-146-20. Standards for Marketing.

A. An issuer, directly or through its producers, shall:

(1) establish marketing procedures to assure that any comparison of policies by its producers will be fair and accurate;

(2) establish marketing procedures to assure excessive insurance is not sold or issued.

(3) display prominently by type, in bold font, stamp or other appropriate means, on the first page of the policy the following:

"Notice to buyer: This policy may not cover all of your medical expenses."

(4) inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance; and

(5) establish auditable procedures for verifying compliance with this Subsection A.

B. In addition to the practices prohibited in Section 31A-23a, Part 4, the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance producer or insurance company.

C. The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and words of similar import shall not be used unless the policy is issued in compliance with this rule.

R590-146-21. Appropriateness of Recommended Purchase and Excessive Insurance.

A. In recommending the purchase or replacement of any Medicare supplement policy or certificate a producer shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

B. Any sale of Medicare supplement policy or certificate that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

C. An issuer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

R590-146-22. Reporting of Multiple Policies.

A. On or before May 31 of each year, an issuer shall file the report form under Subsection 25.D. for every individual resident of this state for which the issuer has in force more than one Medicare supplement policy or certificate:

(1) policy and certificate number; and

(2) date of issuance.

B. The items set forth above shall be grouped by individual policyholder.

R590-146-23. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary

Periods in Replacement Policies or Certificates.

A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.

B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods for benefits similar to those contained in the original policy or certificate.

R590-146-24. Prohibition Against Use of Genetic Information and Requests for Genetic Testing.

A. An issuer of a Medicare supplement policy or certificate:

(1) shall not deny or condition the issuance or effectiveness of the policy or certificate (including the imposition of any exclusion of benefits under the policy based on a pre-existing condition) on the basis of the genetic information with respect to such individual; and

(2) shall not discriminate in the pricing of the policy or certificate (including the adjustment of premium rates)of an individual on the basis of the genetic information with respect to such individual.

B. Nothing in Subsection A shall be construed to limit the ability of an issuer, to the extent otherwise permitted by law, from

(1) Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or applicant; or

(2) Increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy (in such case, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the group.

C. An issuer of a Medicare supplement policy or certificate shall not request or require an individual or a family member of such individual to undergo a genetic test.

D. Subsection C shall not be construed to preclude an issuer of a Medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment (as defined for the purposes of applying the regulations promulgated under part C of title XI and section 264 of the Health Insurance Portability and Accountability Act of 1996 as may be revised from time to time) and consistent with Subsection A.

E. For purposes of carrying out Subsection D, an issuer of a Medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose.

F. Notwithstanding Subsection C, an issuer of a Medicare supplement policy may request, but not require, that an individual or a family member of such individual undergo a genetic test if each of the following conditions is met:

(1) The request is made pursuant to research that complies with part 46 of title 45, Code of Federal Regulations, or equivalent Federal regulations, and any applicable State or local law or regulations for the protection of human subjects in research.

(2) The issuer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of such child, to whom the request is made that:

(a) compliance with the request is voluntary; and

(b) non-compliance will have no effect on enrollment status or premium or contribution amounts.

(3) No genetic information collected or acquired under this subsection shall be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate.

(4) The issuer notifies the Secretary in writing that the issuer is conducting activities pursuant to the exception provided for under this subsection, including a description of the activities conducted.

(5) The issuer complies with such other conditions as the Secretary may by regulation require for activities conducted under this subsection.

G. An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes.

H. An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information with respect to any individual prior to such individual's enrollment under the policy in connection with such enrollment.

I. If an issuer of a Medicare supplement policy or certificate obtains genetic information incidental to requesting, requiring, or purchasing of other information concerning any individual, such request, requirement, or purchase shall not be considered a violation of Subsection H if such request, requirement, or purchase is not in violation of Subsection G.

J. For the purposes of this section only:

(1) "Issuer of a Medicare supplement policy or certificate" includes third-party administrator, or other person acting for or on behalf of such issuer.

(2) "Family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual.

(3) "Genetic information" means, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual. Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual. Any reference to genetic information concerning an individual or family member of an individual, who is a pregnant woman, includes genetic information of any fetus carried by such pregnant woman, or with respect to an individual or family member utilizing reproductive technology, includes genetic information of any embryo legally held by an individual or family member. The term "genetic information" does not include information about the sex or age of any individual.

(4) "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education.

(5) "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detect genotypes, mutations, or chromosomal changes. The term "genetic test" does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

(6) "Underwriting purposes" means,

(a) rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the policy;

(b) the computation of premium or contribution amounts under the policy;

(c) the application of any pre-existing condition exclusion under the policy; and

(d) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

R590-146-25. Documents Incorporated by Reference.

The following filing documents are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department or at www.insurance.utah.gov. These forms were adopted by the National Association of Insurance Commissioners' Model Regulation number 651, as approved August 2016:

A. "MEDICARE SUPPLEMENT REFUND CALCULATION FORM;"

B. "REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR GROUP POLICIES;"

C. "REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES;"

D. "FORM FOR REPORTING MEDICARE SUPPLEMENT POLICIES;" and

E. "DISCLOSURE STATEMENTS.

R590-146-26. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R590-146-27. Severability.

If any provision or clause 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: insurance
June 7, 2019 **31A-22-620**
Notice of Continuation April 4, 2017

R616. Labor Commission, Boiler, Elevator and Coal Mine Safety.
R616-2. Boiler and Pressure Vessel Rules.
R616-2-1. Authority.

This rule is established pursuant to Title 34A, Chapter 7 for the purpose of establishing reasonable safety standards for boilers and pressure vessels to prevent exposure to risks by the public and employees.

R616-2-2. Definitions.

A. "ASME" means the American Society of Mechanical Engineers.

B. "Boiler inspector" means a person who is an employee of:

1. The Division who is authorized to inspect boilers and pressure vessels by having met nationally recognized standards of competency and having received the Commission's certificate of competency; or

2. An insurance company writing boiler and pressure vessel insurance in Utah who is deputized to inspect boilers and pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Boiler, Elevator and Coal Mine Safety of the Labor Commission.

E. "National Board" means the National Board of Boiler and Pressure Vessel Inspectors.

F. "Nonstandard" means a boiler or pressure vessel that does not bear ASME and National Board stamping and registration.

G. "Owner/user agency" means any business organization operating pressure vessels in this state that has a valid owner/user certificate from the Commission authorizing self-inspection of unfired pressure vessels by its owner/user agents, as regulated by the Commission, and for which a fee has been paid.

H. "Owner/user agent" means an employee of an owner/user agency who is authorized to inspect unfired pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

A. ASME Boiler and Pressure Vessel Code -- 2017.

1. Section I Rules for Construction of Power Boilers.

2. Section IV Rules for Construction of Heating Boilers.

3. Section VIII Rules for Construction of Pressure Vessels.

B. Power Piping ASME B31.1 -- 2016.

C. Controls and Safety Devices for Automatically Fired Boilers (Applicable to boilers with fuel input ratings greater than or equal to 400,000 btu/hr) ASME CSD-1-2015. Except:

1. Part CG-130(c).

D. National Board Inspection Code ANSI/NB-23 - 2017 Part 3.

E. NFPA 85 Boiler and Combustion Systems Hazard Code 2015.

F. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

G. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 Tenth Edition, 2014. Except:

1. Section-8, and

2. Appendix-A.

R616-2-4. Quality Assurance for Boilers, Pressure Vessels and Power Piping.

A. Consistent with the requirements of the Commission and its predecessor agency since May 1, 1978, all boilers and pressure vessels installed on or after May 1, 1978 shall be registered with the National Board and the data plate must include the National Board number.

B. Pursuant to Section 34A-7-102(2), any boiler or pressure vessel of special design must be approved by the Division to ensure it provides a level of safety equivalent to that contemplated by the Boiler and Pressure Vessel Code of the ASME. Any such boiler or pressure vessel must thereafter be identified by a Utah identification number provided by the Division.

C. All steam piping, installed after May 1, 1978, which is external (from the boiler to the first stop valve for a single boiler and the second stop valve in a battery of two or more boilers having manhole openings) shall comply with Section 1 of the ASME Boiler and Pressure Vessel Code or ASME B31.1 Power Piping as applicable.

D. Nonstandard boilers or pressure vessels installed in Utah before July 1, 1999 may be allowed to continue in operation provided the owner can prove the equivalence of its design to the requirements of the ASME Boiler and Pressure Vessel Code. Nonstandard boilers or pressure vessels may not be relocated or moved.

E. Effective July 1, 1999, all boiler and pressure vessel repairs or alterations must be performed by an organization holding a valid Certificate of Authorization to use the "R" stamp from the National Board. Repairs to pressure relief valves shall be performed by an organization holding a valid Certificate of Authorization to use the "VR" stamp from the National Board.

R616-2-5. Code Applicability.

A. The safety codes which are applicable to a given boiler or pressure vessel installation are the latest versions of the codes in effect at the time the installation commenced.

B. If a boiler or pressure vessel is replaced, this is considered a new installation.

C. If a boiler or pressure vessel is relocated to another location or moved in its existing location, this is considered a new installation.

R616-2-6. Variances to Code Requirements.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner or user, the Division may allow the owner or user a variance pursuant to Section 34A-7-102. Variances must be in writing to be effective, and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their boiler or pressure vessel installation provides safety equivalent to the safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

R616-2-7. Boiler and Pressure Vessel Compliance Manual.

A. The Division shall develop and issue a safety code compliance manual for organizations and personnel involved in the design, installation, operation and maintenance of boilers and pressure vessels in Utah.

B. This compliance manual shall be reviewed annually

for accuracy and shall be re-issued on a frequency not to exceed two years.

C. If a conflict exists between the Boiler and Pressure Vessel compliance manual and a safety code adopted in R616-2-3, the code requirements will take precedence.

R616-2-8. Inspection of Boilers and Pressure Vessels.

A. It shall be the responsibility of the Division to make inspections of all boilers or pressure vessels operated within its jurisdiction, when deemed necessary or appropriate.

1. Boiler inspection frequency shall be pursuant to 34A-7-103.

2. Pressure Vessel inspection frequency shall be as follows:

a. Heat exchangers that operate from high pressure steam or high temperature water plants shall be inspected every twenty-four (24) months.

b. Autoclaves that operate above 15 psi steam pressure shall be inspected every twenty-four (24) months.

c. All other pressure vessels which fall under the jurisdiction of the Division shall be inspected every forty-eight (48) months.

B. Boiler inspectors shall examine conditions in regards to the safety of the employees, public, machinery, ventilation, drainage, and into all other matters connected with the safety of persons using each boiler or pressure vessel, and when necessary give directions providing for the safety of persons in or about the same. For boilers or pressure vessels inspected by an inspector employed by the Division, the owner or user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary. For boilers or pressure vessels inspected by a deputy inspector employed by an insurance company, the deputy inspector's right of entry on the premises where the boiler or pressure vessel is located is subject to the agreement between the insurance company and the owner or operator of the boiler or pressure vessel. In the event an internal inspection of a boiler or pressure vessel is required the owner or user shall, at a minimum, prepare the boiler or pressure vessel by meeting the requirements of 29 CFR Part 1910.146 "Permit Required Confined Spaces" and 29 CFR Part 1910.147 "Control of Hazardous Energy (Lockout/Tagout)".

C. If the Division finds a boiler or pressure vessel complies with the safety codes and rules, the owner or user shall be issued a Certificate of Inspection and Permit to Operate.

D. If the Division finds a boiler or pressure vessel is not being operated in accordance with safety codes and rules, the owner or user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the boiler or pressure vessel into compliance.

E. Pursuant to Sections 34A-1-104, 34A-2-301 and 34A-7-102, if the improvements or changes to the boiler or pressure vessel are not made within a reasonable time, the boiler or pressure vessel is being operated unlawfully.

F. If the owner or user refuses to allow an inspection to be made, the boiler or pressure vessels is being operated unlawfully.

G. If the owner or user refuses to pay the required fee, the boiler or pressure vessel is being operated unlawfully.

H. If the owner or user operates a boiler or pressure vessel unlawfully, the Commission may order the boiler or pressure vessel operation to cease pursuant to Sections 34A-1-104 and 34A-7-103.

I. If, in the judgment of a boiler inspector, the lives or safety of employees or public are or may be endangered should they remain in the danger area, the boiler inspector shall direct that they be immediately withdrawn from the danger area, and the boiler or pressure vessel be removed from service until repairs have been made and the boiler or pressure vessel has been brought into compliance.

J. An owner/user agency may conduct self inspection of its own unfired pressure vessels with its own employees who are owner/user agents under procedures and frequencies established by the Division.

R616-2-9. Fees.

Fees to be charged as required by Section 34A-7-104 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63J-1-301(2).

R616-2-10. Notification of Installation, Revision, or Repair.

A. Before any boiler covered by this rule is installed or before major revision or repair, particularly welding, begins on a boiler or pressure vessel, the Division must be advised at least one week in advance of such installation, revision, or repair unless emergency dictates otherwise.

B. It is recommended that a business organization review its plans for purchase and installation, or of revision or repair, of a boiler or pressure vessel well in advance with the Division to ensure meeting code requirements upon finalization.

R616-2-11. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the boiler inspector are informal adjudicative actions commenced by the agency per Section 63G-4-201.

R616-2-12. Presiding Officer.

The boiler inspector is the presiding officer referred to in Section 63G-4-201. If an informal hearing is requested pursuant to R616-2-13, the Commission shall appoint the presiding officer for that hearing.

R616-2-13. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63G-4-201(2)(a) and 63G-4-201(3).

R616-2-14. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-2-13 shall be informal and pursuant to the procedural requirements of Section 63G-4-203 and any agency review of the order issued after the hearing shall be per Section 63G-4-302. An informal hearing may be converted to a formal hearing pursuant to Section 63G-4-202(3).

R616-2-15. Deputy Boiler/Pressure Vessel Inspectors.

A. Purpose -- Section 34A-7-10 of the Safety Act ("the Act"; Title 34A, Chapter 7, Part One, Utah Code Annotated) permits the Division of Boiler, Elevator and Coal Mine Safety ("the Division") to authorize qualified individuals to inspect boilers and pressure vessels as "deputy inspectors." This rule sets forth the Division's procedures and standards for authorizing deputy inspectors, monitoring their performance, and suspending or revoking such authority when appropriate.

B. Initial appointment of deputy inspectors.

1. An applicant for initial Division authorization to inspect boilers and pressure vessels as a deputy inspector must satisfy the following requirements in the order listed

below:

a. A company insuring boilers and pressure vessels in Utah ("sponsoring employer" hereafter) must submit a letter to the Division certifying that:

i. the applicant is employed by the sponsoring employer; and

ii. the sponsoring employer requests the Division authorize the applicant to inspect boilers and pressure vessels insured by that employer;

b. The applicant or sponsoring employer must submit to the Division a current, valid certification from the National Board of Boiler and Pressure Vessel Certification ("National Board") that the applicant is qualified to inspect boilers and pressure vessels;

c. The applicant or sponsoring employer must submit an application fee of $25 to the Division;

d. The applicant must complete training for deputy inspectors provided by the Division;

e. The applicant must pass an oral examination administered by the Division pertaining to boiler and pressure vessel inspection standards and processes; and

f. The applicant must pass a written, closed-book examination administered by the Division on the Division's boiler/Pressure Vessel Compliance Manual, Rules, and codes adopted;

2. Upon successful completion of the foregoing requirements, the Division will appoint the applicant as a deputy inspector and will issue credentials to that effect. The Division will also notify the sponsoring employer of the appointment.

3. Initial appointment as a deputy inspector terminates at the end of the calendar year in which such appointment is made unless a deputy inspector qualifies for reappointment under paragraph C of this rule.

C. Annual reappointment of deputy inspectors.

1. Effective January 1 of each year, the Division will renew the appointment of each deputy inspector for an additional year if the inspector satisfies the following requirements:

a. The individual was authorized to serve as a deputy inspector as of December 31 of the previous year;

b. A sponsoring employer has submitted a letter to the Division certifying that:

i. the individual is employed by the sponsoring employer; and

ii. The sponsoring employer requests the Division to reappoint that individual as a deputy inspector to inspect boilers and pressure vessels for that employer;

c. The individual or sponsoring employer has submitted to the Division a current, valid certification from the National Board establishing that the individual is qualified as a boiler and pressure vessel inspector;

d. The individual or sponsoring employer has submitted to the Division the required renewal fee of $20;

e. The individual has completed the Division's required training for deputy inspectors.

2. An individual who does not meet each of the foregoing requirements is not eligible for reappointment as a deputy inspector and must instead meet each of the requirements for initial appointment under paragraph B of this rule.

D. Lapse, change of employment and loss of National Board certification.

1. Lapse. An individual's appointment as a deputy inspector will lapse if the individual:

a. Does not renew the appointment by satisfying the requirements of paragraph C of this rule;

b. Does not perform and submit to the Division at least one boiler or pressure vessel inspection during the previous calendar year; or

c. Fails to inform the Division of any change in status of employment with his or her sponsoring employer as required in the following paragraph D.2. of this rule.

2. Change in employment.

a. A deputy inspector must immediately notify the Division in writing of any change in the status of the inspector's employment with his or her sponsoring employer.

b. If the Division determines that an individual previously appointed as a deputy inspector is no longer employed by a company authorized to insure boilers and pressure vessels in Utah, the Division will immediately revoke that individual's appointment.

c. If the Division determines that a deputy inspector has changed employment to another company that insures boilers and pressure vessels in Utah, the Division will require the new employer or deputy inspector to submit the following:

i. A letter from the new employer:

AA. certifying that the individual is employed by that sponsoring employer; and

BB. requesting that the individual's appointment as a deputy inspector be continued;

ii. A current, valid certification as a boiler/pressure vessel inspector from the National Board; and

iii. Payment to the Division of the required fee of $20.

3. National Board Certification.

a. Every deputy inspector shall at all times hold a current valid certification as a boiler/pressure vessel inspector from the National Board.

b. Each deputy inspector shall immediately notify the Division if his or her National Board certification has been revoked or suspended.

c. If the Division has reason to believe that a deputy inspector's National Board certification has been revoked or suspended, the Division will obtain written verification from the National Board. IF the National Board has in fact revoked or suspended the deputy inspector's certification, the Division will revoke the inspector's appointment as a deputy inspector.

E. Scope of authority. Appointment as a deputy inspector has the limited effect of authorizing the deputy inspector to inspect boilers and pressure vessels insured by his or her sponsoring employer for compliance with engineering codes and other standards adopted by the Division in Utah Administrative Code Rule R616-2. The Division expressly does not confer any other authority to deputy inspectors. Deputy inspectors remain employees of their respective sponsoring employers and are not employees of the Division or agents of the Division for any other purpose. A deputy inspector's right to inspect any particular boiler or pressure vessel, including the deputy inspector's right of entry on the premises where the boiler or pressure vessel is located, is subject to the agreement between the sponsoring employers and the owner or operator of the boiler or pressure vessel. Appointment as a deputy inspector by the Division does not confer any right of entry independent from the terms of such agreement.

F. Inspection Standards

1. In inspecting any boiler or pressure vessel, a deputy inspector shall apply the standards and engineering codes adopted in Utah Administrative Code R616-2 - Boiler and Pressure Vessel Rules.

2. Each deputy inspector must use the Division's web-based applications to accurately record and submit all information regarding boilers and pressure vessels, including;

a. inspection reports;

b. scrapped and inactive items;

c. information changes other than those requiring submission of a Change of Insurance Status Form (NB4); and

d. a Web Issue Form (Form WIF-01) to identify any error or other issue resulting from the deputy inspector's use of the Division's web-based applications.

G. Quality Control. The Division will evaluate the performance of each deputy inspector to assure compliance with the Division's standards for boiler and pressure vessel inspections.

1. The Division's Business Analyst will review each inspection report submitted by a deputy inspector and will report any serious errors to the Chief Boiler and Pressure Vessel Inspector ("Chief Inspector") for appropriate action.

2. Each year, the Chief Inspector will evaluate a sample of each deputy inspector's inspections performed during that year for compliance with Division standards.

3. In addition to the reviews undertaken pursuant to paragraph G.2. of this rule, the Chief Inspector will also investigate any observation or report of an inspection deficiency to determine whether the deputy inspector complied with Division standards and rules in performing and reporting the inspection.

H. Corrective Action, Revocation and Right to Hearing.

1. If the Chief Inspector concludes that a deputy inspector does not satisfy requirements of this rule for continued appointment as a deputy inspector or has performed an inspection in a manner that is inconsistent with Division standards, the Chief Inspector will submit a written report and may recommend corrective action to the Division Director.

2. Depending on the circumstances and the seriousness of the situation, corrective action may include;

a. warning letter;

b. requirements for additional training;

c. requirements for retesting;

d. request review by the National Board;

e. additional supervision; and

f. revocation of appointment as a deputy inspector.

3. The Division Director shall forward a copy of the Chief Inspector's written report and any recommendation for corrective action to the deputy inspector and the sponsoring employer. If the deputy inspector or sponsoring employer dispute the report or recommended corrective action, the Division Director shall schedule time and place to conduct a hearing on the matter, such hearing to be conducted as an informal adjudicative proceeding under the Utah Administrative Procedures Act. After conducting such hearing, the Division Director will issue a written decision setting forth the material facts and ordering appropriate corrective action, if any. The Division Director shall forward a copy of the decision to the deputy inspector, sponsoring employer, and the National Board.

4. If the deputy inspector or sponsoring employer is dissatisfied with the Division Director's decision, the inspector or sponsoring employer may seek judicial review as provided by the Utah Administrative Procedures Act.

KEY: boilers, certification, safety
July 8, 2019 34A-7-101 et seq.
Notice of Continuation August 23, 2016

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-105. Blaster Training, Examination and Certification.
R645-105-100. Introduction.

The rules in R645-105-100 present the requirements for blaster training, examination and certification at coal mining and reclamation operations. The Division is empowered to delegate, through contract or other means, the blaster training, examination, and certification program or any part thereof. The object of such delegation will be to minimize duplication of efforts of Utah agencies in certifying, licensing, or training mining personnel.

R645-105-200. Training.

210. To receive certification, a blaster will receive training from a program approved by the Division. Training may be provided by a permittee, industry, and/or the Division.

220. Training includes, but is not limited to, the technical aspects of blasting operations, and Utah and federal laws governing the storage, transportation, and use of explosives. Blasting courses will provide training and discuss practical applications of explosives.

230. Persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives will receive direction and on-the-job training from a blaster.

240. Training will include course work in, and discuss the practical application of:

241. Explosives, including:

241.100. Selection of the type of explosive to be used;

241.200. Determination of the properties of explosives which will produce desired results at an acceptable level of risk; and

241.300. Handling, transportation, and storage;

242. Blast designs, including:

242.100. Geologic and topographic considerations;

242.200. Design of a blast hole, with critical dimensions;

242.300. Pattern design, field layout, and timing of blast holes; and

242.400. Field applications;

243. Loading blast holes, including priming and boostering;

244. Initiation systems and blasting machines;

245. Blasting vibrations, airblasts and flyrock, including:

245.100. Monitoring techniques; and

245.200. Methods to control adverse effects;

246. Secondary blasting applications;

247. Current federal and Utah rules applicable to the use of explosives;

248. Blast records; and

249. Schedules.

250. Training will also include course work in, and discuss the practical application of:

251. Preblasting surveys, including:

251.100. Availability;

251.200 Coverage; and

251.300. Use of in-blast design;

252. Blast-plan requirements;

253. Certification and training;

254. Signs, warning signals, and site control; and

255. Unpredictable hazards, including:

255.100. Lightning;

255.200. Stray currents;

255.300. Radio waves; and

255.400. Misfires.

R645-105-300. Examination.

310. Candidates for blaster certification will meet the following qualifications:

311. Have one year practical field experience involving blasting prior to taking the examination;

312. Take an approved blaster training course as required by R645-105-210;

313. Pass the written examination; and

314. Be twenty-one years of age or older.

320. Examination will be administered by the Division or its designee and will include, at a minimum, the topics set forth in R645-105-240 and R645-105-250.

R645-105-400. Certification.

410. Upon successful completion of the training and examination process identified in R645-105-200 and R645-105-300, the candidate for blasting certification will be awarded a certificate for three years from the date of issuance.

420. Blasting certificates may be renewed by attending a refresher course approved by the Division.

430. Refresher courses will review the topics identified in initial training in R645-105-200.

440. Suspension and revocation of certification.

441. The Division, when practicable, following written notice and opportunity for hearing and upon a Board finding of willful misconduct, will suspend or revoke the blaster's certification during the term of the certification or take other necessary action for any of the following reasons:

441.100. Noncompliance with any blasting-related order issued by the Board;

441.200. Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs;

441.300. Violation of any provision of Utah or federal explosives laws or regulations; or

441.400. Providing false information or a misrepresentation to obtain certification.

442. If advance notice and opportunity for a hearing cannot be provided, an opportunity for a hearing will be provided as soon as practical following the suspension, revocation, or other adverse action.

443. Upon notice of suspension or revocation of a blaster certificate, the blaster shall immediately surrender the revoked or suspended certificate to the Division.

450. Protection and Conditions of Certification.

451. Protection of Certification. Certified blasters will take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence will be reported immediately to the Division.

452. Conditions of Certification. In addition to the recertification described in R645-105-420, the following conditions for maintaining certification apply to all blasters:

452.100. A blaster will immediately exhibit, upon request, his or her certificate to any authorized representative of the Division and the Office;

452.200. Blasters' certificates will not be assigned or transferred; and

452.300. Blasters will not delegate their responsibility to any individual who is not a certified blaster.

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November 17, 2000 40-10-1, et seq.
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R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-106. Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.
R645-106-100. Scope.

This rule implements the exemption contained in Section 40-10-3(20) of the Act concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16-2/3 percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

R645-106-200. Application Requirements and Procedures.

210. Date and Time Requirements.

211. Any person who plans to commence or continue coal extraction after July 1, 1992, under the Utah coal regulatory program, in reliance on the incidental mining exemption shall file a complete application for exemption with the Division for each mining area.

212. Following incorporation of an exemption application approval process into the Utah coal regulatory program, a person may not commence coal extraction based upon the exemption until the Division approves such application, except as provided in R645-106-253.

220. Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to July 1, 1992, may continue mining operations for 60 days after such effective date. Coal extraction may not continue after such 60-day period unless that person files an administratively complete application for exemption with the Division. If an administratively complete application is filed within 60 days, the person may continue extracting coal in reliance on the exemption beyond the 60-day period until the Division makes an administrative decision on such application.

230. Additional information. The Division shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

240. Public comment period. Following publication of the newspaper notice required by R645-106-319., the Division shall provide a period of no less than 30 days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.

250. Exemption determination.

251. No later than 90 days after filing of an administratively complete application, the Division shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under R645-106, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

252. The determination of exemption shall be based upon information contained in the application and any other information available to the Division at that time.

253. If the Division fails to provide an applicant with the determination as specified in R645-106-251, an applicant who has not begun may commence coal extraction pending a determination on the application unless the Division issues an interim finding, together with reasons therefor, that the applicant may not begin coal extraction.

260. Administrative review.

261. Any adversely affected person may request administrative review of a determination under R645-106-250 within 30 days of the notification of such determination in accordance with procedures established under the R641 rules and R645-300-200.

262. A petition for administrative review filed under R645-300-200 shall not suspend the effect of a determination under R645-106-250.

R645-106-300. Contents of Application for Exemption.

310. An application for exemption shall include at a minimum:

311. The name and address of the applicant;

312. A list of the minerals sought to be extracted;

313. Estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;

314. Estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;

315. Where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;

316. The basis for all annual production, revenue, and fair market value estimates;

317. A description, including county, township if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;

318. An estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;

319. Evidence of publication, in a newspaper of general circulation in the county of the mining area, of a public notice that an application for exemption has been filed with the Division (The public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation.);

320. Representative stratigraphic cross-section(s) based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;

321. A map of appropriate scale which clearly identifies the mining area;

322. A general description of mining and mineral processing activities for the mining area;

323. A summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for such minerals;

324. If the other minerals are to be commercially used by the applicant, a description specifying the use;

325. For operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information must also be submitted:

325.100. Any relevant documents the operator has received from the Division documenting its exemption from the requirements of the Act;

325.200. The cumulative production of the coal and other minerals from the mining area; and

325.300. Estimated tonnages of stockpiled coal and other minerals; and

326. Any other information pertinent to the qualification of the operation as exempt.

R645-106-400. Public Availability of Information.

410. Except as provided in R645-106-420., all information submitted to the Division under R645-106- shall be made immediately available for public inspection and copying at the Salt Lake City office of the Division until at

least three years after expiration of the period during which the subject mining area is active.

420. The Division may keep information submitted to the Division under R645-106- confidential, if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under R645-106.

430. Information requested to be held as confidential under R645-106-420 shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

R645-106-500. Requirements for Exemption.

510. Activities are exempt from the requirements of the Act if all of the following are satisfied:

511. The cumulative production of coal extracted from the mining area determined annually as described in this paragraph does not exceed 16-2/3 percent of the total cumulative production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use.

512. Coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for purposes of bona fide sale or reasonable commercial use.

513. The cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed 50 percent of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use. If the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

520. Persons seeking or that have obtained an exemption from the requirements of the Act shall comply with the following:

521. Each other mineral upon which an exemption under R645-106- is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months from the end of the current period for which cumulative production is calculated. A legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard.

522. If either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

R645-106-600. Conditions of Exemption and Right of Inspection and Entry.

610. A person conducting activities covered by this R645-106 shall:

611. Maintain on-site or at other locations available to authorized representatives of the Division and the Secretary information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the Division;

612. Notify the Division upon the completion of the mining operation or permanent cessation of all coal extraction activities; and

613. Conduct operations in accordance with the approved application or when authorized to extract coal under R645-106-220 or R645-106-253 prior to submittal or approval of an exemption application, in accordance with the standards of R645-106.

614. Authorized representatives of the Division and the Secretary shall have the right to conduct inspections of operations claiming exemption under this R645-106.

615. Each authorized representative of the Division and the Secretary conducting an inspection under this R645-106:

615.100. Shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;

615.200. May, at reasonable times and without delay, have access to and copy any records relevant to the exemption; and

615.300. Shall have a right to gather physical and photographic evidence to document conditions, practices or violations at a site.

616. No search warrant shall be required with respect to any activity under R645-106-614 and R645-106-615, except that a search warrant may be required for entry into a building.

R645-106-700. Stockpiling of Minerals.

710. Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use:

711. Up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or

712. For a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

720. Other minerals.

721. The Division shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of R645-106- if the operator fails to maintain adequate and verifiable records of the mining area of origin, the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

722. The Division may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this R645-106 if:

722.100. The stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

722.200. Except as provided in paragraph R645-106-723, the stockpiled other minerals do not exceed a 12-month supply of the mineral required for future sales as approved by the Division on the basis of the exemption application.

723. The Division may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in R645-106-722 if the operator can demonstrate to the Division's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

724. The Division may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by R645-106-722 and -723 based on additional information available to the Division.

R645-106-800. Revocation and Enforcement.

810. Division responsibility. The Division shall conduct an annual compliance review of the mining area, utilizing the annual report submitted pursuant to R645-106-900, an on-site

inspection and any other information available to the Division.

820. If the Division has reason to believe that a specific mining area was not exempt under the provisions of R645-106 at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the Division shall notify the operator that the exemption may be revoked and the reason(s) therefor. The exemption will be revoked unless the operator demonstrates to the Division within 30 days that the mining area in question should continue to be exempt.

830. Division decision.

831. If the Division finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the Division shall revoke the exemption and immediately notify the operator and intervenors. If a decision is made not to revoke an exemption, the Division shall immediately notify the operator and intervenors.

832. Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such decision in accordance with procedures established under R645-300-200.

833. A petition for administrative review filed under R645-300-200 shall not suspend the effect of a decision whether to revoke an exemption.

840. Direct enforcement.

841. An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of the regulatory program which occurred prior to the revocation of the exemption.

842. An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should know such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of the regulatory program which occur during the period of such activities.

843. Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of the applicable regulatory program with regard to conditions, areas and activities existing at the time of revocation or denial.

R645-106-900. Reporting Requirements.

910. Reports.

911. Following approval by the Division of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the Division containing the information specified in R645-106-920.

912. The report shall be filed no later than 30 days after the end of the 12-month period as determined in accordance with the definition of "cumulative measurement period" in R645-100-200.

913. The information in the report shall cover:

913.100. Annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding 12-month period, and

913.200. The cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

920. For each period and mining area covered by the report, the report shall specify:

921. The number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales;

922. The number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of such coal;

923. The number of tons of coal stockpiled;

924. The number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from such sales;

925. The number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of such minerals; and

926. The number of tons of other commercially valuable minerals removed and stockpiled by the operator.

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Notice of Continuation July 23, 2019

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-400. Inspection and Enforcement: Division Authority and Procedures.
R645-400-100. General Information on Authority and Procedures.

110. Right of Entry.

111. Within the State of Utah, Division representatives may enter upon and through any coal exploration or coal mining and reclamation operation without advance notice upon presentation of appropriate credentials. No search warrant will be required, except that the State may provide for its use with respect to entry into a building.

112. Division representatives may inspect any monitoring equipment or method of exploration or operation and have access to and may copy any records required under the approved State Program. Division representatives may exercise these rights at reasonable times, without advance notice, upon presentation of appropriate credentials. No search warrant will be required, except that the State may provide for its use with respect to entry into a building.

120. Enforcement Authority. Nothing in the Federal Act or the State Program will be construed as eliminating any additional enforcement rights or procedures which are available under State law to the Division, but which are not specifically enumerated in Sections 40-10-20 and 40-10-22 of the Act.

130. Inspection Program.

131. The Division will conduct an average of at least one partial inspection per month of each active coal mining and reclamation operation under its jurisdiction, and will conduct a partial inspection of each inactive coal mining and reclamation operation under its jurisdiction as are necessary to ensure effective enforcement of the State Program. A partial inspection is an on-site or aerial review of a person's compliance with some of the permit conditions and requirements imposed under the State Program.

132. The Division will conduct an average of at least one complete inspection per calendar quarter of each active or inactive coal mining and reclamation operation under its jurisdiction. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the State Program, within the entire area disturbed or affected by the coal mining and reclamation operation. Abandoned sites may be inspected on a frequency as determined by the procedures set out in the definition of "abandoned sites" which is found in R645-100-200.

133. The Division will conduct inspections of coal explorations as are necessary to ensure compliance with the State Program.

134. Aerial Inspection.

134.100. Aerial inspections will be conducted in a manner which reasonably ensures the identification and documentation of conditions at each coal mining and reclamation operation inspected.

134.200. Any potential violation observed during an aerial inspection will be investigated on-site within three (3) days: provided, that any indication of a condition, practice or violation constituting cause for the issuance of a cessation order under section 40-10-22(1)(b) of the Act will be investigated on site immediately, and provided further, that an on-site investigation of a potential violation observed during an aerial inspection will not be considered to be an additional partial or complete inspection for the purposes of R645-400-131 and R645-400-132.

135. The inspections required under R645-400-131 through R645-400-134 will:

135.100. Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

135.200. Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and

135.300. Include the prompt filing of inspection reports adequate to enforce the requirements of the approved State Program.

136. For the purposes of R645-400 an inactive coal mining and reclamation operation is one for which:

136.100. The Division has secured from the permittee the written notice provided for under R645-301-515.320; or

136.200. Reclamation Phase II as defined at R645-301-880.320 has been completed and the liability of the permittee has been reduced by the Division in accordance with the State Program.

140. Availability of Records.

141. The Division will make available to the Director of the Office, upon request, copies of all documents relating to applications for and approvals of existing, new, or revised coal exploration approvals or coal mining and reclamation operations permits and all documents relating to inspection and enforcement actions.

142. Copies of all records, reports, inspection materials, or information obtained by the Division will be made immediately available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area, except:

142.100. As otherwise provided by federal law; and

142.200. For information not required to be made available under R645-203, R645-300-124 or R645-400-144.

143. The Division will ensure compliance with R645-400-142 by either:

143.100. Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a federal, Utah or local government office in the county where the mining is occurring or proposed to occur; or

143.200. At the Division's option and expense, providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur. Provided, that the Division will maintain for public inspection, at a federal, Utah or local government office in the county where the mining is occurring or proposed to occur, a description of the information available for mailing and the procedure for obtaining such information.

144. In order to protect preparation for hearings and enforcement proceedings, the Director of the Office and the Division may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.

150. Public Participation. The State Program provides for public participation in the enforcement of the State Program in R645-400-200, R645-400-300, R645-401, and the Board's Procedural Rules.

160. Compliance Conference.

161. Compliance conferences between a permittee and an authorized representative of the Division are provided for and described in R645-400-162 through R645-400-165.

162. A permittee may request an on-site compliance conference with an authorized representative of the Division to review the compliance status of any condition or practice proposed at any coal exploration or coal mining and reclamation operation. Any such conference will not constitute an inspection within the meaning of UCA 40-10-19 and R645-400-130, or any applicable permit or exploration approval.

163. The Division may accept or refuse any request to conduct a compliance conference under R645-400-162.

164. The authorized representative at any compliance conference will review such proposed conditions and practices in order to advise whether any such condition or practice may become a violation of any requirement of the Act, the approved State Program or any applicable permit or exploration approval.

165. Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference will affect:

165.100. Any rights or obligations of the Division or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or

165.200. The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

R645-400-200. Information Related to Inspections.

210. Requests for Inspections.

211. A citizen may request a Division inspection under UCA 40-10-22 by furnishing to the Division a signed, written statement (or an oral report followed by a signed, written statement) giving the Division reason to believe that a violation of the State Program or any applicable permit or exploration approval has occurred, and including a phone number and address where the citizen can be contacted.

212. The identity of any person supplying information to the Division relating to a possible violation or imminent danger or harm will remain confidential with the Division if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under Utah or federal law.

213. If a Division inspection is conducted as a result of information provided to the Division by a citizen as described in R645-400-211, the citizen will be notified as far in advance as practicable when the inspection is to occur and will be allowed to accompany the authorized representative of the Division during the inspection. Such person has a right of entry to, upon, and through the coal exploration or coal mining and reclamation operation about which he or she provided information, but only if he or she is in the presence of and is under control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant. All citizens so visiting mine sites are required to comply with applicable MSHA safety standards.

214. Within 10 days of the Division inspection or, if there is no inspection within 15 days of receipt of the citizen's written statement, the Division will send the citizen the following:

214.100. If an inspection was made, a description of the enforcement action taken, which may consist of copies of the Division inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;

214.200. If no Division inspection was conducted, an explanation of the reason why; and

214.300. An explanation of the citizen's right, if any, to informal review of the action or inaction of the Division under R645-400-240.

215. The Division will give copies of all materials in R645-400-214 within the time limits specified in that Rule to the person alleged to be in violation, except that the name of the citizen will be removed unless disclosure of the citizen's identity is permitted under R645-400-212.

220. Right of Entry.

221. Each authorized representative of the Division conducting an inspection under R645-400 through R645-401:

221.100. Will have a right of entry to, upon, and through any coal exploration or coal mining and reclamation operation without advance notice or a search warrant, upon presentation of appropriate credentials;

221.200. May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation required under the State Program or any condition of an exploration approval or permit imposed under the State Program; and

221.300. Will have a right to gather physical and photographic evidence to document conditions, practices or violations at the site.

222. No search warrant will be required with respect to any activity under R645-400-221 except that a search warrant may be required for entry into a building.

230. Review of Adequacy and Completeness of Inspection. Any person who is or may be adversely affected by coal mining and reclamation operations or coal exploration operations may notify the Director in writing of any alleged failure on the part of the Division to make adequate and complete or periodic inspections as provided in R645-400-130 or R645-400-210. The notification will contain information to demonstrate the belief that the person is or may be adversely affected including the basis for his or her belief that the Division has failed to conduct the required inspections. The Director will within 15 days of receipt of the notification, determine whether there is sufficient information to create a reasonable belief that R645-400-130 or R645-400-210 are not being complied with, and if not, will immediately order an inspection to remedy the noncompliance. The Director will, also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

240. Review of Decision Not to Inspect or Enforce.

241. Any person who is or may be adversely affected by coal exploration or coal mining and reclamation operations may ask the Director to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for State inspection under R645-400-210. The request for review will be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

242. The Director will conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation will also be given a copy of the results of the review, except that the name of the citizen will not be disclosed unless confidentiality has been waived or disclosure is required under Utah or federal law.

243. Informal review under this section will not affect any right to formal review or to a citizen's suit under the State Program.

R645-400-300. Provisions of State Enforcement.

310. Cessation Orders.

311. The Division will immediately order a cessation of coal mining and reclamation operations or of the relevant portion thereof, if it finds, on the basis of any Division inspection, any violation of the State Program, or any condition of a permit or an exploration approval under the State Program, which:

311.100. Creates an imminent danger to the health or safety of the public; or

311.200. Is causing or can reasonably be expected to

cause significant, imminent environmental harm to land, air, or water resources.

312. Coal mining and reclamation operations conducted by any person without a valid coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations.

313. If the cessation ordered under R645-400-311 will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the Division will impose affirmative obligations on the person to whom it is issued to abate the violation. The order will specify the time by which abatement will be accomplished.

314. When a notice of violation has been issued under R645-400-320 and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the Division then the Division will immediately order a cessation of coal exploration or coal mining and reclamation operations or of the portion relevant to the violation. A cessation order issued under R645-400-314 will require the permittee to take all steps the Division deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

315. A cessation order issued under R645-400-311 or R645-400-314 will be in writing, signed by the authorized representative of the Division who issued it, and will set forth with reasonable specificity:

315.100. The nature of the violation;

315.200. The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

315.300. The time established for abatement, if appropriate, including the time for meeting any interim steps;

315.400. A reasonable description of the portion of the coal exploration or coal mining and reclamation operations to which it applies; and

315.500. The order will remain in effect until the violation has been abated or until vacated, modified or terminated in writing by the Division.

316. Reclamation operations and other activities intended to protect public health and safety and the environment will continue during the period of any order unless otherwise provided in the order.

317. The Division may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

318. The Division will terminate a cessation order by written notice to the permittee, when it is determined that all conditions, practices or violations listed in the order have been abated. Termination will not affect the right of the Board to assess civil penalties for those violations under R645-401.

319. Within sixty days after issuing a cessation order, the Division will notify in writing the permittee, the operator, and any person who has been listed or identified by the applicant, permittee, or the Division as an owner or controller of the operation, as defined in R645-100-200, that the cessation order was issued and that the person has been identified as an owner or controller.

320. Notices of Violation.

321. The Division will issue a notice of violation if, on the basis of a Division inspection carried out during the enforcement of a State Program it finds a violation of the State Program or any condition of a permit or an exploration approval imposed under the State Program which does not create an imminent danger or harm for which a cessation order must be issued under R645-400-310.

322. When on the basis of any Division inspection other than one described in R645-400-321, the Division determines that there exists a violation of the State Program or any condition of a permit or an exploration approval required by the Act which does not create an imminent danger or harm for which a cessation order must be issued under R645-400-310, the Division will issue a notice of violation to the permittee or his agent fixing a reasonable time not to exceed 90 days for the abatement of the violation and providing opportunity for a conference before the Division.

323. A notice of violation issued under R645-400-320 will be in writing, signed by the authorized representative of the Division, and will set forth reasonable specificity:

323.100. The nature of the violation;

323.200. The remedial action required, which may include interim steps;

323.300. A reasonable time for abatement, which may include time for accomplishment of interim steps; and

323.400. A reasonable description of the portion of the coal exploration or coal mining and reclamation operations to which it applies.

324. The Division may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, will not exceed 90 days from the date of issuance except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in R645-400-327. An extended abatement date pursuant to this section will not be granted when the permittee's failure to abate within 90 days has been caused by lack of diligence or intentional delay by the permittee in completing the remedial action required.

325. If the permittee fails to meet any time set for abatement or for accomplishment of an interim step, the Division will issue a cessation order under R645-400-314.

326. The Division will terminate a notice of violation by written notice to the permittee, when the Division determines that all violations listed in the notice of violation have been abated. Termination will not affect the right of the Board to assess civil penalties for those violations which have been abated, nor will termination affect the right of the Board to assess civil penalties for those violations under R645-401.

327. Circumstances which may qualify a coal mining and reclamation operation for an abatement period of more than 90 days are:

327.100. Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

327.200. Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

327.300. Where the permittee cannot abate within 90 days due to a labor strike;

327.400. Where climatic conditions preclude abatement within 90 days or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

327.500. Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of

1977.

328. Other information on abatement times extended beyond 90 days.

328.100. Whenever an abatement time in excess of 90 days is permitted, interim abatement measures will be imposed to the extent necessary to minimize harm to the public or the environment.

328.200. If any of the conditions in R645-400-327 exists, the permittee may request the authorized representative of the Division to grant an abatement period exceeding 90 days. The authorized representative will not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted will not exceed the shortest possible time necessary to abate the violation. The permittee will have the burden of establishing by clear and convincing proof that he or she is entitled to any extension under the provisions of R645-400-324 and R645-400-327.

328.300. In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative will promptly and fully document in the file his or her reasons for granting or denying the request. The Director or designee of the Director specified in R645-400-328.200 will review this document before concurring in or disapproving the extended abatement date and will promptly and fully document the reasons for his or her concurrence or disapproval in the file.

328.400. Any determination made under R645-400-328.200 or R645-400-328.300 will contain a right of appeal to the Board under R645-400-360.

328.500. No extension granted under R645-400-328.200 or R645-400-328.300 may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of R645-400-328.200.

329. Enforcement actions at abandoned sites. The Division may refrain from using a notice of violation or cessation order for a violation at an abandoned site, as defined in R645-100-200., if abatement of the violation is required under any previously issued notice on order.

330. Suspension or Revocation of Permits.

331. The Board will issue an order to a permittee requiring him or her to show cause why his or her permit and right to mine under the State Program should not be suspended or revoked, if the Board determines that a pattern of violations of any requirements of the State Program, or any permit condition required by the Act exists or has existed, and that each violation was caused by the permittee willfully or through an unwarranted failure to comply with those requirements or conditions. A finding of unwarranted failure to comply will be based upon a demonstration of greater than ordinary negligence on the part of the permittee. Violations by any person conducting coal mining and reclamation operations on behalf of the permittee will be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

332. Pattern of Violation.

332.100. The Director may determine that a pattern of violations exists or has existed, based upon two or more Division inspections of the permit area within a 12-month period, after considering the circumstances, including:

332.110. The number of violations, cited on more than one occasion, of the same or related requirements of the State Program or the permit; and

332.120. The number of violations, cited on more than one occasion, of different requirements of the State Program or the permit; and

332.130. The extent to which the violations were isolated departures from lawful conduct.

332.200. If after the review described in R645-400-332, the Director determines that a pattern of violation exists or has existed and that each violation was caused by the permittee willfully or through unwarranted failure to comply, he or she will recommend that the Board issue an order to show cause as provided in R645-400-331.

332.300. The Director will promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the State Program, or the permit during three or more state inspections of the permit area within a 12-month period. If, after such review, the Director determines that a pattern of violations exists or has existed, he or she will recommend that the Board issue an order to show cause as provided in paragraph R645-400-331.

333. Number of Violations.

333.100. In determining the number of violations within a 12-month period, the Director will consider only violations issued as a result of a state inspection carried out during enforcement of the State Program.

333.200. The Director may not consider violations issued as a result of inspections other than those mentioned in R645-400-333.100 in determining whether to exercise his or her discretion under R645-400-332.100, except as evidence of the willful or unwarranted nature of the permittee's failure to comply.

334. Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the Director will review the permittee's history of violations to determine whether a pattern of violations caused by the permittee's willful or unwarranted failure to comply exists pursuant to this section, and will make a recommendation to the Board concerning whether or not an order to show cause should issue pursuant to R645-400-331.

335. Hearing Procedures.

335.100. If the permittee files an answer to the show cause order and requests a hearing, a formal public hearing on the record will be conducted pursuant to the R641 Rules before the Board or at the Board's option by an administrative hearing officer. The hearing officer will be a person who meets minimum requirements for a hearing officer under Utah law. At such hearing the Division will have the burden of establishing a prima facie case for suspension or revocation of the permit based upon clear and convincing evidence. The ultimate burden of persuasion that the permit should not be suspended or revoked will rest with the permittee.

The Board or Officer will give 30 days written notice of the date, time and place of the hearing to the Director, the permittee and any intervenor. Upon receipt of the notice the Director will publish it, if practicable, in a newspaper of general circulation in the area of the coal mining and reclamation operations, and will post it at the Division office closest to those operations. Upon written request by the permittee, such hearing may at the Board's option be held at or near the mine site within the county in which the permittee's operations are located.

335.200. Within 60 days after the hearing, the Board will prepare a written determination, or the Officer will prepare a written determination to the Board, as to whether or not a pattern of violation exists. If the determination is prepared by the hearing officer, it will be reviewed by the Board which will make the final decision thereon. If the Board finds a pattern of violations and revokes or suspends the permit and the permittee's right to mine under the State Program, the permittee will immediately cease coal mining

operations on the permit area and will:

335.210. If the permit and the right to mine under the State Program are revoked, complete reclamation within the time specified in the order; or

335.220. If the permit and the right to mine under the State Program are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

340. Service of Notices of Violation, Cessation Orders and Show Cause Orders.

341. A notice of violation or cessation order will be served on the permittee or his designated agent promptly after issuance, as follows:

341.100. By tendering a copy at the coal exploration or coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the coal exploration or coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the permittee. Service will be complete upon tender of the notice or order and will not be deemed incomplete because of refusal to accept.

341.200. As an alternative to R645-400-341.100, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or his designated agent. Service will be complete upon tender of the notice or order by mail and will not be deemed incomplete because of refusal to accept.

342. A show cause order may be served on the permittee in either manner provided in R645-400-341.

343. Designation by any person of an agent for service of notices and orders will be made in writing to the Division.

350. Informal Public Hearing.

351. Except as provided in R645-400-352 and R645-400-353 a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, will expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing will be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the Division and the permittee. The Division office nearest to the mine site will be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the Division. Expiration of a notice or order will not affect the Board's right to assess civil penalties for the violations mentioned in the notice or order under R645-401.

352. A notice of violation or cessation order will not expire as provided in R645-400-351, if the condition, practice or violation in question has been abated or if the informal public hearing has been waived, or if, with the consent of the permittee, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of R645-400-352:

352.100. The informal public hearing will be deemed waived if the permittee:

352.110. Is informed, by written notice served in the manner provided in R645-400-352.200, that he or she will be deemed to have waived an informal public hearing unless he or she requests one within 30 days after service of the notice; and

352.120. Fails to request an informal public hearing within that time;

352.200. The written notice referred to in R645-400-352.110 will be delivered to the permittee by an authorized representative or sent by certified mail to the permittee no later than five days after the notice or order is served on the permittee; and

352.300. The permittee will be deemed to have consented to an extension of the time for holding the informal public hearing if his or her request is received on or after the 21st day after service of the notice or order. The extension of time will be equal to the number of days elapsed after the 21st day.

353. The Division will give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

353.100. The permittee; and

353.200. Any person who filed a report which led to that notice or order.

354. The Division will also post notice of the hearing at the office closest to the mine site, and publish it, where practicable, in a newspaper of general circulation in the area of the mine.

355. An informal public hearing will be conducted by a representative of the Board who may accept oral or written arguments and any other relevant information from any person attending.

356. Within five days after the close of the informal public hearing, the Division will affirm, modify or vacate the notice or order in writing. The decision will be sent to:

356.100. The permittee; and

356.200. Any person who filed a report which led to the notice or order.

357. The granting or waiver of an informal public hearing will not affect the right of any person to formal review under UCA 40-10-22-(3). At such formal review proceedings, no evidence as to statements made or evidence produced at an informal public hearing will be introduced as evidence or to impeach a witness.

360. Board Review of Citations.

361. Petition Process.

361.100. A permittee issued a notice of violation or cessation order under R645-400-320 or R645-400-310 or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of the Division's action by filing an application for review and request for hearing pursuant to UCA 40-10-22(3) and the Board's Rules within 30 days after receiving notice of the action.

361.200. Upon written petition by the operator or an interested party, the Board, at its discretion, or a hearing examiner appointed by the Board, pursuant to UCA 40-6-10(6), may be requested to hold a hearing at the site of the operation or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

361.300. The Board will issue an order concerning the cessation order within 30 days after its next regularly scheduled hearing of receipt of the petition for review of the Division's cessation order.

362. The filing of a petition for review and request for a hearing under R645-400-360 will not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

370. Inability to Comply.

371. No cessation order or notice of violation issued under R645-400-300 may be vacated because of inability to comply.

372. Inability to comply may not be considered in determining whether a pattern of violations exists.

373. Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under R645-401 and of the duration of the suspension of a permit under R645-400-330.

380. Compliance Conference.

381. A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or coal mining and reclamation operation. Any such conference will not constitute an inspection within the meaning of UCA 40-10-19 or R645-400-100.

382. The Division may accept or refuse any request to conduct a compliance conference under R645-400-381. Where the Division accepts such a request, reasonable notice of the scheduled date and time of the compliance conference will be given to the permittee.

383. The authorized representative at any compliance conference will review such proposed conditions and practices as the permittees may request in order to determine whether any such condition or practice may become a violation of any requirement of the Act or of any applicable permit or exploration proposal.

384. Neither the holding of any compliance conference under R645-400-380 nor any opinion given by the authorized representative at such a conference will affect:

384.100. Any rights or obligations of the Division or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference; or

384.200. The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

390. Injunctive Relief.

391. The Division may request the Utah Attorney General's office to institute a civil action for relief, including a permanent or temporary injunction, restraining order or any other order, in the district court for the district in which the coal exploration or coal mining and reclamation operation is located or in which the permittee has his principal office, whenever that permittee, in violation of the State Program or any condition of an exploration approval or permit:

391.100. Violates or fails or refuses to comply with any order or decision of the Division under the State Program;

391.200. Interferes with, hinders or delays the Division in carrying out the provisions of the State Program;

391.300. Refuses to admit the Division to a mine;

391.400. Refuses to permit inspection of a mine by the Division;

391.500. Refuses to furnish any required information or report;

391.600. Refuses to permit access to or copying of any required records; or

391.700. Refuses to permit inspection of monitoring equipment.

392. No citizen suits may be brought pursuant to UCA 40-10-21 if the Board, Division or State Attorney General has commenced and is diligently prosecuting a civil action under R645-400-391, however, in any such action in a state court any interested person may intervene as permitted by and in accordance with Rule 24 of the Utah Rules of Civil Procedure.

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Notice of Continuation July 23, 2019

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-10. Administrative Procedures.
R649-10-1. Designation of Informal Adjudicative Proceedings.

1. Adjudicative proceedings which shall be conducted informally before the division in accordance with these rules are all actions prescribed by the Oil and Gas Conservation General Rules as being specifically under the division's authority and jurisdiction including: R649-2 General Rules; R649-3 Drilling and Operating Practices; R649-5 Underground Injection Control of Recovery Operations and Class II Injection Wells; R649-6 Gas Processing and Waste Crude Oil Treatment; R649-8 Reporting and Report Forms; R649-9 Disposal of Produced Water.

2. Prior to the issuance of a final order in any adjudicative proceeding, the presiding officer may convert an informal proceeding to a formal adjudicative proceeding if:

2.1. Conversion of the proceeding is in the public interest.

2.2. Conversion of the proceeding does not unfairly prejudice the rights of any party.

3. Informal adjudicative proceedings shall be commenced and conducted in accordance with these rules and the provisions of the applicable Oil and Gas Conservation General Rules. In case of conflict between these rules and the Oil and Gas Conservation General Rules, these rules shall govern the informal adjudicative proceedings.

R649-10-2. Definitions.

As used in these rules:

1. "Adjudicative proceeding" means an agency action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and judicial review of all of such actions.

2. "Agency" means the Board of Oil, Gas and Mining and the Division of Oil, Gas and Mining including the director or division employees acting on behalf of or under the authority of the director or board.

3. "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by statute.

4. "Board" means the Board of Oil, Gas and Mining.

5. "Division" means the Division of Oil, Gas and Mining.

6. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.

7. "Party" means the board, division, or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the board to intervene in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

8. "Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

9. "Presiding Officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding. For the purpose of these rules, the board, or its appointed hearing examiner, shall be considered the presiding officer of all appeals or informal adjudicative proceedings which commence before the division as well as all adjudicative proceedings which commence before the board. The director or his designated agent shall be considered a presiding officer for all informal adjudicative proceedings which commence before the division. If fairness to the parties is not compromised, an agency may substitute one presiding officer for another during any proceeding.

10. "Respondent" means any person against whom an adjudicative proceeding is initiated whether by an agency or any other person.

R649-10-3. Commencement of Informal Adjudicative Proceedings.

1. Except for emergency orders, all informal adjudicative proceedings shall be commenced by:

1.1. A Notice of Agency Action, if proceedings are commenced by the board or division; or

1.2. A Request for Agency Action, if proceedings are commenced by persons other than the board or division.

2. A Notice of Agency Action shall be filed and served according to the following requirements:

2.1. The Notice of Agency Action shall be in writing and shall be signed by a presiding officer and shall include:

2.1.1. The names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the agency.

2.1.2. The division's file number or other reference number.

2.1.3. The name of the adjudicative proceeding.

2.1.4. The date that the Notice of Agency Action was mailed.

2.1.5. A statement that the adjudicative proceeding is to be conducted informally according to the provision of these rules and Sections 63G-4-202 and 63G-4-203 if applicable.

2.1.6. A statement that the parties may request an informal hearing before the division within ten days, or such later period as may be provided for in the Oil and Gas Conservation General Rules, of the date of mailing or publication.

2.1.7. A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained.

2.1.8. The name, title, mailing address, and telephone number of the presiding officer.

2.1.9. A statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.

2.2. The Division shall:

2.2.1. Mail the Notice of Agency Action to each party and any other person who has a right to notice under statute or rule.

2.2.2. Publish the Notice of Agency Action as required by statute or by the Oil and Gas Conservation General Rules.

2.2.3 Post a copy of the notice in a public area in the main office of the division at least 24 hours in advance of the scheduled agency proceeding.

2.3. A Request for Agency Action initiated by a person other than the board or the division shall be in writing and signed by the person seeking action by the agency or by his representative, and shall include:

2.3.1. The names and addresses of all persons to whom a copy of the request for agency action is being sent.

2.3.2. The agency's file number or other reference number, if known.

2.3.3. The date that the request for agency action was mailed.

2.3.4. A statement of the legal authority and jurisdiction under which the agency action is requested.

2.3.5. A statement of the relief or action sought from the division.

2.3.6. A statement of the facts and reasons forming the basis for relief or action.

2.4. The person requesting agency action shall file the request with the division and shall send a copy by mail to each person known to have a direct interest in the requested agency action unless previously waived in writing by each person entitled to receive notice of the requested agency action.

2.5. The person requesting the agency action may use the division forms as specified in the Oil and Gas Conservation General Rules as a request for agency action.

2.6. The presiding officer shall promptly review a Request for Agency Action and shall:

2.6.1. Notify the requesting party in writing whether the request is granted and when the adjudicative proceeding is completed;

2.6.2. Notify the requesting party in writing that the request is denied; or

2.6.3. Notify the requesting party that further proceedings are required to determine the agency's response to the request.

2.7. The division shall mail any required notice to all parties, except that any notice required by R649-10-3-2.6 may be published when publication is required by statute.

2.7.1. Give the division's file number or other reference number.

2.7.2. Give the name of the proceeding.

2.7.3. Designate that the proceeding is to be conducted informally according to the provisions of these rules and Sections 63G-4-202 and 63G-4-203 if applicable.

2.7.4. If a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in a scheduled and noticed hearing may be held in default.

2.7.5. If the adjudicative proceeding is to be informal, and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party with the time prescribed by rule, state the parties' right to request a hearing and the time within which a hearing may be requested under the agency's rules.

2.7.6. Give the name, title, mailing address, and telephone number of the presiding officer.

R649-10-4. Procedures for Informal Adjudicative Proceedings.

1. Procedures for informal adjudicative proceedings should include the following:

1.1. Unless the agency by rule provides for and requires a response, no answer or other pleading responsive to the allegations contained in the notice of agency action or the request for agency action need be filed.

1.2. The agency shall hold a hearing if a hearing is requested within ten days or such later period as may be provided for in the Oil and Gas Conservation General Rules.

1.3. In any hearing, the parties named in the Notice of Agency Action or in the Request for Agency Action shall be permitted to testify, present evidence, and comment on the issues.

1.4. Hearings will be held only after timely notice to all parties.

1.5. Discovery is prohibited, but the agency may issue subpoenas or other orders to compel production of necessary evidence.

1.6. All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.

1.7. Intervention is prohibited, except where a federal statute or rule requires that a state permit intervention.

1.8. All hearings shall be open to all parties.

1.9. Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing that states the following:

1.9.1. The decision.

1.9.2. The reasons for the decision.

1.9.3. A notice of any right of administrative or judicial review available to the parties.

1.9.4. A statement that the filing of an appeal or the requesting of a review shall be accomplished within 30 days of the issuance of the order.

1.10. The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.

1.11. A copy of the presiding officer's order shall be promptly mailed to each of the parties and to all persons who request a copy.

2.1. The agency may record any hearing.

2.2. Any party, at his own expense, may have a reporter, approved by the agency, prepare a transcript from the agency's record of the hearing.

3.0. Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

R649-10-5. Default In An Informal Proceeding.

1. The presiding officer may enter an order of default against:

1.1. A party in an informal adjudicative proceeding if after proper notice the party fails to participate in the informal adjudicative proceeding.

2.0. An order of default shall include a statement of the grounds for default and shall be mailed to all parties.

3.1. A defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure.

3.2. A motion to set aside a default and any subsequent order shall be made to the presiding officer.

3.3. A defaulted party may seek board review under R649-10-6 only on the decision of the presiding officer on the motion to set aside the default.

4.0. In an adjudicative proceeding commenced by the agency, or in an adjudicative proceeding commenced by a party that has other parties besides the party in default, the presiding officer shall, after issuing the order of default, conduct any further proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

5.0. In an adjudicative proceeding that has no parties other than the agency and the party(ies) in default, the presiding officer may, after issuing the order(s) of default, dismiss the proceeding.

R649-10-6. Appeal of Division Order.

1. A request for review of an order issued by the division shall be filed with the secretary to the Board within 30 days of issuance of the order and:

1.1. Be signed by the party seeking review.

1.2. State the grounds for review and the relief requested.

1.3. State the date upon which it was mailed.

1.4. Be sent by mail to the presiding officer and to each party.

2. Within 15 days of the mailing date of request for review, or within the time period provided by agency rule, whichever is longer, any party may file a response with the board. One copy of the response shall be sent by mail to each

of the parties and to the presiding officer.

3. The board shall review the order within a reasonable time or within the time required by statute or the agency's rules.

4. To assist in review, the board may by order or rule permit the parties to file briefs or other papers, or to conduct oral argument.

5. Notice of hearings on review shall be mailed to all parties.

6.1. Within a reasonable time after the filing of any response, other filings, or oral argument, or within the time required by statute or applicable rules, the board shall issue a written order on review.

6.2. The order on review shall be signed by the board chairman or by a person designated by the board for that purpose and shall be mailed to each party.

6.3. The order on review shall contain:

6.3.1. A designation of the statute or rule permitting or requiring review.

6.3.2. A statement of the issues reviewed.

6.3.3. Findings of fact as to each of the issues reviewed.

6.3.4. Conclusions of law as to each of the issues reviewed.

6.3.5. The reasons for the disposition.

6.3.6. Whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded.

6.3.7. A notice of any right of further administrative reconsideration or judicial review available to aggrieved parties.

6.3.8. The time limits applicable to any appeal or review.

R649-10-7. Emergency Orders.

Notwithstanding the other provisions of these rules, the director or any member of the board is authorized to issue an emergency order without notice and hearing in accordance with Section 40-6-10. The emergency order shall remain in effect no longer than until the next regular meeting of the board, or such shorter period of time as shall be prescribed by statute.

1. An emergency order may be issued if:

1.1. The facts known by or presented to the director or board member are supported by affidavit to show that an immediate and significant danger of waste or other danger to the public health, safety, or welfare exists; and

1.2. The threat requires immediate action by the director or board member,

2. Limitations. In issuing its emergency order, the director or board member shall:

2.1. Limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

2.2. Issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings;

2.3. Give immediate notice to the persons who are required to comply with the order; and

2.4. If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the division shall commence a formal adjudicative proceeding in accordance with the procedural rules of the board.

R649-10-8. Exhaustion of Administrative Remedies.

A person aggrieved by a division order in an adjudicative proceeding must seek review of that order by the board as provided in R649-10-6.

R649-10-9. Waivers.

Notwithstanding any other provision of these rules, any procedural matter, including any right to notice or hearing, may be waived by the affected person(s) by a signed, written waiver in a form acceptable to the division.

KEY: oil and gas law
December 18, 1996 40-6-1 et seq.
Notice of Continuation July 23, 2019 63G-4

R651. Natural Resources, Parks and Recreation.
R651-411. OHV Use in State Parks.
R651-411-1. Definitions.

(1) "OHV" for this section has the same meaning as defined in Subsection 41-22-2(14).

R651-411-2. OHV Use.

(1) Registered OHVs are permitted to operate on designated routes in State Parks:

(a) To access OHV riding areas or roads designated open, or

(b) To access public ice fishing areas via boat ramps located within state parks.

(2) Responsibility for any accidents or problems while using OHVs in state parks rests with the operator as required under UCA 41-22-37.

KEY: off-highway vehicles
July 22, 2019 41-22-10
Notice of Continuation December 19, 2018 79-4-501

R651. Natural Resources, Parks and Recreation.
R651-615. Motor Vehicle Use.
R651-615-1. Traffic Rules and Regulations.

The use and operation of motor vehicles in general shall be in accordance with the Utah Traffic requirements as found in Title 41, Chapter 6 Utah Code.

R651-615-2. Blocking and Restricting Normal Use.

Blocking, restricting or otherwise interfering with the normal use of any park facility with a vehicle or towed device is prohibited.

R651-615-3. Roadway and Parking Areas.

Operating or parking a motor vehicle or trailer except on roadways and parking areas developed for that use is prohibited.

R651-615-4. Entering and Leaving Park Site.

Operating a motor vehicle in a developed park area for any purpose other than entering or leaving the site is prohibited.

R651-615-5. Off Road Use.

The operation of vehicles off road is prohibited within the boundaries of all park areas except those with designated off-highway vehicle riding areas.

R651-615-7. Motorized Transportation Devices.

Motorized Transportation Devices (MTD) that are powered by electric motors may be used for transportation to and from facilities and structures within the state parks.

KEY: parks, off-highway vehicles

July 22, 2019	**79-4-203**
Notice of Continuation June 7, 2018	**41-22-10**
	79-4-501

R655. Natural Resources, Water Rights.
R655-3. Reports of Water Rights Conveyance.
R655-3-1. Scope and Purpose.

These rules are issued pursuant to Utah Code Section 73-1-10 and 73-2-1(4)(a) which provides that the state engineer shall adopt rules that specify when a water right owner is authorized to prepare a Report of Conveyance to the state engineer; the kinds of information required in such reports; and the procedures for processing such reports.

R655-3-2. Definitions.

APPURTENANCE - A right or improvement to a property that passes with the property upon the transfer of the property. As applied to water rights, it is as described in Utah Code Section 73-1-11.

APPROPRIATION - an application seeking to appropriate water pursuant to Utah Code Section 73-3-2.

BENEFICIAL USE - the basis, the measure and the limit of a water right. It is the specific use(s) authorized under a water right expressed in terms of the purpose(s) to which the water may be applied and the quantity of that purpose. For example, in the case of irrigation, the beneficial use is expressed as the number of acres that may be irrigated (e.g. 11.22 acres).

CHAIN OF TITLE - A series of deeds or other properly filed and recorded documents which demonstrate the transfer of a water right, a portion of a water right, or land with appurtenant water rights. Deeds establishing a chain of title begin with the owner listed on records of the Division of Water Rights as grantor of the first deed through a chronological succession of transfer documents where the right is ultimately conveyed to the grantee listed as new owner on the Report of Water Right Conveyance.

CHANGE APPLICATION - an application authorized to be made under Utah Code Section 73-3-3 to change the point of diversion, place of use, nature of use, period of use or storage of a water right.

CONFLICTED HOLDER - a person or entity claiming ownership of all or a portion of a water right that conflicts with the ownership claim of another person or entity claiming ownership of the same right or portion in question. Conflicted holders may also include title holders whose title is not directly disputed, but is the part-owner of a right where a title question exists, and to resolve the question, the State Engineer deems the holder should be involved.

DIVERSION LIMIT - the total volume of water in acre-feet or the flow rate in cubic feet per second which may be diverted as allowed by the water right to supply the needs of the beneficial uses authorized by the water right.

DIVISION - the Utah Division of Water Rights within the Department of Natural Resources.

EXCHANGE APPLICATION - as authorized under Utah Code Section 73-3-20, an application to allow water from one source to be exchanged for water from another source. Exchanges are conditional rights that do not modify the underlying rights (right on which the exchange is based). The water may be exchanged to the extent it is available and not used under the underlying right. For the purpose of updating title, an approved Exchange Application is appurtenant to land and transfers as other water right interests.

PLACE OF USE - the specific acreage where water under a water right may be placed to beneficial use as described on the records of the State Engineer or a decree.

PROFESSIONAL - for the purposes of this rule, a person authorized to submit a Report of Conveyance as specified in Utah Code Section 73-1-10. A professional must be licensed in Utah as an attorney, a professional engineer, a title insurance producer, or a professional land surveyor.

REPORT OF CONVEYANCE (ROC) - a report of water right conveyance to the state engineer as required by Section 73-1-10.

SHARE STATEMENT - A water right file created on state engineer records for purposes of administration in instances where the owner of shares of stock in a water company is authorized under statute to file an application (nonuse or change application) based on stock ownership. Water rights based on share statements are a conditional right. A water right change application based on shares of stock is appurtenant to the land where it is used and transfers as other interests in water rights. Shares of Stock do not transfer under rules of other rights to use water but transfer as securities as set forth in Title 70A, Chapter 8, Uniform Commercial Code - Investment Securities.

SOLE SUPPLY - means the amount of Beneficial Use allowed under a particular water right when used alone and separate from all Supplemental Rights. If a water right is assigned to more than one Water Use Group, the Sole Supply of the water right is the sum of its Beneficial Use Amounts.

SUPPLEMENTAL GROUP - Also referred to as a Water Use Group, means one or more water rights listed together and assigned a unique number in the records of the State Engineer as being applied to a common Beneficial Use. The unique number referred to is shown on the Division's computer data base as Supplemental Group No.

WATER RIGHT NUMBER - a unique file number assigned by the Division beginning with a two digit prefix associated with a specific geographic area designated by the Division, followed by a dash followed by another number to establish a specific number for the administrative functions of the Division. (e.g. 43-3231)

WATER RIGHTS ADDENDUM - an addendum to a deed clarifying the water rights conveyed by the deed pursuant to Section 73-1-10(1)(d)(i) and 73-1-11(6). Addendums are recorded with the deed it accompanies at the County Recorder's Office and are forwarded by the County Recorder to the State Engineer pursuant to Utah Code Section 57-3-109.

R655-3-3. When a Water Rights Addendum Acts as a Report of Conveyance.

3.1 When a recorded Deed and water right or land addendum is transmitted to the State Engineer by a County Recorder, as required by Utah Code Section 57-3-109, the state engineer under Utah Code Section 73-1-10(1)(d)(ii) will process the Water Rights Addendum as though it were a submitted Report of Water Right Conveyance.

3.2 Water Right Addendums submitted in conformance with this rule shall be processed by the state engineer and ownership updated on water right records of the Division if:

3.2.1 The grantor listed on the deed and addendum is the owner as listed on water right records of the Division;

3.2.2 The Water Rights Addendum document is properly completed as instructed on the form; and

3.2.3 The addendum is signed by all grantors and grantees on the deed.

3.3 If the state engineer does not update water right ownership on records of the Division upon submittal of a Water Rights Addendum as described in this rule, the state engineer shall provide written notice to the grantee at the address stated on the addendum of the reasons ownership was not updated.

3.4 If the state engineer does not update water right ownership on records of the Division upon submittal of a Water Right Addendum as described in this rule, a water right owner shall submit a report of water right conveyance as directed in Utah Code Section 73-1-10(3) and these rules.

R655-3-4. Content of the Report of Conveyance.

4.1 A Report of Conveyance consists of:

4.1.1 A form provided by the state engineer which must be completed by the submitter;

4.1.2 Sufficient documentation presented as copies of properly recorded or authenticated documents to demonstrate the Chain of Title connecting the owner as shown on the Division's water right records to the person currently claiming ownership of all or a portion of the water right; and

4.1.3 Maps conforming to Rule R655-3-5 when conveyance by Appurtenance to land is asserted in the report of conveyance.

4.1.4 Additional information in the form of affidavits, opinions, and explanations if deemed necessary by the state engineer to process the ROC.

4.1.5 A fee paid to the State Engineer to process the Report of Conveyance pursuant to Utah Code Section 73-2-14(1)(q).

4.2 The content of a Report of Conveyance form is as follows:

4.2.1 A single specified water right number to which the report pertains. The ownership record of the Division for this water right number is the only record which will be updated when the ROC is deemed acceptably complete.

4.2.2 A summary of the documents relied upon to establish a Chain of Title including:

4.2.2.1 The type of conveyance document;

4.2.2.2 Recording information on a deed including the date it was signed and recorded, and the Recorder's entry number;

4.2.2.3 The grantor name(s) as it appears on the conveyance document;

4.2.2.4 The grantee names exactly as they appear on the conveyance document;

4.2.2.5 Any reservations or special conditions of conveyance.

4.2.2.6 If a portion of the owner's interest in a water right is conveyed, the "Portion" Report of Conveyance form must be used which additionally requires:

4.2.2.6.1 The quantity of each beneficial use conveyed.

4.2.2.6.2 If applicable, the quantity of use on a change application that was conveyed.

4.2.2.6.3 The diversion limit if applicable.

4.2.3 The number of any change application to which the report also pertains.

4.2.4 The mailing address of all new owner(s) as identified in the Chain of Title as the mailing address is to be shown on records of the state engineer.

4.2.5 A signed certification of the owner if the ROC is submitted by an individual without a professional certification attesting that the information contained in the ROC is true and accurate.

4.2.6 A signed certification by a Professional unless submittal by a Professional is exempted in these rules. The certification shall state: "The professional was retained by an owner of the water right to prepare or supervise the preparation of the Report of Conveyance; that the report is true and accurate to the best of the preparer's knowledge; that an appropriate search of County Recorder records has been made and that the attached documents evidence the ownership interest of the grantee." The certification must include the professional's name, profession, license number, mailing address and phone number.

4.3 Copies of deeds submitted as supporting documentation must be properly recorded in the county where water is diverted and, if different, the county where the water is used. The recording information must appear on deeds submitted.

4.4 A water right deed conveys only the water right or portion thereof expressly identified in the deed.

4.5 A document relied upon by a County Recorder's office to maintain a tract index for land with an appurtenant water right will be accepted as a conveyance document consistent with Utah Code Section 73-1-11(1)(b). Documents submitted must include: a chain of title from the person identified on the State Engineer's records as owning the water right to the person shown on the County Recorder's records as owning the property to which the water right is appurtenant; a copy of the tract index from the County Recorder; and/or an affidavit endorsed by the Report of Conveyance professional affirming that the water right has not been severed from the land but remains appurtenant to the property.

4.6 If an interest in a water right has been segregated from another water right, a deed recorded subsequent to the segregation must show the currently assigned water right number for the segregated water right.

4.7 The document required to support the change of the name of a corporation is a certificate of name change, or other similar document, stamped by the Utah Department of Commerce, or by the appropriate agency in the State in which the corporation is incorporated, accompanying the Report of Conveyance.

4.8 A copy of a marriage license evidences the change of name of an individual specified in the license.

4.9 A copy of a decree of a court of competent jurisdiction evidences the change of name of an individual as declared in the decree.

4.10 A copy of a death certificate evidences the dissolution of joint tenancy in favor of the surviving party (removal of a joint tenant as an owner on Division records).

4.11 A properly executed affidavit by an individual evidences aliases by which the individual may be named in other documents.

4.12 In the case of poor copies, improved copies may be requested.

4.13 Supporting documents must be arranged in ascending chronological order (oldest to youngest) by recording date.

R655-3-5. Maps and Mapping Standards for Reports of Conveyance.

5.1 Maps are required when a water right is conveyed as an appurtenance to property. A map is a graphical depiction of the water right place of use overlain by the metes and bounds description of the property conveyed in a land deed demonstrating graphically and to scale the portion of the water right which is appurtenant to the property described.

5.2 Maps shall meet the following standards:

5.2.1 Maps must be legible.

5.2.2 Maps may be 8 1/2 x 11 or 8 1/2 x 14 inches in size.

5.2.3 Maps are to state the water right number conveyed.

5.2.4 Maps are to include a north arrow.

5.2.5 Maps are to be drawn to scale with a graphical scale bar contained thereon.

5.2.6 Maps are to include appropriate Public Land Survey lines and labelled with section(s), township, range, and base and meridian.

5.2.7 At least one section corner location or appropriate survey tie is to be shown on the map and labelled as such.

5.2.8 Maps are to include and depict the entire parcel described as conveyed on the land deed and the actual acreage of the parcel.

5.2.9 Maps are to show by hatching or shading the authorized place of use of the water right which is appurtenant to land described in a land deed.

5.2.10 Maps are to show any reservations from the

property including property described by language such as "less and excepting" in the overall property description.

5.2.11 Each deed submitted must have a map accompanying it unless the property description in every deed is identical.

5.2.12 Maps should include a legend containing an identifier for the deed mapped, parcel numbers, subdivision name and lot numbers, and any other information needed to connect the map to the deed in a clear and consistent manner.

5.3 The accuracy and completeness of maps are the responsibility of the professional preparing the Report of Conveyance. Additional information may be required by the Division of Water Rights to adequately identify the property to which water rights are appurtenant or the place of use of a portion of a water right being conveyed.

R655-3-6. Procedures for Processing a Report of Conveyance.

6.1 Upon receipt of a Report of Conveyance, the state engineer shall assess if the Report of Conveyance is acceptably completed in form and substance.

6.2 If a Report of Conveyance is acceptably complete, it will be processed and Division records updated to reflect ownership of the water right in accordance with the Report. Written notice will be sent to the new owner identified in the Report of Conveyance.

6.3 If a Report of Conveyance is not acceptably complete, the ROC will be returned to the submitting party with an explanation of why it is not considered acceptably complete.

6.4 If the fee for the ROC has been processed by the state engineer prior to the return of a ROC to the submitting party, the state engineer will place a copy of the ROC on the water right file but will not update ownership records until the ROC is acceptably complete.

The submitting party will be allowed 90 days to return a corrected or completed ROC for processing without further fee.

6.5 The accuracy and completeness of the Report is the sole responsibility of the submitter.

6.6 A Report of Conveyance which conflicts with another Report on the same water right will not be processed and will be returned to the submitter. Its receipt will be noted on records of the state engineer and the disputing parties notified. The state engineer will take no further administrative action on a water right which is the subject of a conflict until the conflict is resolved.

6.6.1 Conflicted Holders may resolve the title conflict by filing documents that resolve the title question with the State Engineer. To be evaluated, any documents submitted, including court orders, must first be filed with the applicable county recorder where the water right is diverted and used. Any resolution document, agreement or order between the Conflicted Holders must directly address the title conflict of record rather than appeal to state engineer discretion in resolving the matter.

6.6.2 Nothing in this Section 6.6 shall be construed to create a title conflict where a deed with precedence over subsequent deeds relied upon in a chain of title used to update state engineer records is submitted in a Report of Conveyance. However, the deed holder assumes ownership of the water right on state engineer records subject to all administrative actions which have occurred at the time the ROC is submitted and individual ROCs must be filed for each segregated portion of the water right affected by the conveyance documents.

R655-3-7. When a Water Right Owner Is Authorized to Prepare a Report of Conveyance Without a Professional.

7.1 A Report of Conveyance may be submitted by the owner of a water right without the certification of a professional only in the following situations:

7.1.1 When the deed or deeds convey 100% of a water right and state the water right number on the deed.

7.1.2 When the deed or deeds convey an owner's interest in a portion of a water right, all owners of that interest of the right shall sign the deed as grantors, the deed conveys the portion by stating the water right number on the deed, and the sole supply has been established for the portion conveyed.

7.1.3 When the Report of Conveyance is submitted to change the name of an owner but does not report the conveyance of an interest in the water right to a new party.

7.1.4 When the Report of Conveyance is submitted to remove the name of a joint tenant due to death.

KEY: conveyances, ownership, titles, water rights
October 12, 2016 73-1
Notice of Continuation July 27, 2019 73-2-1(4)(a)

R655. Natural Resources, Water Rights.
R655-4. Water Wells.
R655-4-1. Purpose, Scope, and Exclusions.

1.1 Purpose.

Under Subsection 73-2-1(4)(b), the State Engineer, as the Director of the Utah Division of Water Rights, is required to make rules regarding well construction and related regulated activities and the licensing of water well drillers and pump installers.

These rules are promulgated pursuant to Section 73-3-25. The purpose of these rules is to assist in the orderly development of underground water; insure that minimum construction standards are followed in the drilling, construction, deepening, repairing, renovating, cleaning, development, testing, disinfection, pump installation/repair, and abandonment of water wells and other regulated wells; prevent pollution of aquifers within the state; prevent wasting of water from flowing wells; obtain accurate records of well construction operations; and insure compliance with the state engineer's authority for appropriating water.

These rules also establish administrative procedures for applications, approvals, hearings, notices, revocations, orders and their judicial review, and all other administrative procedures required or allowed by these rules. These rules shall be liberally construed to permit the Division to effectuate the purposes of Utah law.

1.2 Scope.

The drilling, construction, deepening, repair, renovation, replacement, or abandonment of the following types of wells are regulated by these administrative rules and the work must be permitted by the Utah Division of Water Rights and completed by a licensed well driller. The cleaning, development, testing, and disinfection, in the following types of wells is regulated by these administrative rules and the work must be completed by a licensed well driller or a licensed pump installer; however a permit is not required. Moreover, the installation and repair of pumps in the following types of wells are regulated by these administrative rules and the work must be completed by a licensed pump installer; however a permit is not required. Pursuant to Section 73-3-25(2)(a), a person conducting pump installation and repair work on their own well on their own property for their own use is exempt from these rules and is not required to have a pump installer's license. These rules apply to both vertical, angle and horizontal wells if they fall within the criteria listed below. The rules contained herein pertain only to work on or within the well itself. These rules do not regulate the incidental work beyond the well such as plumbing, electrical, and excavation work up to the well; and the building of well enclosures unless these activities directly impact or change the construction of the well itself. The process for an applicant to obtain approval to drill, construct, deepen, repair, renovate, clean, develop, abandon, or replace the wells listed below in 1.2.1, 1.2.2, 1.2.3, and 1.2.4 is outlined in Section R655-4-9 of these rules.

1.2.1 Cathodic protection wells which are completed to a depth greater than 30 feet.

1.2.2 Closed-loop and open-loop Heating and/or cooling exchange wells which are greater than 30 feet in depth and which encounter formations containing groundwater. If a separate well or borehole is required for re-injection purposes, it must also comply with these administrative rules.

1.2.3 Monitor, piezometer, and test wells designed for the purpose of testing and monitoring water level, pressure, quality and/or quantity which are completed to a depth greater than 30 feet.

1.2.4 Other wells (cased or open) which are completed to a depth greater than 30 feet that can potentially interfere with established aquifers such as wells to monitor mass movement (inclinometers), facilitate horizontal utility placement, monitor man-made structures, house instrumentation to monitor structural performance, or dissipate hydraulic pressures (dewatering wells).

1.2.5 Private water production wells which are completed to a depth greater than 30 feet.

1.2.6 Public water system supply wells.

1.2.7 Recharge and recovery wells which are drilled under the provisions of Title 73, Chapter 3b "Groundwater Recharge and Recovery Act" Utah Code Annotated.

1.3 Exclusions.

The drilling, construction, deepening, repair, renovation, replacement, cleaning, development, pump installation/repair, or abandonment of the following types of wells or boreholes are excluded from regulation under these administrative rules:

1.3.1 Any wells described in Section 1.2 that are constructed to a final depth of 30 feet or less. However, diversion and beneficial use of groundwater from wells at a depth of 30 feet or less shall require approval through the appropriation procedures and policies of the state engineer and Title 73, Chapter 3 of the Utah Code Annotated.

1.3.2 Geothermal wells. Although not regulated under the Administrative Rules for Water Wells, geothermal wells are subject to Section 73-22-1 "Utah Geothermal Resource Conservation Act" Utah Code Annotated and the rules promulgated by the state engineer including Section R655-1, Wells Used for the Discovery and Production of Geothermal Energy in the State of Utah. Moreover, those drilling and constructing geothermal wells must hold a current well driller's license in accordance with Sections R655-4-3 and R655-4-8 of these rules.

1.3.3 Temporary exploratory wells drilled to obtain information on the subsurface strata on which an embankment or foundation is to be placed or an area proposed to be used as a potential source of material for construction.

1.3.4 Wells or boreholes drilled or constructed into non-water bearing zones or which are 30 feet or less in depth for the purpose of utilizing heat from the surrounding earth.

1.3.5 Geotechnical borings drilled to obtain lithologic data which are not installed for the purpose of utilizing or monitoring groundwater, and which are properly sealed immediately after drilling and testing.

1.3.6 Oil, gas, and mineral/mining exploration/production wells. These wells are subject to rules promulgated under the Division of Oil, Gas, and Mining of the Utah Department of Natural Resources.

1.3.7 Well setback/separation and water quality testing requirements are generally regulated at the local health department level or by another state agency.

R655-4-2. Definitions.

ABANDONED WELL - any well which is not in use and has been sealed or plugged with approved sealing materials so that it is rendered unproductive and shall prevent contamination of groundwater. A properly abandoned well will not produce water nor serve as a channel for movement of water from the well or between water bearing zones.

ADDRESS - the current residential or business address of a well driller as recorded in the Division's files.

ADJUDICATIVE PROCEEDING - means, for the purposes of this rule, an administrative action or proceeding commenced by the Division in conjunction with an Infraction Notice; or an administrative action or proceeding commenced in response to a well driller's appeal or a Cease and Desist Order or an appeal of a restriction or denial of a license renewal application.

AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI) - a nationally recognized testing laboratory that certifies building products and adopts standards including

those for steel and plastic (PVC) casing utilized in the well drilling industry. ANSI standards are often adopted for use by ASTM and AWWA. Current information on standards can be obtained from: ANSI, 1430 Broadway, New York, NY 10018 (ANSI.org).

AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) - an independent organization concerned with the development of standards on characteristics and performance of materials, products and systems including those utilized in the well drilling industry. Information may be obtained from: ASTM, 1916 Race Street, Philadelphia, PA 19013 (ASTM.org).

AMERICAN WATER WORKS ASSOCIATION (AWWA) - an international association which publishes standards intended to represent a consensus of the water supply industry that the product or procedure described in the standard shall provide satisfactory service or results. Information may be obtained from: AWWA, 6666 West Quincy Avenue, Denver CO 80235 (AWWA.org).

ANNULAR SPACE - the space between the outer well casing and the borehole or the space between two sets of casing.

AQUIFER - a porous underground formation yielding withdrawable water suitable for beneficial use.

ARTESIAN AQUIFER - a water-bearing formation which contains underground water under sufficient pressure to rise above the zone of saturation.

ARTESIAN WELL - a well where the water level rises appreciably above the zone of saturation.

BACKFLOW PREVENTER - means a safety device, assembly, or construction practice used to prevent water pollution or contamination by preventing flow of a mixture of water and/or chemicals from the distribution piping into a water well or in the opposite direction of that intended. This includes but is not limited to check valves, foot valves, curb stops, or air gaps

BENTONITE - a highly plastic, highly absorbent, colloidal swelling clay composed largely of mineral sodium montmorillonite. Bentonite is commercially available in powdered, granular, tablet, pellet, or chip form which is hydrated with potable water and used for a variety of purposes including the stabilization of borehole walls during drilling, the control of potential or existing high fluid pressures encountered during drilling below a water table, well abandonment, and to provide a seal in the annular space between the well casing and borehole wall.

BENTONITE GROUT - a mixture of bentonite and potable water specifically designed to seal and plug wells and boreholes mixed at manufacturer's specifications to a grout consistency which can be pumped through a pipe directly into the annular space of a well or used for abandonment. Its primary purpose is to seal the borehole or well in order to prevent the subsurface migration or communication of fluids.

CASH BOND - A type of well driller bond in the form of a certificate of deposit (CD) submitted and assigned to the State Engineer by a licensed driller to satisfy the required bonding requirements.

CASING - a tubular retaining and sealing structure that is installed in the borehole to maintain the well opening.

CATHODIC PROTECTION WELL - a well constructed for the purpose of installing deep anodes to minimize or prevent electrolytic corrosive action of metallic structures installed below ground surface, such as pipelines, transmission lines, well casings, storage tanks, or pilings.

CEASE AND DESIST ORDER - means an order issued by the State Engineer comprised of a red tag placed on a well rig at the well drilling location and a letter to the driller requiring that all well drilling activity at the well drilling location cease until such time as the order is lifted.

CLOSED-LOOP HEATING/COOLING EXCHANGE WELL - means the subsystem of a geothermal heat pump system that consists of the drilled vertical borehole into the Earth that is equipped with a heat exchange media conveyance tube (loop tube), and is grouted from the bottom of the vertical borehole to the Earth's surface at the drilling site. Construction of a geothermal heat pump loop well includes, in continuous order, drilling of the vertical borehole, placement of the loop tube to the bottom of the vertical borehole with the grout tremie, and grouting of the vertical borehole from the bottom of the vertical borehole to the Earth's surface at the drill site. Closed loop systems circulate a heat transfer fluid (such as water or a mixture of water and food grade/non-toxic anti-freeze) to exchange heat with the subsurface geological environment.

CONDUCTOR CASING - means the temporary or permanent casing used in the upper portion of the well bore to prevent collapse of the formation during the construction of the well or to conduct the gravel pack to the perforated or screened areas in the casing.

CONFINING UNIT - a geological layer either of unconsolidated material, usually clay or hardpan, or bedrock, usually shale, through which virtually no water moves.

CONSOLIDATED FORMATION - bedrock consisting of sedimentary, igneous, or metamorphic rock (e.g., shale, sandstone, limestone, quartzite, conglomerate, basalt, granite, tuff, etc.).

DEFAULT ORDER - means an order issued by the Presiding Officer after a well driller fails to attend a hearing in a well driller adjudicative proceeding. A Default Order constitutes a Final Judgment and Order.

DEWATERING WELL - a water extraction well constructed for the purpose of lowering the water table elevation, either temporarily or permanently, around a man-made structure or construction activity.

DISINFECTION - or disinfecting is the use of chlorine or other disinfecting agent or process approved by the state engineer, in sufficient concentration and contact time adequate to inactivate or eradicate bacteria such as coliform or other organisms.

DIVISION - means the Division of Water Rights. The terms Division and State Engineer may be used interchangeably in this rule.

DRAWDOWN - the difference in elevation between the static water level and the pumping water level in a well.

DRILL RIG - any power-driven percussion, rotary, boring, coring, digging, jetting, or augering machine used in the construction of a well or borehole.

EMERGENCY SITUATION - any situation where immediate action is required to protect life or property. Emergency status would also extend to any situation where life is not immediately threatened but action is needed immediately and it is not possible to contact the state engineer for approval. For example, it would be considered an emergency if a domestic well needed immediate repair over a weekend when the state engineer's offices are closed.

FILES - means information maintained in the Division's public records, which may include both paper and electronic information.

FINAL JUDGMENT AND ORDER - means a final decision issued by the Presiding Officer on the whole or a part of a well driller adjudicative proceeding. This definition includes "Default Orders."

GRAVEL PACKED WELL - a well in which filter material such as sand and/or gravel is placed in the annular space between the well intakes (screen or perforated casing) and the borehole wall to increase the effective diameter of the well and to prevent fine-grained sediments from entering the well.

GROUNDWATER - subsurface water in a zone of saturation.

GROUT - a fluid mixture of Portland cement or bentonite with water of a consistency that can be forced through a pipe and placed as required. Upon approval, various additives such as sand, bentonite, and hydrated lime may be included in the mixture to meet different requirements.

HEATING/COOLING EXCHANGE SYSTEM - also known as GeoExchange, ground-source heat pump, geothermal heat pump, and ground-coupled heat pump; a heat pump that uses the Earth itself as a heat source (heating) and heat sink (cooling). It is coupled to the ground by means of a closed loop heat exchanger installed vertically underground or by physically pumping water from a well with an open loop systems and utilizing the thermal properties of the water to heat or cool.

HYDRAULIC FRACTURING - the process whereby water or other fluid is pumped with sand under high pressure into a well to fracture and clean-out the rock surrounding the well bore thus increasing the flow to the well.

INFRACTION NOTICE - means a notice issued by the Division to the well driller informing him of his alleged act or acts violating the Administrative Rules for Water Drillers and the infraction points that have been assessed against him.

ISSUED - means a document executed by an authorized delegate of the State Engineer (in the case of an Infraction Notice) or by the Presiding Officer (in the case of a Hearing Notice, Final Judgment and Order or other order related to a well driller adjudicative proceeding) and deposited in the mail.

LICENSE - means the express grant of permission or authority by the State Engineer to carry on the activity of well drilling.

LICENSED PUMP INSTALLER - means a qualified individual who has obtained a license from the Division and who is engaged in the installation, removal, alteration, or repair of pumps and pumping equipment for compensation.

LOG - means an official document or report that describes where, when, and how a regulated well was drilled, constructed, deepened, repaired, renovated, cleaned, developed, tested, equipped with pumping equipment, and/or abandoned. A Log shall be submitted to the Division by a licensee on forms provided by the Division including a Well Driller's Report, Well Abandonment Report, or Pump Installer's Report.

MONITOR WELL - a well, as defined under "well" in this section, that is constructed for the purpose of determining water levels, monitoring chemical, bacteriological, radiological, or other physical properties of ground water or vadose zone water.

NATIONAL SANITATION FOUNDATION (NSF) - a voluntary third party consensus standards and testing entity established under agreement with the U. S. Environmental Protection Agency (EPA) to develop testing and adopt standards and certification programs for all direct and indirect drinking water additives and products. Information may be obtained from: NSF, 3475 Plymouth Road, P O Box 1468, Ann Arbor, Michigan 48106 (NSF.org).

NEAT CEMENT GROUT -- cement (types I, II, III, V, high-alumina, or a combination thereof) conforming to the ASTM Standard C150 (standard specification of Portland cement), with no more than six gallons of water per 94 pound sack (one cubic foot) of cement of sufficient weight density of not less than 15 lbs/gallon. One cubic yard of neat cement grout contains approximately 1993 pounds of Portland cement and not more than 127 gallons of clean water. Bentonite, controlled density fill (CDF), or fly ash shall not be added to neat cement grout unless state engineer approval is received.

NOMINAL SIZE - means the manufactured commercial designation of the diameter of a casing. An example would be casing with an outside diameter of 12 3/4 inches which may be nominally 12-inch casing by manufactured commercial designation.

OPEN-LOOP HEATING/COOLING EXCHANGE WELL - means a well system in which groundwater is extracted from a typical water production well and pumped through an above ground heat exchanger inside the heat pump system. Heat is either extracted or added by the primary refrigerant loop (primary loop refrigerant does not come into contact with the pumped water), and then the water is returned to the same aquifer by injection through the original extraction well or through a separate injection well.

OPERATOR - a drill rig operator or pump rig operator is an individual who works under the direct supervision of a licensed Utah Water Well Driller or Pump Installer and who can be left in responsible charge of regulated well drilling or pump installation/repair activity using equipment that is under the direct control of the licensee.

PARTY means the State Engineer, an authorized delegate of the State Engineer, the well driller, the pump installer, or the affected well owner.

PIEZOMETER - a tube or pipe, open at the bottom in groundwater, and sealed along its length, used to measure hydraulic head or water level in a geologic unit.

PITLESS ADAPTER - a commercially manufactured devise designed for attachment to a well casing which allows buried pump discharge from the well and allows access to the interior of the well casing for installation or removal of the pump or pump appurtenances, while preventing contaminants from entering the well. Such devices protect the water and distribution lines from temperature extremes, permit extension of the casing above ground as required in Subsection R655-4-11.3.2 and allow access to the well, pump or system components within the well without exterior excavation or disruption of surrounding earth or surface seal.

PITLESS UNIT - a factory-assembled device with cap which extends the upper end of a well casing to above grade and is o constructed as to allow for buried pump discharge from the well and allows access to the interior of the well casing for installation or removal of the pump or pump appurtenances, while preventing contaminants from entering the well. Such devices protect the water and distribution lines from temperature extremes, permit extension of the casing above ground as required in Subsection R655-4-11.3.2 and allow access to the well, pump or system components within the well without exterior excavation or disruption of surrounding earth or surface seal.

POLLUTION - the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animals, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any or reasonable purpose.

POTABLE WATER - water supplied for human consumption, sanitary use, or for the preparation of food or pharmaceutical products which is free from biological, chemical, physical, and radiological impurities.

PRESIDING OFFICER - means an authorized delegate of the State Engineer who conducts a well driller adjudicative proceeding.

PRESSURE GROUTING - a process by which grout is confined within the drillhole or casing by the use of retaining plugs or packers and by which sufficient pressure is applied to drive the grout slurry into the annular space or zone to be grouted.

PRIVATE WATER PRODUCTION WELL - a privately owned well constructed to supply water for any purpose which has been approved by the state engineer (such as irrigation, stockwater, domestic, commercial, industrial, etc.).

PROBATION - A disciplinary action that may be taken by the state engineer that entails greater review and regulation of well drilling activities but which does not prohibit a well driller from engaging in the well drilling business or operating well drilling equipment.

PROVISIONAL WELL - authorization granted by the state engineer to drill under a pending, unapproved water right, change or exchange application; or for the purpose of determining characteristics of an aquifer, or the existence of a useable groundwater source. Water from a provisional well cannot be put to beneficial use until the application has been approved.

PUBLIC WATER SYSTEM SUPPLY WELL - a well, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least 15 service connections or regularly serves an average of at least 25 individuals daily for at least 60 days out of the year. Public Water System Supply Wells are also regulated by the Division of Drinking Water in the Utah Department of Environmental Quality (Section R309 of the Utah Administrative Code).

PUMP/PUMPING EQUIPMENT - means any equipment or materials utilized or intended for use in withdrawing or obtaining groundwater for any use.

PUMP INSTALLATION/REPAIR - means the procedure employed in the placement and preparation for operation of pumps and pumping equipment at the water well location, including all construction or repair involved in making entrance to the water well, which involves the breaking of the well seal.

PUMPING WATER LEVEL - the water level in a well after a period of pumping at a given rate.

RECORD - means the official collection of all written and electronic materials produced in a well driller adjudicative proceeding, including but not limited to Infraction Notices, pleadings, motions, exhibits, orders and testimony produced during the adjudicative proceedings, as well as the files of the Division as defined herein.

RED TAG - is a component of a "CEASE AND DESIST ORDER" in the form of a red colored tag placed on a well at a well drilling location

REGISTRATION - means the express grant of permission or authority by the State Engineer to carry on the activity of well drilling or pump installation under the supervision of a licensed well driller or pump installer.

REPAIRING, RENOVATING, AND DEEPENING - means the deepening, hydrofracturing, re-casing, perforating, re-perforating, installation of packers or seals, and any other material change in the design or construction of a well. Material changes include but are not limited to casing installation or modification including casing extensions, installation or modification of liner pipe, reaming or under reaming of the borehole, pitless unit installation or re-sealing.

REVOCATION - A disciplinary action that may be taken by the state engineer that rescinds the well driller's Utah Water Well Driller's License

SAND - a material having a prevalent grain size ranging from 2 millimeters to 0.06 millimeters.

SAND CEMENT GROUT - a grout consisting of equal parts by volume of cement conforming to ASTM standard C150 and clean sand/aggregate with no more than six (6) gallons of water per 94 pound sack (one cubic foot) of cement.

STANDARD DIMENSION RATIO (SDR) - the ratio of average outside pipe diameter to minimum pipe wall thickness.

STATE ENGINEER - the director of the Utah Division of Water Rights or any employee of the Division of Water Rights designated by the state engineer to act in administering these rules. The terms Division and State Engineer may be used interchangeably in this rule.

STATIC LEVEL - stabilized water level in a non-pumped well beyond the area of influence of any pumping well.

SURETY BOND - an indemnity agreement in a sum certain and payable to the state engineer, executed by the licensee as principal and which is supported by the guarantee of a corporation authorized to transact business as a surety in the State of Utah.

SUSPENSION - A disciplinary action that may be taken by the state engineer that prohibits the well driller from engaging in the well drilling business or operating well drilling equipment as a registered operator for a definite period of time and /or until certain conditions are met.

TEST WELL - authorization granted by the state engineer to drill under a Non-production well approval for the purpose of determining characteristics of an aquifer, or the existence of a useable groundwater source. Water from a Test Well cannot be put to beneficial use.

TREMIE PIPE - a device that carries materials such as seal material, gravel pack, or formation stabilizer to a designated depth in a drill hole or annular space.

UNCONSOLIDATED FORMATION - loose, soft, incoherent rock material composed of sedimentary, igneous, or metamorphic rock which includes sand, gravel, and mixtures of sand and gravel. These formations are widely distributed and can possess good water storage and transmissivity characteristics.

UNHYDRATED BENTONITE - dry bentonite consisting primarily of granules, tablets, pellets, or chips that may be placed in a well or borehole in the dry state and hydrated in place by either formation water or by the addition of potable water into the well or borehole containing the dry bentonite. Unhydrated bentonite can be used for sealing and abandonment of wells.

VADOSE ZONE - the zone containing water under less than atmospheric pressure, including soil water, intermediate vadose water and capillary water. The zone extends from land surface to the zone of saturation or water table.

WATERTIGHT - a condition that does not allow the entrance, passage, or flow of water under normal operating conditions.

WELL - a horizontal or vertical excavation or opening into the ground made by digging, boring, drilling, jetting, augering, or driving or any other artificial method and left cased or open for utilizing or monitoring underground waters.

WELL DRILLER - any person who is licensed by the state engineer to construct water wells for compensation or otherwise. The licensed driller has total responsibility for the construction work in progress at the well drilling site.

WELL DRILLER BOND - A financial guarantee to the state engineer, in the form of a surety bond or cash bond, by which a licensed driller binds himself to pay the penal sum of $5,000 to the state engineer in the event of significant noncompliance with the Administrative Rules for Water Wells.

WELL DRILLING - the act of drilling, constructing, deepening, replacing, repairing, renovating, cleaning, developing, or abandoning a well.

R655-4-3. Licenses and Registrations.

3.1 General.

3.1.1 Section 73-3-25 of the Utah Code requires every person that drills, constructs, deepens, repairs, renovates,

cleans, develops, tests, disinfects, installs/repairs pumps, and abandons a regulated well in the state to obtain a license from the state engineer. Licenses and registrations are not transferable. Applicants for well driller or pump installer licensure must meet all requirements in this subsection, and applicants cannot obtain a Utah license through reciprocity or comity with a similar license from other States or organizations.

3.1.2 Any person found to be performing regulated well activity without a valid license (well driller's license or pump installer's license, as applicable) or operator's registration will be ordered to cease and desist by the state engineer. The order may be made verbally but must also be followed by a written order. The order may be posted at an unattended well drilling site. A person found performing regulated well activities without a license will be subject to the state engineer's enforcement powers under Section 73-2-25 of the Utah Code (Related rules: Section R655-14 UAC) and subject to criminal prosecution under Section 73-3-26 of the Utah Code annotated, 1953.

3.2 Well Driller's License.

A Utah Well Driller's License allows an individual to perform regulated well activity including drilling, construction, deepening, repairing, renovating, cleaning, development, testing, disinfection, pump installation/repair, and abandonment of water wells and other regulated wells. An applicant must meet the following requirements to become licensed as a Utah Water Well Driller:

3.2.1 Applicants must be 21 years of age or older and be a citizen of the United States, or be lawfully entitled to remain and work in the United States in accordance with Section 63G-11-104 UCA (Applicants must file a Division Lawful Presence Affidavit with the license application);

3.2.2 Complete and submit the application form provided by the state engineer.

3.2.3 Pay the application fee approved by the state legislature.

3.2.4 Provide documentation of experience according to the following standards:

3.2.4.1 Water well drillers shall provide documentation of at least two (2) years of full time prior water well drilling experience utilizing the applied for drilling methods with a licensed driller in good standing OR documentation of sixteen (16) applicable wells constructed by the applicant under the supervision of a licensed well driller in good standing.

3.2.4.2 Monitor well drillers shall provide documentation of at least two (2) years of full time prior monitor well drilling experience utilizing the applied for drilling methods with a licensed driller in good standing OR documentation of thirty two (32) wells constructed by the applicant under the supervision of a licensed well driller in good standing.

3.2.4.3 Heating/cooling exchange and other non-production well drillers must provide documentation of at least six (6) months of full time prior well drilling experience utilizing the applied for drilling methods with a licensed driller in good standing AND documentation of sixteen (16) well drilling projects constructed by the applicant under the supervision of a licensed well driller in good standing.

3.2.4.4 A copy of the well log for each well constructed must be provided. The documentation must also show the applicant's experience with each type of drilling rig to be listed on the license. Acceptable documentation will include registration with the Division of Water Rights, letters from licensed well drillers (Utah or other states), or a water well drilling license granted by another state, etc.

3.2.4.5 Successful completion of training/education in well drilling, geology, map reading, and other related subjects may be substituted for up to, but not exceeding, twenty five percent of the required drilling experience, and for up to, but not exceeding, twenty five percent of the required drilled wells or well drilling projects. The state engineer will determine the number of months of drilling experience and the number of drilled wells that will be credited for the classroom study.

3.2.4.6 A limited or restricted license can be obtained in subcategories of activity including well cleaning, well renovation, well abandonment, and well development/testing. Testing requirements for these license subcategories will be reduced or limited in accordance with the level of activity.

3.2.5 File a well driller bond in the sum of $5,000 with the Division of Water Rights payable to the state engineer. The well driller bond must be filed under the conditions and criteria described in Section 4-3.9.

3.2.6 Obtain a score of at least 70% on each of the written licensing examinations required and administered by the state engineer. The required examinations test the applicant's knowledge of:

a. The Administrative Rules for Water Wells and Utah water law as it pertains to underground water;

b. The minimum construction standards established by the state engineer for water well construction;

c. Geologic formations and proper names used in describing underground material types;

d. Reading maps and locating points from descriptions based on section, township, and range;

e. Groundwater geology and the occurrence and movement of groundwater;

f. The proper operating procedures and construction methods associated with the various types of water well drilling rigs. (A separate test is required for each type of water well drilling rig to be listed on the license).

3.2.7 Demonstrate proficiency in resolving problem situations that might be encountered during the construction of a water well by passing an oral examination administered by the state engineer.

3.3 Drill Rig Operator's Registration.

An applicant must meet the following requirements to become registered as a drill rig operator:

3.3.1 Applicants must be 18 years of age or older and be a citizen of the United States, or be lawfully entitled to remain and work in the United States in accordance with Section 63G-11-104 UCA (Applicants must file a Division Lawful Presence Affidavit with the operator application).

3.3.2 Complete and submit the application form provided by the state engineer.

3.3.3 Pay the application fee approved by the state legislature.

3.3.4 Provide documentation of at least six (6) months of prior water well drilling experience with a licensed driller in good standing. The documentation must show the applicant's experience with each type of drilling rig to be listed on the registration. Acceptable documentation will include letters from licensed well drillers or registration as an operator in another state.

3.3.5 Obtain a score of at least 80% on a written examination of the minimum construction standards established by the state engineer for water well construction. The test will be provided to the licensed well driller by the state engineer. The licensed well driller will administer the test to the prospective operator and return it to the state engineer for scoring.

3.4 Pump Installer's License.

A Utah Pump Installer's License allows an individual to perform regulated pump activity including pump removal, installation, and repair in water wells and other regulated wells. A licensed pump installer can also clean, develop, pump test, and disinfect a regulated well. An individual (does

not include entities such as businesses, corporations, governments, water systems, and municipalities) can perform pump installation and repair work on their own well on their own property without obtaining a Pump Installer's License. An applicant must meet the following requirements to become licensed as a Utah Pump Installer:

3.4.1 Applicants must be 21 years of age or older and be a citizen of the United States, or be lawfully entitled to remain and work in the United States in accordance with Section 63G-11-104 UCA (Applicants must file a Division Lawful Presence Affidavit with the license application).

3.4.2 Complete and submit the application form provided by the state engineer.

3.4.3 Pay the application fee approved by the state legislature.

3.4.4 Provide documentation of experience of at least two (2) years of full time prior water well pump installation and repair experience with a driller or pump installer in good standing

3.4.4.4 The documentation must show the applicant's experience with each type of pump rig to be listed on the license. Acceptable documentation will include registration with the Division of Water Rights, reference letters from licensed well drillers/pump installers (Utah or other states), or a license granted by another state, etc.

3.4.4.5 Successful completion of training/education in pump installation/repair and other related subjects may be substituted for up to, but not exceeding, twenty five percent of the required pump experience. The state engineer will determine the number of months of drilling experience that will be credited for the classroom study.

3.4.5 File a pump installer bond in the sum of $5,000 with the Division of Water Rights payable to the state engineer. The bond must be filed under the conditions and criteria described in Section 4-3.9.

3.4.6 Obtain a score of at least 70% on each of the written licensing examinations required and administered by the state engineer. The required examinations test the applicant's knowledge of:

a. The Administrative Rules for Water Wells and Utah water law as it pertains to underground water;

b. The minimum construction standards established by the state engineer pertaining to pump installation and repair;

c. Groundwater protection procedures and standards applicable to pump installation and repair work on wells;

d. The proper operating procedures and methods associated with pump installation and repair.

3.4.7 Demonstrate proficiency in resolving problem situations that might be encountered during pump installation and repair of a water well by passing an oral examination administered by the state engineer.

3.5 Pump Rig Operator's Registration.

An applicant must meet the following requirements to become registered as a pump rig operator:

3.5.1 Applicants must be 18 years of age or older and be a citizen of the United States, or be lawfully entitled to remain and work in the United States in accordance with Section 63G-11-104 UCA (Applicants must file a Division Lawful Presence Affidavit with the license application).

3.5.2 Complete and submit the application form provided by the state engineer.

3.5.3 Pay the application fee approved by the state legislature.

3.5.4 Provide documentation of at least six (6) months of prior pump installation and repair experience with a licensed driller or pump installer in good standing. Acceptable documentation will include letters from licensed well drillers or registration as an operator in another state.

3.5.5 Obtain a score of at least 80% on a written examination of the minimum construction standards established by the state engineer for pump installation and repair. The test will be provided to the licensed pump installer/well driller by the state engineer. The licensed pump installer/well driller will administer the test to the prospective operator and return it to the state engineer for scoring.

3.6 Conditional, Restricted, or Limited Licenses.

The state engineer may issue a restricted, conditional, or limited license to an applicant based on prior drilling experience.

3.7 Refusal to Issue a License or Registration.

The state engineer may, upon investigation and after a hearing, refuse to issue a license or a registration to an applicant if it appears the applicant has not had sufficient training or experience to qualify as a competent well driller, pump installer, or operator.

3.8 Falsified Applications.

The state engineer may, upon investigation and after a hearing, revoke a license or a registration in accordance with Section 5.6 if it is determined that the original application contained false or misleading information.

3.9 Well Driller/Pump Installer Bond.

3.9.1 General

3.9.1.1. In order to become licensed and to continue licensure, well drillers and pump installers must file a bond in the form of a surety bond or cash bond, approved by the state engineer, in the sum of five thousand dollars ($5,000) with the Division of Water Rights, on a form provided by the Division, which is conditioned upon proper compliance with the law and these rules and which is effective for the licensing period in which the license is to be issued. The bond shall stipulate the obligee as the "Office of the State Engineer". The bond is penal in nature and is designed to ensure compliance by the licensed well driller or pump installer to protect the groundwater resource, the environment, and public health and safety. The bond may only be exacted by the state engineer for the purposes of investigating, repairing, or abandoning wells in accordance with applicable rules and standards. No other person or entity may initiate a claim against the bond. Lack of a current and valid bond shall be deemed sufficient grounds for denial or discontinuation of a driller's/pump installer's license. The well driller/pump installer bond may consist of a surety bond or a cash bond as described below.

3.9.2 Surety Bonds.

3.9.2.1. The licensee and a surety company or corporation authorized to do business in the State of Utah as surety shall bind themselves and their successors and assigns jointly and severally to the state engineer for the use and benefit of the public in full penal sum of five thousand dollars ($5,000). The surety bond shall specifically cover the licensee's compliance with the Administrative Rules for Water Wells found in R655-4 of the Utah Administrative Code. Forfeiture of the surety bond shall be predicated upon a failure to drill, construct, repair, renovate, deepen, clean, develop, test, disinfect, perform pump work, or abandon a regulated well in accordance with these rules (R655-4 UAC). The bond shall be made payable to the 'Utah State Engineer' upon forfeiture. The surety bond must be effective and exactable in the State of Utah.

3.9.2.2. The bond and any subsequent renewal certificate shall specifically identify the licensed individual covered by the bond (company names may be included on the bond, but the licensed driller name must be included). The licensee shall notify the state engineer of any change in the amount or status of the bond. The licensee shall notify the state engineer of any cancellation or change at least thirty (30) days prior to the effective date of such cancellation or change. Prior to the expiration of the 30-day notice of cancellation,

the licensee shall deliver to the state engineer a replacement surety bond or transfer to a cash bond. If such a bond is not delivered, all activities covered by the license and bond shall cease at the expiration of the 30 day period. Termination shall not relieve the licensee or surety of any liability for incidences that occurred during the time the bond was in force.

3.9.2.3. Before the bond is forfeited by the licensee and exacted by the state engineer, the licensee shall have the option of resolving the noncompliance to standard either by personally doing the work or by paying to have another licensed driller do the work. If the licensee chooses not to resolve the problem that resulted in noncompliance, the entire bond amount of five thousand dollars ($5,000) shall be forfeited by the surety and expended by the state engineer to investigate, repair or abandon the well(s) in accordance with the standards in R655-4 UAC. Any excess there from shall be retained by the state engineer and expended for the purpose of investigating, repairing, or abandoning wells in accordance with applicable rules and standards. All claims initiated by the state engineer against the surety bond will be made in writing.

3.9.2.4. The bond of a surety company that has failed, refused or unduly delayed to pay, in full, on a forfeited bond is not approvable.

3.9.3 Cash Bonds.

3.9.3.1. The requirements for the well driller/pump installer bond may alternatively be satisfied by a cash bond in the form of a certificate of deposit (CD) for the amount of five thousand dollars ($5,000) issued by a federally insured bank or credit union with an office(s) in the State of Utah. The cash bond must be in the form of a CD. Cash, savings accounts, checking accounts, letters of credit, etc., are not acceptable cash bonds. The CD shall specifically identify the licensed individual covered by that fund. The CD shall be automatically renewable and fully assignable to the state engineer. CD shall state on its face that it is automatically renewable.

3.9.3.2. The cash bond shall specifically cover the licensee's compliance with well drilling rules found in R655-4 of the Utah Administrative Code. The CD shall be made payable or assigned to the state engineer and placed in the possession of the state engineer. If assigned, the state engineer shall require the bank or credit union issuing the CD to waive all rights of setoff or liens against those CD. The CD, if a negotiable instrument, shall be placed in the state engineer's possession. If the CD is not a negotiable instrument, the CD and a withdrawal receipt, endorsed by the licensee, shall be placed in the state engineer's possession.

3.9.3.3. The licensee shall submit CDs in such a manner which will allow the state engineer to liquidate the CD prior to maturity, upon forfeiture, for the full amount without penalty to the state engineer. Any interest accruing on a CD shall be for the benefit of the licensee.

3.9.3.4. The period of liability for a cash bond is five (years) after the expiration, suspension, or revocation of the license. The cash bond will be held by the state engineer until the five year period is over, then it will be relinquished to the licensed driller. In the event that a cash bond is replaced by a surety bond, the period of liability, during which time the cash bond will be held by the state engineer, shall be five (5) years from the date the new surety bond becomes effective.

3.9.4 Exacting a Well Driller/Pump Installer Bond.

3.9.4.1. If the state engineer determines, following an investigation and a hearing in accordance with the process defined in Sections 4-5, 4-6, and 4-7, that the licensee has failed to comply with the Administrative Rules for Water Wells and refused to remedy the noncompliance, the state engineer may suspend or revoke a license and fully exact the well driller bond and deposit the money as a non-lapsing dedicated credit.

3.9.4.2. The state engineer may expend the funds derived from the bond to investigate or correct any deficiencies which could adversely affect the public interest resulting from non-compliance with the Administrative Rules by any well driller/pump installer.

3.9.4.3. The state engineer shall send written notification by certified mail, return receipt requested, to the licensee and the surety on the bond, if applicable, informing them of the determination to exact the well driller bond. The state engineer's decision regarding the noncompliance will be attached to the notification which will provide facts and justification for bond exaction. In the case of a surety bond exaction, the surety company will then forfeit the total bond amount to the state engineer. In the case of a cash bond, the state engineer will cash out the CD. The exacted well driller bond funds may then be used by the state engineer to cover the costs of well investigation, repair, and/or abandonment.

R655-4-4. Administrative Requirements and General Procedures.

4.1 Authorization to Drill or Conduct Regulated Activity.

The well driller shall make certain that a valid authorization or approval to drill exists before engaging in regulated well drilling activity. Authorization to drill shall consist of a valid 'start card' based on any of the approvals listed below. Items 4.1.1 through 4.1.12 allow the applicant to contract with a well driller to drill, construct, deepen, replace, repair, renovate, or abandon exactly one well at each location listed on the start card or approval form. The drilling of multiple borings/wells at an approved location/point of diversion is not allowed without authorization from the state engineer's office. Most start cards list the date when the authorization to drill expires. If the expiration date has passed, the start card and authorization to engage in regulated drilling activity is no longer valid. If there is no expiration date on the start card, the driller must contact the state engineer's office to determine if the authorization to drill is still valid. When the work is completed, the permission to drill is terminated. Preauthorization or pre-approval of pump installation/repair work, well cleaning, development, testing, and disinfection is not required. A well renovation permit is required if an existing well is to be modified by activities such as deepening, casing/seal/gravel pack repair/renovation, liner installation, pitless adapter/unit installation, and perforating/screen installation. A well renovation permit is not required if the well is not modified by activities such as cleaning, development, testing, disinfection, and pump work.

4.1.1 An approved application to appropriate.

4.1.2 A provisional well approval letter (also known as a Rush Letter Approval).

An approved provisional well letter grants authority to drill but allows only enough water to be diverted to determine the characteristics of an aquifer or the existence of a useable groundwater source.

4.1.3 An approved permanent change application.

4.1.4 An approved exchange application.

4.1.5 An approved temporary change application.

4.1.6 An approved application to renovate or deepen an existing well.

4.1.7 An approved application to replace an existing well.

4.1.8 An approved monitor well letter.

An approved monitor well letter grants authority to drill but allows only enough water to be diverted to monitor groundwater.

4.1.9 An approved heat exchange well letter.

4.1.10 An approved cathodic protection well letter.

4.1.11 An approved non-production well construction application.

4.1.12 Any letter or document from the state engineer directing or authorizing a well to be drilled or work to be done on a well.

4.2 Start Cards.

4.2.1 Prior to commencing work to drill, construct, deepen, replace, repair, renovate, clean, or develop any well governed by these administrative rules, the driller must notify the state engineer of that intention by transmitting the information on the "Start Card" to the state engineer by telephone (leaving a voice mail is acceptable notification), by facsimile (FAX), by hand delivery, or by e-mail (with completed Start Card scanned and attached to e-mail). Thereafter, a completed original Start Card must be sent to the state engineer by the driller after it has been telephoned in (including voice mail). A completed original Start Card does not need to be sent to the state engineer by the driller after it has been faxed or E-mailed. A copy of the Start Card should be kept at the drill site at all times regulated activity is being conducted.

4.2.2 A specific Start Card is printed for each well drilling approval and is furnished by the state engineer to the applicant or the well owner. The start card is preprinted with the water right or non-production well number, owner name/address, and the approved location of the well. The state engineer marks the approved well drilling activity on the card. If a Start Card is stamped with 'Special Conditions', the licensee shall contact the state engineer's office to determine what the special drilling conditions or limitations are; then implement them in the drilling and construction of the well. The driller must put the following information on the card:

a. The date on which work on the well will commence;

b. The projected completion date of the work;

c. The well driller's license number;

d. The licensed well driller's signature.

4.2.3 When a single authorization is given to drill wells at more than one point of diversion, a start card shall be submitted for each location to be drilled.

4.2.4 Following the submittal of a start card, if the actual start date of the drilling activity is postponed beyond the date identified on the start card, the licensed driller must notify the state engineer of the new start date.

4.2.5 A start card is not required to abandon a well. However, prior to commencing well abandonment work, the driller is required to notify the state engineer by telephone, by facsimile, or by e-mail of the proposed abandonment work. The notice must include the location of the well. The notice should also include the water right or non-production well number associated with the well and the well owner if that information is available.

4.2.6 A start card or pre-notification is not required to perform pump installation and repair work on a well.

4.3 General Requirements During Construction.

4.3.1 The well driller or pump installer shall have the required penal bond continually in effect during the term of the license; otherwise the license will become inactive.

4.3.2 The well driller's/pump installer's license number or company name exactly as shown on the license must be prominently displayed on each well drilling/pump rig operated under the license. If the company name is changed the licensee must immediately inform the state engineer of the change in writing.

4.3.3 A licensed well driller or a registered drill rig operator must be at the well site whenever the following aspects of well construction are in process: advancing the borehole, setting casing and screen, placing a filter pack, constructing a surface seal, or similar activities involved in well deepening, renovation, repair, cleaning, developing, testing, disinfecting, capping, pitless installation, or abandoning. All registered drill rig operators working under a well driller's license must be employees of the well driller and must use equipment either owned by or leased by the licensed well driller.

4.3.3.1 A licensed pump installer or a registered pump rig operator must be at the well site whenever the following aspects of pump work are in process: pump removal, pump installation, modification to the well head including capping, sealing, and pitless adapter/unit installation, or similar activities on and within the well involving pump installation/repair. Inasmuch as a licensed pump installer is allowed to clean, develop, test, and disinfect a regulated well, these activities must be performed in the presence of a licensed pump installer or registered pump rig operator. All registered pump rig operators working under a pump installer's license must be employees of the pump installer and must use equipment either owned by or leased by the licensed pump installer.

4.3.3.2 A registered drill rig operator who is left in responsible charge of advancing the borehole, setting casing and screen, placing a filter pack, constructing a surface seal, or similar activities involved in well deepening, renovation, repair, cleaning, developing, testing, disinfecting, capping, pitless installation, or abandoning must have a working knowledge of the minimum construction standards and the proper operation of the drilling rig. The licensed well driller is responsible to ensure that a registered operator is adequately trained to meet these requirements.

4.3.3.3 A registered pump rig operator who is left in responsible charge of pump installation or repair must have a working knowledge of the minimum construction standards and the proper operation of the pump rig. The licensed well driller or pump installer is responsible to ensure that a registered operator is adequately trained to meet these requirements.

4.3.4 State engineer provisions for issuing cease and desist orders (Red Tags)

4.3.4.1 Construction Standards: The state engineer or staff of the Division of Water Rights may order that regulated work on a well cease if a field inspection reveals that the construction does not meet the minimum construction standards to the extent that the public interest might be adversely affected.

4.3.4.2 Licensed Drilling Method: A cease work order may also be issued if the well driller is not licensed for the drilling method being used for the well construction.

4.3.4.3 Incompetent Registered Operator: If, during a field inspection by the staff of the Division of Water Rights, it is determined that a registered operator in responsible charge does not meet these requirements, a state engineer's red tag (see Section 4.3.4) shall be placed on the drilling rig or pump rig and the drilling/pump operation shall be ordered to shut down. The order to cease work shall remain effective until a qualified person is available to perform the work.

4.3.4.4 No licensee or registered operator on site: If, during a field inspection by the staff of the Division of Water Rights, it is determined that neither a licensee or registered operator are one site when regulated well activity is occurring, the state engineer may order regulated well work to cease.

4.3.4.5 General: The state engineer's order shall be in the form of a red tag which shall be attached to the drilling/pump rig. A letter from the state engineer shall be sent to the licensee to explain the sections of the administrative rules which were violated. The letter shall also explain the requirements that must be met before the order can be lifted.

4.3.4.6 A licensee may appeal a Cease and Desist order by:

4.3.4.6.1 submitting to the Division a written statement clearly and concisely stating the specific disputed facts, the supporting facts, and the relief sought; or

4.3.4.6.2 requesting a hearing on the issue according to the provisions of R655-4-7.

4.3.4.7 A Cease and Desist Order shall remain in force during the pendency of the appeal.

4.3.5 When required by the state engineer, the well driller or registered operator shall take lithologic samples at the specified intervals and submit them in the bags provided by the state engineer.

4.3.6 A copy of the current Administrative Rules for Water Wells should be available at each well construction site for review by the construction personnel. Licensed well drillers/pump installers and registered operators must have proof of licensure or registration with them on site during regulated well activity.

4.3.7 Prior to starting construction of a new well, the licensed driller shall investigate and become familiar with the drilling conditions, geology of potential aquifers and overlying materials, anticipated water quality problems, and know contaminated water bearing zones that may be encountered in the area of the proposed drilling activity.

4.4 Removing Drill Rig From Well Site.

4.4.1 A well driller shall not remove his drill rig from a well site unless the well drilling activity is properly completed or abandoned in accordance with the construction standards in Sections 9 thru 12.

4.4.2 For the purposes of these rules, the regulated work on a well will be considered completed when the well driller removes his drilling rig from the well site. The regulated pump work on a well will be considered completed when the pump installer removes his pump rig from the well site.

4.4.3 The well driller may request a variance from the state engineer to remove a drill rig from a well prior to completion or abandonment. This request must be in written form to the state engineer. The written request must provide justification for leaving the well incomplete or un-abandoned and indicate how the well will be temporarily abandoned as provided in Section R655-4-14 and must give the date when the well driller plans to continue work to either complete the well or permanently abandon it.

4.5 Official Well Driller's Report (Well Log).

4.5.1 Within 30 days of the completion of regulated work on any well, the driller shall file an official well driller's report (well log) with the state engineer. The blank well log form will be mailed to the licensed well driller upon receipt of the information on the Start Card as described in Subsection 4.2.

4.5.2 The water right number or non-production well number, owner name/address, and the approved location of the well will be preprinted on the blank well log provided to the well driller. The driller is required to verify this information and make any necessary changes on the well log prior to submittal. The state engineer will mark the approved activity (e.g., new, replace, repair, deepen) on the well log. The driller must provide the following information on the well log:

a. The start and completion date of work on the well;

b. The nature of use for the well (e.g., domestic, irrigation, stock watering, commercial, municipal, provisional, monitor, cathodic protection, heat pump, etc.;

c. The borehole diameter, depth interval, drilling method and drilling fluids utilized to drill the well;

d. The lithologic log of the well based on strata samples taken from the borehole as drilling progresses;

e. Static water level information to include date of measurement, static level, measurement method, reference point, artesian flow and pressure, and water temperature;

f. The size, type, description, joint type, and depth intervals of casing, screen, and perforations;

g. A description of the filter pack, surface and interval seal material, and packers used in the well along with necessary related information such as the depth interval, quantity, and mix ratio;

h. A description of the finished wellhead configuration;

i. The date and method of well development;

j. The date, method, yield, drawdown, and elapsed time of a well yield test;

k. A description of pumping equipment (if available);

l. Other comments pertinent to the well activity completed;

m. The well driller's statement to include the driller name, license number, signature, and date.

4.5.3 Accuracy and completeness of the submitted well log are required. Of particular importance is the lithologic section which should accurately reflect the geologic strata penetrated during the drilling process. Sample identification must be logged in the field as the borehole advances and the information transferred to the well log form for submission to the state engineer.

4.5.4 An amended well log shall be submitted by the licensed driller if it becomes known that the original report contained inaccurate or incorrect information, or if the original report requires supplemental data or information. Any amended well log must be accompanied by a written statement, signed and dated by the licensed well driller, attesting to the circumstances and the reasons for submitting the amended well log.

4.6 Official Well Abandonment Reports (Abandonment Logs).

4.6.1 Whenever a well driller is contracted to replace an existing well under state engineer's approval, it shall be the responsibility of the well driller to inform the well owner that it is required by law to permanently abandon the old well in accordance with the provisions of Section R655-4-14.

4.6.2 Within 30 days of the completion of abandonment work on any well, the driller shall file an abandonment log with the state engineer. The blank abandonment log will be mailed to the licensed well driller upon notice to the state engineer of commencement of abandonment work as described in Subsection R655-4-4(4.2.5).

4.6.3 The water right number or non-production well number, owner name/address, and the well location (if available) will be preprinted on the blank abandonment log provided to the well driller. The driller is required to verify this information and make any necessary changes on the abandonment log prior to submitting the log. The driller must provide the following information on the abandonment log:

a. Existing well construction information;

b. Date of abandonment;

c. Reason for abandonment;

d. A description of the abandonment method;

e. A description of the abandonment materials including depth intervals, material type, quantity, and mix ratio;

f. Replacement well information (if applicable);

g. The well driller's statement to include the driller name, license number, signature, and date.

4.6.4 When a well is replaced and the well owner will not allow the driller to abandon the existing well, the driller must briefly explain the situation on the abandonment form and submit the form to the state engineer within 30 days of completion of the replacement well.

4.7 Official Pump Installation Report (Pump Log).

4.7.1 Soon after the completion of regulated pump work on any well, the licensee shall file an official pump

installation report (pump log) with the state engineer. If well disinfection is the only activity on a well, a pump log need not be filed with the state engineer. Blank pump log forms will be available to the licensee at any Division office, requested by mail, or downloaded from the Division's website (www.waterrights.utah.gov).

4.7.2 Pertinent information to be included on the pump log by the licensee shall consist of:

a. The water right number or non-production well number;

b. the well owner name and address;

c. The approved point of diversion or location of the well;

d. The start and completion date of work on the well;

e. The nature of use for the well (e.g., domestic, irrigation, stock watering, commercial, municipal, provisional, monitor, cathodic protection, heat pump, etc.;

f. Pertinent well details including casing diameters/depths, total well depth, well intake depth intervals, wellhead configuration including pitless adapter/unit configuration if applicable;

g. A detailed description of pump-related work performed on or in the well including pump setting depth, pump type, pumping rate, valving, drop piping, jointing, capping, testing, sealing, disinfection, and pitless adapter/unit installation;

h. Static water level information to include date of measurement, static level, measurement method, reference point, artesian flow and pressure, and water temperature;

i. A description of the finished wellhead configuration;

j. The date, method, yield, drawdown, and elapsed time of a well yield test;

k. Other comments pertinent to the well activity completed;

m. The pump installer's statement to include the licensee name, license number, signature, and date.

4.8 Incomplete or Incorrectly Completed Reports.

An incomplete log or a log that has not been completed correctly will be returned to the licensee to be completed or corrected. The log will not be considered filed with the state engineer until it is complete and correct.

4.8 Extensions of Time.

The well driller may request an extension of time for filing the well log if there are circumstances which prevent the driller from obtaining the necessary information before the expiration of the 30 days. The extension request must be submitted in writing before the end of the 30-day period.

4.9 Late Well Logs - Lapsed License

All outstanding well logs or abandonment logs shall be properly submitted to the state engineer prior to the lapsing of a license. A person with a lapsed license who has failed to submit all well/abandonment logs within 90 days of lapsing will be subject to the state engineer's enforcement powers under Section 73-2-25 of the Utah Code (Related rules: Section R655-14 UAC)

R655-4-5. Administrative Rule Infractions.

5.1 List of Infractions and Points.

Licensed well drillers who commit the infractions listed below in Table 1 shall have assessed against their well drilling record the number of points assigned to the infraction.

TABLE 1

Level I Infractions of Administrative Requirements

	Points
Well log submitted late	10
Failure to submit a Pump Log	10
Well abandonment report submitted late	10
License number or company name not clearly posted on well drilling/pump rig	10
Failing to notify the state engineer of a change in the well licensee's company name	10
Failure to properly notify the state engineer before the proposed start date shown on the start card	20
Failure to properly notify the state engineer before the abandonment of a regulated well	20
Failure to notify the state engineer of a change of start date	50
Constructing a replacement well further than 150 ft from the original well without the authorization of an approved change application	50
Failure to drill at the state engineer approved location as identified on the start card	50
Removing the well drilling rig from the well site before completing the well or temporarily or permanently abandoning the well	50

TABLE 2

Level II Infractions of Administrative Requirements

	Points
Employing an operator who is not registered with the state	75
Contracting out work to an unlicensed driller (using the unlicensed driller's rig) without prior written approval from the state	75
Performing any well drilling activity without valid authorization (except in emergency situations)	100
Intentionally making a material misstatement of fact in an official well driller's report/pump log or amended official well driller's report (well log)	100

TABLE 3

Level III Infractions of Construction Standards / Conditions

	Points
Approvals	
Using a method of drilling not listed on the well driller's license	30
Failing to comply with any conditions included on the well approval such as minimum or maximum depths, specified locations of perforations, etc.	50
Performing any well construction activity in violation of a red tag cease work order	100
Casing	
Failure to extend well casing at least 18" above ground	30
Failure to install casing in accordance with these rules	50
Failure to install a protective casing around a PVC well at the surface	50
Using improper casing joints	100
Using or attempting to use sub-standard well casing	100
Surface Seals	
Using improper products or procedures to install a surface seal	100
Failure to seal off artesian flow on the outside of casing	100
Failure to install surface seal to adequate depth based on formation type	100
Failure to install interval seals to eliminate aquifer commingling or cross contamination	100
Well Abandonment	

Using improper procedures to abandon a well	100
Using improper products to abandon a well	100
Construction Fluids	
Using water of unacceptable quality in the well drilling operation	40
Using an unacceptable mud pit	40
Failure to use treated or disinfected water for drilling processes	40
Using improper circulation materials or drilling chemicals	100
Filter/Gravel Packs and Formation Stabilizers	
Failure to disinfect filter pack	40
Failure to install filter pack properly	75
Failure to install formation stabilizer according to standard	75
Well Completion	
Failure to make well accessible to water level or pressure head measurements	30
Failure to install casing annular seals, cap, and valving, and to control artesian flow	30
Failure to disinfect a well upon completion of well drilling activity	40
Failure to install sanitary well capping according to standard	75
Failure to install a pitless adapter/unit according to standard	75
Failure to develop and test a well according to standard	75
Failure to hydrofracture a well according to standard	75
Failure to install packers/plugs according to standard	75
Failure to install well intakes(screens, perforations, open bottom) according to standard	75
Failure to install non-production wells according to standard	100
Pump Installation and Repair	
Failure to extend well casing at least 18" above ground	30
Failure to make well accessible to water level or pressure head measurements	30
Failure to install casing annular seals, cap, and valving, and to control artesian flow	30
Failure to disinfect a well upon completion of pump activity	40
Failure to install a protective casing around a PVC well at the surface	50
Failure to maintain surface completion and security standards	75
Failure to install or maintain Backflow protection	75
Failure to develop and test a well according to standard	75
Failure to install sanitary well capping according to standard	75
Failure to install a pitless adapter/unit according to standard	75
Failure to prevent contamination from entering a well through placement, products, tools, and materials	100
Failure to repair a well's surface seal	100
General	
Failure to securely cover an unattended well during construction	30
Failure to engage in well drilling activity in accordance with accepted industry practices	100

TABLE 4

Level IV Infractions of Application Requirements

	POINTS
Submitting an initial license or registration application that contains false or misleading information	100

5.2 When Points Are Assessed.

Points will be assessed against a driller's record upon verification by the state engineer that an infraction has occurred. Points will be assessed at the time the state engineer becomes aware of the infraction regardless of when the infraction occurred.

5.3 Infraction Notice

When infraction points are assessed against a well driller's record, the State Engineer shall issue an infraction notice to the well driller. The notice shall include an explanation of the administrative rule(s) violated, the date the alleged violations were discovered and the approximate date of occurrence, the number of points assessed for each infraction, the total number of points on the well drillers record, an explanation of the adjudicative process to appeal a cease and desist order and or infraction notice, and an explanation of how to delete points from the driller record, an any other information deemed pertinent by the state engineer.

5.4 Appeal of Infractions.

5.4.1 If the infraction points do not require a hearing, a well driller may appeal an infraction within 30 days of the date the Infraction Notice was issued. The appeal shall be made in writing to the state engineer and shall state clearly and concisely the disputed facts, the supporting facts, and the relief sought.

5.4.2 A well driller may request reconsideration of a denied appeal by requesting a hearing before the Presiding Officer within 20 days of the denial. If the Presiding Officer does not respond within 20 days after the request is submitted, then it is deemed denied.

5.5 Deleting Points from the Driller Record.

Points assessed against a well driller's record shall remain on the record unless deleted through any of the following options:

5.5.1 Points shall be deleted three years after the date when the infraction is noted by the state engineer and the points are assessed against the driller's record.

5.5.2 One half the points on the record shall be deleted if the well driller is free of infractions for an entire year.

5.5.3 Thirty (30) points shall be deleted for obtaining six (6) hours of approved continuing education credits in addition to the credits required to renew the water well driller's license. A driller may exercise this option only once each year.

5.5.4 Twenty (20) points shall be deleted for taking and passing (with a minimum score of 70%) the test covering the administrative requirements and the minimum construction standards. A driller may exercise this option only every other year.

5.6 Well Driller Hearings.

When the number of infraction points assessed against the well driller's record equals or exceeds 100, the state engineer shall submit a request to the Presiding Officer for a hearing. The requested purpose of the hearing shall be to determine if administrative penalties should be levied against the water well driller including fines and probation, suspension, or revocation of the water well driller's. In lieu of a hearing, the well driller may request a preliminary conference to resolve and agree upon the dispute, fines, and penalties. If resolution cannot be reached at the preliminary conference, a hearing shall be held.

5.7 Lack of Knowledge Not an Excuse.

Lack of knowledge of the law or the administrative requirements and minimum construction standards related to well drilling shall not constitute an excuse for violation thereof.

R655-4-6. Administrative Penalties.

Administrative penalties ordered against a licensed driller by the Presiding Officer following a hearing can include probation, administrative fines, license suspension,

and license revocation. Administrative penalties are ordered based on the severity of the infraction (Level I, II, III from Tables 1-3 of Section 5.1) as well as the recurrence of an infraction. The maximum administrative fine per infraction shall be capped at $1000.

6.1 Level I Administrative Penalties: Level I administrative penalties shall be levied against Level I administrative infractions (see Table 1 of Section 5.1). The Level I administrative penalty structure is as follows:

6.1.1 At the first conviction of Level I infractions, the disciplinary action for the infractions shall be probation.

6.1.2 Second conviction shall result in probation and a fine at a rate of $2.50 per infraction point.

6.1.3 Third conviction shall result in probation and an elevated fine at a rate of $5.00 per infraction point.

6.1.4 Fourth conviction shall result in an elevated fine at a rate of $10.00 per infraction point and possible suspension.

6.1.5 Continued and repeated convictions beyond the fourth conviction may result in an elevated fine at a rate of $10.00 per infraction point and possible suspension or revocation.

6.1.6 Fines for late well logs and abandonment logs shall be calculated separately and added to fines calculated for other infractions. For late well log infractions, the points associated with each infraction shall be multiplied by a factor based on the lateness of the well log. The infraction point multipliers are as follows in Table 5:

TABLE 5

Tardiness of the log	Infraction Point Multiplier
1-2 weeks	0.50
2-4 weeks	1.00
1-3 months	1.50
3-6 months	2.00
6-9 months	2.50
9-12 months	3.00
Over 12 months	4.00

6.2 Level II Administrative Penalties: Level II administrative penalties shall be levied against Level II administrative infractions (see Table 2 of Section 5.1). The Level II administrative penalty structure is as follows:

6.2.1 At the first conviction of Level II infractions, the disciplinary action shall result in probation and a fine at a rate of $2.50 per infraction point.

6.2.2 Second conviction shall result in probation and an elevated fine at a rate of $5.00 per infraction point.

6.2.3 Third conviction shall result in possible suspension and an elevated fine at a rate of $10.00 per infraction point.

6.2.4 Continued and repeated convictions beyond the fourth conviction may result in an elevated fine at a rate of $10.00 per infraction point and possible suspension or revocation.

6.3 Level III Administrative Penalties: Level III administrative penalties shall be levied against Level III construction infractions (see Table 3 of Section 5.1). The Level III administrative penalty structure is as follows:

6.3.1 At the first conviction of Level III infractions, the disciplinary action shall result in probation and a fine at a rate of $5.00 per infraction point.

6.3.2 Second conviction shall result in possible suspension and an elevated fine at a rate of $10.00 per infraction point.

6.3.3 Third conviction may result in an elevated fine at a rate of $10.00 per infraction point and possible suspension or revocation.

6.3.4 Level IV Administrative Penalties: The Level IV administrative penalty shall be levied against a Level IV application requirement infraction (see Table 4 of Section 5.1). The Level IV administrative penalty is revocation of the license at first conviction.

6.4 Administrative Penalties - General

6.4.1 Penalties shall only be imposed as a result of a well driller hearing.

6.4.2 Failure to pay a fine within 30 days from the date it is assessed shall result in the suspension of the well driller license until the fine is paid.

6.4.3 Fines shall be deposited as a dedicated credit. The state engineer shall expend the money retained from fines for expenses related to well drilling activity inspection, well drilling enforcement, and well driller education.

6.5 Probation: As described above in Sections 6.1, 6.2, and 6.3, probation shall generally be the disciplinary action imposed in situations where the facts established through testimony and evidence describe first time infractions of the administrative rules that are limited in number and less serious in their impact on the well owner and on the health of the aquifer. The probation period shall generally last until the number of infraction points on the well driller's record is reduced below 70 through any of the options described in Subsection 4-5.5.

6.6 Suspension: Suspension shall generally be the disciplinary action imposed in situations where the facts established through testimony and evidence describe repeated convictions of the administrative rules, or infractions that a pose serious threat to the health of the aquifer, or a well driller's apparent disregard for the administrative rules or the state's efforts to regulate water well drilling. Depending upon the number and severity of the rule infractions as described above in Sections 6.1, 6.2, and 6.3, the state engineer may elect to suspend a well driller license for a certain period of time and/or until certain conditions have been met by the well driller. In establishing the length of the suspension, the state engineer shall generally follow the guideline that three infraction points is the equivalent of one day of suspension. A well driller whose license has been suspended shall be prohibited from engaging in regulated well drilling activity. License suspension may also result in the exaction of the Well Driller Bond as set forth in Subsection 4-3.9.4. A well driller whose license has been suspended is allowed to work as a registered operator under the direct, continuous supervision of a licensed well driller. If the suspension period extends beyond the expiration date of the water well driller license, the water well driller may not apply to renew the license until the suspension period has run and any conditions have been met. Once the suspension period has run and once all conditions have been met by the well driller, the suspension shall be lifted and the driller shall be notified that he/she may again engage in the well drilling business. The well driller shall then be placed on probation until the number of infraction points on the well driller's record is reduced below 70 through any of the options described in Subsection 4-5.5.

6.7 Revocation: Revocation shall generally be the disciplinary action imposed in situations where the facts established through testimony and evidence describe repeated convictions of the administrative rules for which the well driller's Utah Water Well License has previously been suspended. Revocation shall also be the disciplinary action taken if after a hearing the facts establish that a driller knowingly provided false or misleading information on a driller license application. A well driller whose license has been revoked shall be prohibited from engaging in regulated well drilling activity. License revocation may also result in the exaction of the Well Driller Bond as set forth in Subsection 4-3.9.4. A well driller whose license has been revoked is allowed to work as a registered operator under the direct, continuous supervision of a licensed well driller. A well driller whose water well license has been revoked may not make application for a new water well license for a period

of two years from the date of revocation. After the revocation period has run, a well driller may make application for a new license as provided in Section R655-4-3. However, the well drilling experience required must be based on new experience obtained since the license was revoked.

R655-4-7. Adjudicative Proceedings.

7.1 Designation of Presiding Officers.

The following persons may be designated Presiding Officers in well driller adjudicative proceedings: Assistant State Engineers; Deputy State Engineers; or other qualified persons designated by the State Engineer.

7.2 Disqualification of Presiding Officers.

7.2.1 A Presiding Officer shall disqualify himself from performing the functions of the Presiding Officer regarding any matter in which he, his spouse, or a person within the third degree of relationship to either of them or the spouse of such person:

7.2.1.1 Is a party to the proceeding, or an officer, director, or trustee of a party;

7.2.1.2 Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented, a party concerning the matter in controversy;

7.2.1.3 Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

7.2.1.4 Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or

7.2.1.5 Is likely to be a material witness in the proceeding.

7.2.2 A Presiding Officer is also subject to disqualification under principles of due process and administrative law.

7.2.3 These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Section 67-16-1 et seq.

7.2.4 A motion for disqualification shall be made first to the Presiding Officer. If the Presiding Officer is appointed, any determination of the Presiding Officer upon a motion for disqualification may be appealed to the State Engineer.

7.3 Informal Proceedings

7.3.1 All adjudicative proceedings initiated under this rule are classified as informal adjudicative proceedings.

7.3.1 The procedures for informal adjudicative proceedings initiated under this rule are set forth in this rule.

7.4 Service of Notice and Orders.

7.4.1 Hearing Notices and Final Judgment and Orders shall be served upon the well driller at the well driller's address using certified mail or methods described in Rule 5 of the Utah Rules of Civil Procedure.

7.4.2 Infraction notices, notices of approval or denial of licensing or registration or license or registration renewal, and other routine correspondence related to the Division's Well Drilling Program shall be sent to the well driller at the well driller's address by regular U.S. Mail.

7.5 Computation of Time.

7.5.1 Computation of any time period referred to in these rules shall begin with the first day following the act that initiates the running of the time period. The last day of the time period computed is included unless it is a Saturday, Sunday, or legal holiday or any other day on which the Division is closed, in which event the period shall run until the end of the business hours of the following business day.

7.5.2 The Presiding Officer, for good cause shown, may extend any time limit contained in these rules, unless precluded by statute. All requests for extensions of time shall be made by motion.

7.6 Request for Hearing

7.6.1 A hearing before a Presiding Officer is permitted in a well drilling adjudicative proceeding if:

7.6.1.1 The proceeding was commenced by an Infraction Notice; or

7.6.1.2 The proceeding was commenced by a well driller request raising a genuine issue regarding

7.6.1.2.1 The denial of a license or registration renewal application; or

7.6.1.2.2 The issuance of a cease and desist order (red tag)

7.6.2 Regardless of any other provision of the general laws to the contrary, all requests for a hearing shall be in writing and shall be filed with the Division to the attention of the Presiding Officer.

7.6.3 The request for a hearing shall state clearly and concisely the disputed facts, the supporting facts, the relief sought, and any additional information required by applicable statutes and rules.

7.6.4 The Presiding Officer shall, give all parties at least ten (10) days notice of the date, time and place for the hearing. The Presiding Officer may grant requests for continuances for good cause shown.

7.6.5 Any party may, by motion, request that a hearing be held at some place other than that designated by the Presiding Officer, due to disability or infirmity of any party or witness, or where justice and equity would be best served.

7.6.6 A well driller at any time may withdraw the well driller's request for a hearing. The withdrawal shall be filed with the Division to the attention of the Presiding Officer, in writing, signed by the well driller or an authorized representative, and is deemed final upon the date filed.

7.7 Filings Generally.

7.7.1 Papers filed with the Division shall state the title of the proceeding and the name of the well driller on whose behalf the filing is made.

7.7.2 Papers filed with the Division shall be signed and dated by the well driller on whose behalf the filing is made or by the well driller's authorized representative. The signature constitutes certification that the well driller:

7.7.2.1 Read the document;

7.7.2.2 Knows the content thereof;

7.7.2.3 To the best of the well driller's knowledge, represents that the statements therein are true;

7.7.2.4 Does not interpose the papers for delay; and

7.7.2.5 If the well driller's signature does not appear on the paper, authorized a representative with full power and authority to sign the paper.

7.7.3 All papers, except those submittals and documents that are kept in a larger format during the ordinary course of business, shall be submitted on an 8.5 x 11-inch paper. All papers shall be legibly hand printed or typewritten.

7.7.4 The Division may provide forms to be used by the parties.

7.7.5 The original of all papers shall be filed with the Division with such number of additional copies as the Division may reasonably require.

7.7.6 Simultaneously with the filing of any and all papers with the Division, the party filing such papers shall send a copy to all other parties, or their authorized representative to the proceedings, by hand delivery, or U.S. Mail, postage prepaid, properly addressed.

7.8 Motions.

7.8.1 A party may submit a request to the Presiding Officer for any order or action not inconsistent with Utah law or these rules. Such a request shall be called a motion. The types of motions made shall be those that are allowed under these Rules and the Utah Rules of Civil Procedure.

7.8.2 Motions may be made in writing at any time before or after the commencement of a hearing, or they may be made orally during a hearing. Each motion shall set forth

the grounds for the desired order or action and, if submitted in writing, state whether oral argument is requested. A written supporting memorandum, specifying the legal basis and support of the party's position shall accompany all motions.

7.8.3 The Presiding Officer may, upon the Presiding Officer's own initiative or upon the motion of any party, order any party to file a response or other pleading, and further permit either party to amend its pleadings in a manner just to all parties.

7.8.4 Preliminary Conference. Parties may request to appear for a preliminary conference prior to a hearing or prior to the scheduled commencement of a hearing or at any time before issuing a Final Judgment and Order. All parties shall prepare and exchange the following information at the initial preliminary conference:

(a) Names and addresses of prospective witnesses including proposed areas of expertise for expert witnesses;

(b) A brief summary of proposed testimony;

(c) A time estimate of each witness' direct testimony;

(d) Curricula vitae (resumes) of all prospective expert witnesses.

(e) The scheduling of a preliminary conference shall be solely within the discretion of the Presiding Officer.

(f) The Presiding Officer shall give all parties at least three (3) days notice of the preliminary conference.

(g) The notice shall include the date, time and place of the preliminary conference. The purpose of a preliminary conference is to consider any or all of the following:

(a) The simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which shall avoid unnecessary proof;

(c) The limitation of the number of witnesses or avoidance of similar cumulative evidence, if the case is to be heard;

(d) The possibility of agreement disposing of all or any of the issues in dispute; or

(e) Such other matters as may aid in the efficient and equitable disposition of the adjudicative enforcement proceeding.

7.8.5 Consent Order: If the respondent substantially agrees with or does not contest the statements of fact in the initial order, or if the parties agree to specific amendments to the statements of fact in the initial order, the parties may enter into a Consent Order after a preliminary conference by stipulating to the facts, fines, and penalties, if any. A Consent Order based on that stipulation, shall be prepared by the state engineer for execution by the parties. The executed Consent Order shall be reviewed by the Presiding Officer and, if found to be acceptable, will be signed and issued by the Presiding Officer. A Consent Order issued by the Presiding Officer is not subject to reconsideration or judicial review.

7.9 Conduct of Hearings.

7.9.1 All parties, authorized representatives, witnesses and other persons present at the hearing shall conduct themselves in a manner consistent with the standards and decorum commonly observed in Utah courts. Where such decorum is not observed, the Presiding Officer may take appropriate action including adjournment, if necessary.

7.9.2 The Presiding Officer shall conduct the hearing, make all decisions regarding admission or exclusion of evidence or any other procedural matters, and have an oath or affirmation administered to all witnesses.

7.10 Rules of Evidence in Hearings.

7.10.1 Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary evidence.

7.10.2 A party may call witnesses and present oral, documentary, and other evidence.

7.10.3 A party may comment on the issues and conduct cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for hearing, and as may affect the disposition of any interest which permits the person participating to be a party.

7.10.4 A witness' testimony shall be under oath or affirmation.

7.10.5 Any evidence may be presented by affidavit rather than by oral testimony, subject to the right of any party to call and examine or cross-examine the affiant.

7.10.6 Relevant evidence shall be admitted.

7.10.7 The Presiding Officer's decision may not be based solely on hearsay.

7.10.8 Official notice may be taken of all facts of which judicial notice may be taken in Utah courts.

7.10.9 All parties shall have access to public information contained in the Division's files and to all materials and information gathered in the investigation, to the extent permitted by law.

7.10.10 No evidence shall be admitted after completion of a hearing or after a case is submitted on the record, unless otherwise ordered by the Presiding Officer.

7.10.11 Intervention is prohibited.

7.10.12 A well driller appearing before the Presiding Officer for the purpose of a hearing may be represented by a licensed attorney. The Water Well Drilling Specialist shall present evidence before a Presiding Officer supporting the State Engineer's claim. At the State Engineer's discretion, other Division staff or a representative from the office of the Attorney General may also present supporting evidence.

7.11 Transcript of Hearing.

7.11.1 Testimony and argument at the hearing shall be recorded electronically. The Division shall make copies of electronic recordings available to any party, upon written request. The fee charged for this service shall be equal to the actual costs of providing the copy. The Division is not responsible to supply any party with a transcript of a hearing.

7.11.2 If any party shall cause to be produced a transcript of a hearing, a copy of said transcript shall be filed with the Division and provided to all other parties. By order of the Presiding Officer and with the consent of all parties, such written transcript may be deemed an official transcript.

7.11.3 Corrections to an official transcript may be made only to conform it to the evidence presented at the hearing. Transcript corrections, agreed to by opposing parties, may be incorporated into the record, if and when approved by the Presiding Officer, at any time during the hearing, or after the close of the adjudicative proceeding. The Presiding Officer may call for the submission of proposed corrections and may determine the disposition thereof at appropriate times during the course of the proceeding.

7.12 Procedures and Standards for Orders

7.12.1 If the well driller attends the hearing, the Presiding Officer shall issue a Final Judgment and Order.

7.12.2 The Presiding Officer may issue a Default Order if, after proper notice, the well driller fails to attend a hearing scheduled by the Presiding Officer.

7.12.3 Within a reasonable time after the close of a well driller adjudicative proceeding, the Presiding Officer shall issue a written and signed Final Judgment and Order, including but not limited to:

7.12.3.1 A statement of law and jurisdiction;

7.12.3.2 A statement of facts;

7.12.3.3 An identification of the confirmed infraction(s);

7.12.3.4 An order setting forth actions required of the well driller;

7.12.3.5 A notice of the option to request reconsideration and the right to petition for judicial review;

7.12.3.6 The time limits for requesting reconsideration or filing a petition for judicial review; and

7.12.3.7 Other information the Presiding Officer deems necessary or appropriate.

7.12.4 The Presiding Officer's Final Judgment and Order shall be based on the record, as defined in this rule.

7.12.5 A copy of the Presiding Officer's Final Judgment and Order shall be promptly mailed to each of the parties.

7.12.6 A well driller who fails to attend a hearing waives any right to request reconsideration of the Final Judgment and Order per Section R655-4-7.13, but may petition for judicial review per Section R655-4-7.16.

7.13 Reconsideration.

7.13.1 Within 14 days after the Presiding Officer issues a Final Judgment and Order, any party may file a written request for reconsideration stating the specific grounds upon which relief is requested.

7.13.2 Unless otherwise provided by statute, the filing of a request for reconsideration is not a prerequisite for seeking judicial review of the order.

7.13.3 The request for reconsideration shall be filed with the Division to the attention of the Presiding Officer and one copy shall be mailed to each party by the party filing the request.

7.13.4 The Presiding Officer may issue a written order granting or denying the request for reconsideration. It is not required that the written order explain the grounds for the Presiding Officer's decision.

7.13.5 If the Presiding Officer does not issue an order granting a request for reconsideration within 14 days after the date it is filed with the Division, the request shall be considered denied.

7.14 Amending Administrative Orders.

7.14.1 On the motion of any party or of the Presiding Officer, the Presiding Officer may amend a Final Judgment and Order for reasonable cause shown, including but not limited to a clerical mistake made in the preparation of the order.

7.14.2 A motion by any party to amend an order shall be made in a reasonable time and, if to amend a Final Judgment and Order, not more than three (3) months after the Final Judgment and Order was issued.

7.14.3 The Presiding Officer shall notify the parties of the receipt and consideration of a motion to amend an order by issuing a notice. The notice shall include a copy of the motion.

7.14.4 Any party opposing a motion to amend an order may submit information within the time period to be established by the Presiding Officer's notice of the motion.

7.14.5 After considering a motion to amend an order and any relevant information received from the parties, the Presiding Officer shall advise the parties of his determination. If the Presiding Officer determines that the order shall be amended, the Presiding Officer shall issue the amended order to all parties.

7.15 Setting Aside a Final Judgment and Order.

7.15.1 On the motion of any party or on a motion by the Presiding Officer, the Presiding Officer may set aside a Final Judgment and Order on any reasonable grounds, including but not limited to the following:

7.15.1.1 The well driller was not properly served with an Infraction Notice;

7.15.1.2 A rule or policy was not followed when the Final Judgment and Order was issued;

7.15.1.3 Mistake, inadvertence, excusable neglect;

7.15.1.4 Newly discovered evidence which by due diligence could not have been discovered before the Presiding officer issued the Final Judgment and Order; or

7.15.1.5 Fraud, misrepresentation or other misconduct of an adverse party;

7.15.2 A motion to set aside a final order shall be made in a reasonable time and not more than three (3) months after the Final Judgment and Order was issued.

7.15.3 The Presiding Officer shall notify the parties of the receipt and consideration of a motion to set aside a final order by issuing a notice to all parties, including therewith a copy of the motion.

7.15.4 Any party opposing a motion to set aside a final order may submit information within the time period to be established by the Presiding Officer's notice of the motion.

7.15.4 After consideration of the motion to set aside an order and any information received from the parties, the Presiding Officer shall issue an order granting or denying the motion, and provide a copy of the order to all parties.

7.16 Judicial Review.

7.16.1 Pursuant to Section 73-3-14, a Final Judgment and Order may be reviewed by trial de novo by the district court:

7.16.1.1 In Salt Lake County; or

7.16.1.2 In the county where the violation occurred.

7.16.2 A well driller shall file a petition for judicial review of a Final Judgment and Order within 20 days from the day on which the order was issued, or if a request for reconsideration has been filed and denied, within 20 days of the date of denial of the request for reconsideration.

7.16.3 The Presiding Officer may grant a stay of an order or other temporary remedy during the pendency of the judicial review on the Presiding Officer's own motion, or upon the motion of a party. The procedures for notice, for consideration of motions, and for issuing a determination shall be as set forth herein for a motion to set aside a Final Judgment and Order.

R655-4-8. License and Operator Registration Renewal.

8.1 Well Driller and Pump Installer Licenses. The Division will mail to each licensed well driller and pump installer a notice (packet) to renew his/her license approximately 30 days before the expiration of the license. Failure to receive the notice does not relieve a licensee of his obligation to file application and pay the fee for renewal in a timely manner. A well driller shall notify the Division of any change in his mailing address within 30 days after the change.

8.1.1 Well driller licenses and Pump Installer licenses shall expire and be renewed according to the following provisions:

a. The licenses of well drillers and pump installers whose last name begins with A thru L shall expire at 12 midnight on June 30 of odd numbered years.

b. The licenses of well drillers and pump installers whose last name begins with M thru Z shall expire at 12 midnight on June 30 of even numbered years.

c. Drillers and pump installers who meet the renewal requirements set forth in Subsection R655-4-8(8.1.2) on or before the expiration deadlines set forth in Subsection R655-4-8(8.1.1) shall be authorized to operate as a licensed well driller or pump installer until the new license is issued. If a licensee does not complete the renewal requirements by the license expiration date, the license will become inactive, and the licensee must cease and desist all regulated work until the license has been renewed.

d. Licensees must renew their licenses within 24 months of the license expiration date. Licensees failing to renew within 24 months of the license expiration date must re-apply for a license, meet all the application requirements of Subsections R655-4-3(3.2) or R655-4-3(3.4), and provide documentation of 12 hours of continuing education according

to the requirements of R655-4-8(8.2) obtained within the previous 24 months.

8.1.2 Applications to renew a license must include the following items:

a. Payment of the license renewal fee determined and approved by the legislature;

b. Written application to the state engineer;

c. Documentation of continuing well driller bond coverage in the amount of five thousand dollars ($5,000) penal bond for the next licensing period. The form and conditions of the well driller bond shall be as set forth in Section R655-4.3.9. Allowable documentation can include bond continuation certificates and CD statements;

d. As applicable to the type of license, proper submission of all start cards, official well driller reports (well logs), pump installer reports (pump logs), and well abandonment reports for the current licensing period;

e. Documentation of compliance with the continuing education requirements described in Section 8.2. Acceptable documentation of attendance at approved courses must include the following information: the name of the course, the date it was conducted, the number of approved credits, the name and signature of the instructor and the licensees name; for example, certificates of completion, transcripts, attendance rosters, diplomas, etc. (Note: licensees are advised that the state engineer will not keep track of the continuing education courses each licensee attends during the year. Licensees are responsible to acquire and then submit documentation with the renewal application.)

8.1.3 License renewal applications that do not meet the requirements of Subsection R655-4-8(8.1.2) by June 30 of the expiration year or which are received after June 30 of the expiration year, will be assessed an additional administrative late fee determined and approved by the legislature.

8.1.4 Restricted, conditioned, limited, or denied renewal applications

8.1.4.1 The state engineer may renew a license on a restricted, conditional, or limited basis if the licensee's performance and compliance with established rules and construction standards indicates the scope of the licensee's permitted activities should be reduced or that the licensee requires strict supervision during a probationary period.

8.1.4.2 The restricted, conditional, or limited license shall state the restrictions, conditions, or limitations placed on the licensee's regulated activity; whether the restrictions, conditions, or limitations are permanent or time-limited; and the requirements, if any, which must be met for the license to be re-issued without restrictions, conditions, or limitations.

8.1.4.3 The state engineer may deny an application to renew a license if there has been a violation of these rules or UTAH CODE ANNOTATED Section 73-3-25 that casts doubt on the competency of the licensee or his willingness to comply with the well drilling administrative requirements or construction standards.

8.1.4.4 Within 30 days of a license renewal application being denied or a license being renewed on a restricted, conditioned, or limited basis, a licensee may appeal the action by requesting a hearing according to the provisions of R655-4-7.

8.1.4.5 The restrictions, conditions, or limitations on a license or the denial of a license shall remain effective during the pendency of the well driller/pump installer adjudicative proceeding.

8.2 Continuing Education.

8.2.1 During each license period, licensed well drillers and pump installers are required to earn at least twelve (12) continuing education credits by attending training sessions approved, sponsored or sanctioned by the state engineer. Drillers and pump installers who do not renew their licenses, but who intend to renew within the following 24 month period allowed in Section 8.1.1, are also required to earn twelve (12) continuing education credits.

8.2.2 The state engineer will develop criteria for the training courses, approve the courses which can offer continuing education credits, and assign the number of credits to each course.

8.2.3 The state engineer shall assign the number of continuing education credits to each proposed training session based on the instructor's qualifications, a written outline of the subjects to be covered, and written objectives for the session. Licensees wishing continuing education credit for other training sessions shall provide the state engineer with all information it needs to assign continuing education requirements.

8.2.4 Licensed drillers must complete a State Engineer-sponsored "Administrative Rules for Well Drillers and Pump Installers" review course or other approved rules review once every four (4) years.

8.2.5 CE credits cannot be carried over from one licensing period to another.

8.3 Operator's Registration.

8.3.1 Drill Rig and Pump Rig operator registrations shall expire at the same time as the license of the well driller or pump installer by whom they are employed. Operators who meet the renewal requirements set forth in Subsection R655-4-8(8.3.2) on or before 12 midnight June 30 of the expiration year shall be authorized to act as a registered operator until the new registration is issued. Operators must renew their registrations within 24 months of the registration expiration date. Operators failing to renew within 24 months of the registration expiration date must re-apply for an operator's registration and meet all the application requirements of Subsections R655-4-3(3.3) and R655-4-3(3.5).

8.3.2 Applications to renew an operator's registration must include the following items:

a. Payment of the registration renewal fee determined and approved by the legislature;

b. Written application to the state engineer.

8.3.3 Registration renewal applications that do not meet the requirements of Subsection R655-4-8(8.3.2) by the June 30 expiration date or that are received after the June 30 expiration date will be assessed an additional administrative late fee determined and approved by the legislature.

R655-4-9. The Approval Process for Non-Production Wells.

9.1 General.

Regulated non-production wells such as cathodic protection wells, closed-loop heating/cooling exchange wells, monitor/piezometer/test wells, and other wells meeting the criteria in R655-4-1(1.2.4) drilled and constructed to a depth greater than 30 feet below natural ground surface require approval from the state engineer. The approval and permitting of regulated production wells is accomplished through the water right processes in accordance with Section 73 of the Utah Code.

9.2 Approval to Drill, Construct, Renovate, or Replace.

Approval to drill, construct, renovate, or replace non-production wells is issued by the state engineer's main office and regional offices following review of written requests from the owner/applicant or their appointed representative. The appointed representative shall not include the licensed driller designated on the application. The requests for approval shall be made on forms provided by the state engineer entitled "Request for Non-Production Well Construction". The following information must be included on the form:

a. General location or common description of the

project.

b. Specific course and distance locations from established government surveyed outside section corners or quarter corners.

c. Total anticipated number of wells to be installed.

d. Diameters, approximate depths and materials used in the wells.

e. Projected start and completion dates.

f. Name and license number of the driller contracted to install the wells.

g. A detailed explanation of the purpose and technical aspects of the drilling project. This can also include reviews and approvals (e.g., building permits) done by local jurisdictions of the project. This additional documentation may expedite the Division's processing of the non-production well application.

h. Signature of the well owner or authorized representative attesting to the accuracy and truthfulness of the information on the application. The licensed driller cannot be the signatory on the non-production well application.

9.2.1 There is no fee required to request approval to drill, construct, renovate, or replace a non-production well. Using available information and sources, the Division will evaluate the potential for the non-production well to become a contamination source or otherwise negatively impact the groundwater resource prior to approval. This evaluation can take up to 14 days to conduct. The Division shall list application information on its website to allow the public and local jurisdictions to review the project prior to approval. The well permit application shall be returned without review to the applicant if the Division determines that the application is incomplete, contains inaccurate information, lacks sufficient information or is illegible. The Division shall deny the issuance of a well permit if the site where the well is to be drilled is designated by the Division as an area where wells may not be constructed, including but not limited to contaminated or protected aquifers, areas where drilling and construction of wells can impact other water rights, and other areas where environmental remediation may be adversely affected by the construction and/or operation of wells. Upon written approval by the state engineer, the project will be assigned an approved non-production well number which will be referenced on all start cards and official well driller's reports.

R655-4-10. General Requirements.

10.1 Standards.

10.1.1 In some locations, the compliance with the following minimum standards will not result in a well being free from pollution or from being a source of subsurface leakage, waste, or contamination of the groundwater resource. Since it is impractical to attempt to prepare standards for every conceivable situation, the well driller or pump installer shall judge when to construct or otherwise perform work on wells under more stringent standards when such precautions are necessary to protect the groundwater supply and those using the well in question. Other state and local regulations pertaining to well drilling and construction, groundwater protection, isolation distances (setbacks) from potential contamination sources and/or other structures/boundaries, and water quality/testing regulations may exist that are either more stringent than these rules or that specifically apply to a given situation. It is the licensee's responsibility to understand and apply other federal, state, and local regulations as applicable.

10.2 Well Site Locations.

10.2.1 Well site locations are described by course and distance from outside section corners or quarter corners (based on a Section/Township/Range Cadastral System) and by the Universal Transverse Mercator (UTM) coordinate system (NAD83 Map Datum) on all state engineer authorizations to drill (Start Cards). However, the licensee should also be familiar with local zoning ordinances, or county boards of health requirements which may limit or restrict the actual well location and construction in relationship to property/structure boundaries and existing or proposed concentrated sources of pollution or contamination such as septic tanks, drain fields, sewer lines, stock corrals, feed lots, etc. The licensee should also be familiar with the Utah Underground Facilities Act (Title 54, Chapter 8a of the Utah Code Annotated 1953 as amended) which requires subsurface excavators (including well drilling) to notify operators of underground utilities prior to any subsurface excavation. Information on this requirement can be found by calling Blue Stakes Utility Notification Center at (800)662-4111.

10.2.2 Regulated wells shall be drilled at the approved location as defined on the valid start card. The driller shall check the drilling location to see if it matches the state-approved location listed on the Driller's Start Card.

10.3 Unusual Conditions.

10.3.1 If unusual conditions occur at a well site and compliance with these rules and standards will not result in a satisfactory well or protection to the groundwater supply, a licensed water well driller or pump installer shall request that special standards be prescribed for a particular well (variance request). The request for special standards shall be in writing and shall set forth the location of the well, the name of the owner, the unusual conditions existing at the well site, the reasons and justification that compliance with the rules and minimum standards will not result in a satisfactory well, and the proposed standards that the licensee believes will be more adequate for this particular well. If the state engineer finds that the proposed changes are in the best interest of the public, the state engineer will approve the proposed changes by assigning special standards for the particular well under consideration. At the Division's discretion, the licensee applying for the variance may be required to provide additional technical information justifying the variance. The variance request will be evaluated, and a response will be given within fourteen days. In a public health emergency or other exceptional circumstance, verbal notification for a variance may be given. An emergency usually consists of a well failure resulting in a dry well or an unusable well. Driller convenience does not constitute an emergency.

R655-4-11. Well Drilling and Construction Requirements.

11.0 General.

11.0.1 Figures 1 through 5 are used to illustrate typical well construction standards, and can be viewed in the State of Utah Water Well Handbook available at the Division of Water Rights, 1594 West North Temple, Salt Lake City, Utah. Figure 1 illustrates the typical construction of a drilled well with driven casing such as a well drilled using the cable tool method or air rotary with a drill-through casing driver. Figure 2 illustrates the typical construction of a well drilled with an oversized borehole and/or gravel packed without the use of surface casing. Figure 3 illustrates the typical construction of a well drilled with an oversized borehole and/or gravel packed with the use of surface casing. Figure 4 illustrates the typical construction of a well drilled with an oversized borehole and/or gravel packed completed in stratified formations in which poor formation material or poor quality water is encountered. Figure 5 illustrates the typical construction of a well completed with PVC or nonmetallic casing.

11.1 Approved Products, Materials, and Procedures.

11.1.1 Any product, material or procedure designed for use in the drilling, construction, cleaning, renovation,

development pump installation/repair, or abandonment of water production or non-production wells, which has received certification and approval for its intended use by the National Sanitation Foundation (NSF) under ANSI/NSF Standard 60 or 61, the American Society for Testing Materials (ASTM), the American Water Works Association (AWWA) or the American National Standards Institute (ANSI) may be utilized. Other products, materials or procedures may also be utilized for their intended purpose upon manufacturers certification that they meet or exceed the standards or certifications referred to in this section and upon state engineer approval.

11.2 Well Casing - General

11.2.1 Drillers Responsibility. It shall be the sole responsibility of the well driller to determine the suitability of any type of well casing for the particular well being constructed, in accordance with these minimum requirements.

11.2.2 Casing Stick-up. The well casing shall extend a minimum of 18 inches above finished ground (land) level and the natural ground surface should slope away from the casing. A secure sanitary, weatherproof mechanically secured cap/seal or a completely welded cap shall be placed on the top of the well casing to prevent contamination of the well. If a vent is placed in the cap, it shall be properly screened to prevent access to the well by debris, insects, or other animals.

11.2.3 Steel Casing. All steel casing installed in Utah shall be in new or like-new condition, being free from pits or breaks, clean with all potentially dangerous chemicals or coatings removed, and shall meet the minimum specifications listed in Table 6 of these rules. In order to utilize steel well casing that does not fall within the categories specified in Table 6, the driller shall receive written approval from the state engineer. All steel casing installed in Utah shall meet or exceed the minimum ASTM, ANSI, or AWWA standards for steel pipe as described in Subsection 11.1 unless otherwise approved by the state engineer. Applicable standards (most recent revisions) may include:

ANSI/AWWA A100-AWWA Standard for Water Wells.

ANSI/ASTM A53-Standard Specifications for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless.

ANSI/ASTM A139-Standard Specification for Electric-Fusion (Arc)-Welded Steel Pipe (NPS 4 and over).

ANSI/AWWA C200-Standard for Steel Water Pipe-6 in. and Larger.

ASTM A589-89-Standard Specification for Seamless and Welded Carbon Steel Water-Well Pipe.

API Spec.5L and 5LS-Specification for Liner Pipe.

ASTM A106-Standard Specification for Seamless Carbon Steel Pipe for High Temperature Service

ASTM A778-Standard Specifications for Welded, Unannealed Austenitic Stainless Steel Tubular Products.

ASTM A252-Standard Specification for Welded and Seamless Steel Pipe Piles.

ASTM A312-Standard Specification for Seamless, Welded, and Heavily Cold Worked Austenitic Stainless Steel Pipes

ASTM A409- Standard Specification for Welded Large Diameter Austenitic Steel Pipe for Corrosive or High-Temperature Service

TABLE 6

MINIMUM WALL THICKNESS FOR STEEL WELL CASING

Depth Nominal Casing Diameter	0 to 200 (ft)	200 to 300 (ft)	300 to 400 (ft)	400 to 600 (ft)	600 to 800 (ft)	800 to 1000 (ft)	1000 to 1500 (ft)	1500 to 2000 (ft)
5	.250	.250	.250	.250	.250	.250	.250	.250
6	.250	.250	.250	.250	.250	.250	.250	.250
8	.250	.250	.250	.250	.250	.250	.250	.250
10	.250	.250	.250	.250	.250	.250	.312	.312
12	.250	.250	.250	.250	.250	.250	.312	.312
14	.250	.250	.250	.250	.312	.312	.312	.312
16	.250	.250	.312	.312	.312	.312	.375	.375
18	.250	.312	.312	.312	.375	.375	.375	.438
20	.250	.312	.312	.312	.375	.375	.375	.438
22	.312	.312	.312	.375	.375	.375	.375	.438
24	.312	.312	.375	.375	.375	.438		
30	.312	.375	.375	.438	.438	.500		

Note: Minimum wall thickness is in inches.

For nominal casing diameters less than five (5) inches, the minimum wall thickness must be equivalent to ASTM Schedule 40.

For any other casing diameter not addressed herein, prior approval by the state engineer is require.

0.250 = 1/4, 0.312 = 5/16, 0.375 = 3/8, 0.438 = 7/16.

11.2.4 Plastic and Other Non-metallic Casing.

11.2.4.1 Materials. PVC well casing and screen may be installed in Utah upon obtaining permission of the well owner. Other types of non-metallic casing or screen must be approved by the state engineer prior to installation. Plastic well casing and screen shall be manufactured and installed to conform with The American National Standards Institute (ANSI) or the American Society for Testing and Materials (ASTM) Standard F 480 (most recent version), which are incorporated by reference to these rules. Casing and screen meeting this standard is normally marked "WELL CASING" and with the ANSI/ASTM designation "F 480-, SDR-17 (or 13.5, 21, etc.)". All plastic casing and screen for use in potable water supplies shall be manufactured to be acceptable to the American National Standards Institute/National Sanitation Foundation (NSF) standard 61. Other types of plastic casings and screens may be installed upon manufacturers certification that such casing meets or exceeds the above described ASTM/SDR specification or ANSI/NSF approval and upon state engineer approval.

11.2.4.2 Minimum Wall Thickness and Depth Requirements. PVC well casing and screen with a nominal diameter equal to or less than four (4) inches and for non-production well purposes shall meet the minimum wall thickness required under ASTM Standard F480-95 SDR 21 or a Schedule 40 designation. PVC well casing and screen use for water production well purposes with a nominal diameter equal to or less than four (4) inches shall meet the minimum wall thickness required under ASTM Standard F480-95 SDR 17 or a Schedule 80 designation. PVC well casing and screen with a nominal diameter greater than four (4) inches shall meet the minimum wall thickness required under ASTM Standard F480 (most recent version) SDR 17 or a Schedule 80 designation. Additionally, caution should be used whenever other than factory slots or perforations are added to PVC well casing. The installation of hand cut slots or perforations significantly reduces the collapse strength tolerances of unaltered casings. The depth at which plastic casing and screen is placed in a well shall conform to the minimum requirements and restrictions as outlined in ASTM Standard F-480 (most recent version) and to PVC casing manufacturer recommendations. Liner pipe does not need to meet these wall thickness requirements if it is placed inside of a casing that does meet these wall thickness requirements.

11.2.4.3 Fiberglass Casing. Fiberglass reinforced plastic well casings and screens may be installed in wells upon obtaining permission of the well owner. All fiberglass casing or screens installed in wells for use in potable water supplies shall be manufactured to be acceptable by ANSI/NSF Standard 61 and upon state engineer approval.

11.2.4.4 Driving Non-metallic Casing. Non-metallic casing shall not be driven, jacked, or dropped and may only be installed in an oversized borehole.

11.2.4.5 Protective Casing. If plastic or other non-

metallic casing is utilized, the driller shall install a protective steel casing which complies with the provisions of Subsection 11.2.3 or an equivalent protective covering approved by the state engineer over and around the well casing at ground surface to a depth of at least two and one half (2.5) feet. If a pitless adapter is installed on the well, the bottom of the protective cover shall be placed above the pitless adapter/well connection. If the pitless adapter is placed in the protective casing, the protective casing shall extend below the pitless entrance in the well casing and be sealed both on the outside of the protective casing and between the protective casing and well casing. The protective cover shall be sealed in the borehole in accordance with the requirements of Subsection 11.4. The annular space between the protective cover and non-metallic casing shall also be sealed with acceptable materials in accordance with Subsection 11.4. A sanitary, weather-tight seal or a completely welded cap shall be placed on top of the protective cover, thus enclosing the well itself. If the sanitary seal is vented, screens shall be placed in the vent to prevent debris insects, and other animals from entering the well. This protective casing requirement does not apply to monitor wells. Figure 5 depicts this requirement.

11.3 Casing Joints.

11.3.1 General. All well casing joints shall be made water tight. In instances in which a reduction in casing diameter is made, there shall be enough overlap of the casings to prevent misalignment and to insure the making of an adequate seal in the annular space between casings to prevent the movement of unstable sediment or formation material into the well, in addition to preventing the degradation of the water supply by the migration of inferior quality water through the annular space between the two casings.

11.3.2 Steel Casing. All steel casing shall be screw-coupled or welded. If the joints are welded, the weld shall meet American Welding Society standards and be at least as thick as the wall thickness of the casing and shall consist of at least two beads for the full circumference of the joint and be fully penetrating. Spot welding of joints is prohibited.

11.3.3 Plastic Casing. All plastic well casing shall be mechanically screw coupled, chemically welded, cam-locked or lug coupled to provide water tight joints as per ANSI/ASTM F480-95. Metal screws driven into casing joints shall not be long enough to penetrate the inside surface of the casing. Metal screws should be used only when surrounding air temperatures are below 50 degrees Fahrenheit (F) which retards the normal setting of the cement. Solvent-welded joints shall not impart taste, odors, toxic substances, or bacterial contamination to the water in the well.

11.4 Surface Seals and Interval Seals.

11.4.1 General. Before the drill rig is removed from the drill site of a well, a surface seal shall be installed. Well casings shall be sealed to prevent the possible downward movement of contaminated surface waters in the annular space around the well casing. The seal shall also prevent the upward movement of artesian waters within the annular space around the well casing. Depending upon hydrogeologic conditions around the well, interval seals may need to be installed to prevent the movement of groundwater either upward or downward around the well from zones that have been cased out of the well due to poor water quality or other reasons. The following surface and interval seal requirements apply equally to rotary drilled, cable tool drilled, bored, jetted, augered, and driven wells unless otherwise specified.

11.4.2 Seal Material.

11.4.2.1 General. The seal material shall consist of neat cement grout, sand cement grout, unhydrated bentonite, or bentonite grout as defined in Section R655-4-2. Use of sealing materials other than those listed above must be approved by the state engineer. Bentonite drilling fluid (drilling mud), dry drilling bentonite, or drill cuttings are not an acceptable sealing material. In no case shall drilling fluid (mud), drill cuttings, drill chips, or puddling clay be used, or allowed to fill, partially fill, or fall into the required sealing interval of a well during construction of the well. The annular space to be grouted must be protected from collapse and the introduction of materials other than grout. All hydrated sealing materials (neat cement grout, sand cement grout, bentonite grout) shall be placed by tremie pipe, pumping, or pressure from the bottom of the seal interval upwards in one continuous operation when placed below a depth of 30 feet or when placed below static groundwater level. Neat cement and sand cement grouts must be allowed to cure a minimum of 24 hours before well drilling, construction, or testing may be resumed. Allowable setting times may be reduced or lengthened by use of accelerators or retardants specifically designed to modify setting time, at the approval of the state engineer. The volume of annular space in the seal interval shall be calculated by the driller to determine the estimated volume of seal material required to seal the annular space. The driller shall place at least the volume of material equal to the volume of annular space, thus ensuring that a continuous seal is placed. The driller shall maintain the well casing centered in the borehole during seal placement using centralizers or other means to ensure that the seal is placed radially and vertically continuous. Neat cement and sand cement grout shall not be used for surface or interval seals with PVC and other approved non-metallic casing unless specific state engineer approval is obtained.

11.4.2.2 Bentonite Grout. Bentonite used to prepare grout for sealing shall have the ability to gel; not separate into water and solid materials after it gels; have a hydraulic conductivity or permeability value of 10E-7 centimeters per second or less; contain at least 20 percent solids by weight of bentonite, and have a fluid weight of 9.5 pounds per gallon or greater and be specifically designed for the purpose of sealing. In addition, if a bentonite grout is to be placed in the vadose zone (unsaturated interval), then clean rounded fine sand shall be added to the bentonite grout in order to increase the overall solids content and stabilize the grout from dehydrating and cracking in that interval. For 20% solids bentonite grout, at least 100 pounds of clean rounded fine sand shall be added. For 30% solids bentonite grout, at least 50 pounds of clean fine sand shall be added. Bentonite grout shall not be used for sealing intervals of fractured rock or sealing intervals of highly unstable material that could collapse or displace the sealing material, unless otherwise approved by the state engineer. Bentonite grout shall not be used as a sealing material where rapidly flowing groundwater might erode it. Bentonite or polymer drilling fluid (mud) does not meet the definition of a grout with respect to density, gel strength, and solids content and shall not be used for sealing purposes. At no time shall bentonite grout contain materials that are toxic, polluting, develop odor or color changes, or serve as a micro-bacterial nutrient. All bentonite grout shall be prepared and installed according to the manufacturer's instructions and these rules. All additives must be certified by a recognized certification authority such as NSF and approved by the state engineer. All bentonite used in any well shall be certified by NSF/ANSI approved standards for use in potable water supply wells, or equivalent standards as approved by the state engineer.

11.4.2.3 Unhydrated Bentonite. Unhydrated bentonite (e.g., granular, tabular, pelletized, or chip bentonite) may be used in the construction of well seals above a depth of 50 feet. Unhydrated bentonite can be placed below a depth of 50 feet when placed inside the annulus of two casings, when placed using a tremie pipe, or by using a placement method approved by the state engineer. The bentonite material shall

be specifically designed for well sealing and be within industry tolerances. All unhydrated bentonite used for sealing must be free of organic polymers and other contamination. Placement of bentonite shall conform to the manufacturer's specifications and instructions and result in a seal free of voids or bridges. Granular or powdered bentonite shall not be placed under water by gravity feeding from the surface. When placing unhydrated bentonite, a sounding or tamping tool shall be run in the sealing interval during pouring to measure fill-up rate, verify a continuous seal placement, and to break up possible bridges or cake formation.

11.4.3 Seal and Unperforated Casing Placement.

11.4.3.1 General Seal Requirements. Figure 1 illustrates the construction of a surface seal for a typical well. The surface seal must be placed in an annular space that has a minimum diameter of four (4) inches larger than the nominal size of the permanent well casing (This amounts to a 2-inch annulus). The surface seal must extend from land surface to a minimum depth of 30 feet. The completed surface seal must fully surround the permanent well casing, must be evenly distributed, free of voids, and extend to undisturbed or recompacted soil. In unconsolidated formations such as gravels, sands, or other unstable conditions when the use of drilling fluid or other means of keeping the borehole open are not employed, either a temporary surface casing with a minimum depth of 30 feet and a minimum nominal diameter of four (4) inches greater than the outermost permanent casing shall be utilized to ensure proper seal placement or the well driller shall notify the state engineer's office that the seal will be placed in a potentially unstable open borehole without a temporary surface casing by telephone or FAX in conjunction with the start card submittal in order to provide an opportunity for the state engineer's office to inspect the placement of the seal. If a temporary surface casing is utilized, the surface casing shall be removed in conjunction with the placement of the seal. Alternatively, conductor casing may be sealed permanently in place to a depth of 30 feet with a minimum 2-inch annular seal between the surface casing and borehole wall. If the temporary surface casing is to be removed, the surface casing shall be withdrawn as sealing material is placed between the outer-most permanent well casing and borehole wall. The sealing material shall be kept at a sufficient height above the bottom of the temporary surface casing as it is withdrawn to prevent caving of the borehole wall. If the temporary conductor casing is driven in place without a 2-inch annular seal between the surface casing and borehole wall, the surface casing shall be removed. Specific state engineer approval must be obtained on a case-by-case basis for any variation of these requirements. Surface seals and unperforated casing shall be installed in wells located in unconsolidated formation such as sand and gravel with minor clay or confining units; unconsolidated formation consisting of stratified layers of materials such as sand, gravel, and clay or other confining units; and consolidated formations according to the following procedures.

11.4.3.2 Unconsolidated Formation without Significant Confining Units. This includes wells that penetrate an aquifer overlain by unconsolidated formations such as sand and gravel without significant clay beds (at least six feet thick) or other confining formations. The surface seal must be placed in a 2-inch annular space to a minimum depth of 30 feet. Permanent unperforated casing shall extend at least to a depth of 30 feet and also extend below the lowest anticipated pumping level. Additional casing placed in the open borehole below the required depths noted above shall meet the casing requirements of Subsection 9.2 unless the casing is installed as a liner inside a larger diameter approved casing.

11.4.3.3 Unconsolidated Formation with Significant Confining Units. This includes wells that penetrate an aquifer overlain by clay or other confining formations that are at least six (6) feet thick. The surface seal must be placed in a 2-inch annular space to a minimum depth of 30 feet and at least five (5) feet into the confining unit above the water bearing formation. Unperforated casing shall extend from ground surface to at least 30 feet and to the bottom of the confining unit overlying the water bearing formation. If necessary to complete the well, a smaller diameter casing, liner, or well screen may be installed below the unperforated casing. The annular space between the two casings shall be sealed with grout, bentonite, or a mechanical packer. Additional casing placed in the open borehole below the required depths noted above shall meet the casing requirements of Subsection 11.2 unless the casing is installed as a liner inside a larger diameter approved casing.

11.4.3.4 Consolidated Formation. This includes drilled wells that penetrate an aquifer, either within or overlain by a consolidated formation. The surface seal must be placed in a 2-inch annular space to a minimum depth of 30 feet and at least five (5) feet into competent consolidated formation. Unperforated permanent casing shall be installed to extend to a depth of at least 30 feet and the lower part of the casing shall be driven and sealed at least five (5) feet into the consolidated formation. If necessary to complete the well, a smaller diameter casing, liner, or well screen may be installed below the unperforated casing. The annular space between the two casings shall be sealed with grout, bentonite, or a mechanical packer. Additional casing placed in the open borehole below the required depths noted above shall meet the casing requirements of Subsection 11.2 unless the casing is installed as a liner inside a larger diameter approved casing.

11.4.3.5 Sealing Artesian Wells. Unperforated well casing shall extend into the confining stratum overlying the artesian zone, and shall be adequately sealed into the confining stratum to prevent both surface and subsurface leakage from the artesian zone. If leaks occur around the well casing or adjacent to the well, the well shall be completed with the seals, packers, or casing necessary to eliminate the leakage. The driller shall not move the drilling rig from the well site until leakage is completely stopped, unless authority for temporary removal of the drilling rig is granted by the state engineer, or when loss of life or property is imminent. If the well flows naturally at land surface due to artesian pressure, the well shall be equipped with a control valve so that the flow can be completely stopped. The control valve must be available for inspection by the state engineer at all times. All flowing artesian water supply wells shall be tested for artesian shut-in pressure in pounds per square inch and rate of flow in cubic feet per second, or gallons per minute, under free discharge conditions. This data shall be reported on the well log.

11.4.3.6 Exceptions: With state engineer approval, exceptions to minimum seal depths can be made for shallow wells where the water to be produced is at a depth less than 30 feet. In no case shall a surface seal extend to a total depth less than 10 feet below land surface.

11.4.4 Interval Seals. Formations containing undesirable materials (e.g., fine sand and silt that can damage pumping equipment and result in turbid water), contaminated groundwater, or poor quality groundwater must be sealed off so that the unfavorable formation cannot contribute to the performance and quality of the well. These zones, as well as zones with significantly differing pressures, must also be sealed to eliminate the potential of cross contamination or commingling between two aquifers of differing quality and pressure. Figure 4 illustrates this situation. Unless approved by the state engineer, construction of wells that cause the commingling or cross connection of otherwise separate aquifers is not allowed.

11.4.5 Other Sealing Methods. In wells where the above-described methods of well sealing do not apply, special sealing procedures can be approved by the state engineer upon written request by the licensed well driller.

11.5 Special Requirements for Oversized and Gravel Packed Wells. This section applies to wells in which casing is installed in an open borehole without driving or drilling in the casing and an annular space is left between the borehole wall and well casing (e.g., mud rotary wells, flooded reverse circulation wells, air rotary wells in open bedrock).

11.5.1 Oversized Borehole. The diameter of the borehole shall be at least four (4) inches larger than the outside diameter of the well casing to be installed to allow for proper placement of the gravel pack and/or formation stabilizer and adequate clearance for grouting and surface seal installations. In order to accept a smaller diameter casing in any oversized borehole penetrating unconsolidated or stratified formations, the annular space must be sealed in accordance with Subsection 11.4. In order to minimize the risk of: 1) borehole caving or collapse; 2) casing failure or collapse; or 3) axial distortion of the casing, it is required that the entire annular space in an oversized borehole between the casing and borehole wall be filled with formation stabilizer such as approved seal material, gravel pack, filter material or other state engineer-approved materials. Well casing placed in an oversized borehole should be suspended at the ground surface until all formation stabilizer material is placed in order to reduce axial distortion of the casing if it is allowed to rest on the bottom of an open oversized borehole. In order to accept a smaller diameter casing, the annular space in an oversized borehole penetrating unconsolidated formations (with no confining layer) must be sealed in accordance with Subsection 11.4 to a depth of at least 30 feet or from static water level to ground surface, whichever is deeper. The annular space in an oversized borehole penetrating stratified or consolidated formations must be sealed in accordance with Subsection 11.4 to a depth of at least 30 feet or five (5) feet into an impervious strata (e.g., clay) or competent consolidated formation overlying the water producing zones back to ground surface, whichever is deeper. Especially in the case of an oversized borehole, the requirements of Subsection 11.4.4 regarding interval sealing must be followed.

11.5.2 Gravel Pack or Filter Material. The gravel pack or filter material shall consist of clean, well-rounded, chemically stable grains that are smooth and uniform. The filter material should not contain more than 2% by weight of thin, flat, or elongated pieces and should not contain organic impurities or contaminants of any kind. In order to assure that no contamination is introduced into the well via the gravel pack, the gravel pack must be washed with a minimum 100 ppm solution of chlorinated water or dry hypochlorite mixed with the gravel pack at the surface before it is introduced into the well (see Table 7 of these rules for required amount of chlorine material).

11.5.3 Placement of Filter Material. All filter material shall be placed using a method that through common usage has been shown to minimize a) bridging of the material between the borehole and the casing, and b) excessive segregation of the material after it has been introduced into the annulus and before it settles into place. It is not acceptable to place filter material by pouring from the ground surface unless proper sounding devices are utilized to measure dynamic filter depth, evaluate pour rate, and minimize bridging and formation of voids.

11.5.4 No Surface Casing Used. If no permanent conductor casing is installed, neat cement grout, sand cement grout, bentonite grout, or unhydrated bentonite seal shall be installed in accordance with Subsection 11.4. Figure 2 of these rules illustrates the construction of a typical well of this type.

11.5.5 Permanent Conductor Casing Used. If permanent conductor casing is installed, it shall be unperforated and installed and sealed in accordance with Subsection 11.4 as depicted in Figure 3 of these rules. After the gravel pack has been installed between the conductor casing and the well casing, the annular space between the two casings shall be sealed by either welding a water-tight steel cap between the two casings at land surface or filling the annular space between the two casings with neat cement grout, sand cement grout, bentonite grout, or unhydrated bentonite from at least 50 feet to the surface and in accordance with Subsection 11.4. If a hole will be created in the permanent conductor casing in order to install a pitless adapter into the well casing, the annual space between the conductor casing and well casing shall be sealed to at least a depth of thirty (30) feet with neat cement grout, sand cement grout, bentonite grout, or unhydrated bentonite. A waterproof cap or weld ring sealing the two casings at the surface by itself without the annular seal between the two casings is unacceptable when a pitless adapter is installed in this fashion. Moreover in this case, the annular space between the surface casing and well casing must be at least 2 inches in order to facilitate seal placement.

11.5.6 Gravel Feed Pipe. If a gravel feed pipe, used to add gravel to the gravel pack after well completion, is installed, the diameter of the borehole in the sealing interval must be at least four (4) inches in diameter greater than the permanent casing plus the diameter of the gravel feed pipe. The gravel feed pipe must have at least 2-inches of seal between it and the borehole wall. The gravel feed pipe must extend at least 18 inches above ground and must be sealed at the top with a watertight cap or plug (see Figure 2).

11.5.7 Other Gravel Feed Options. If a permanent surface casing or conductor casing is installed in the construction of a filter pack well, a watertight, completely welded, steel plate (weld ring) at least 3/16 of an inch in thickness shall be installed between the inner production casing and the outer surface/conductor casing at the wellhead. A watertight fill port with threaded cap may be installed for the purpose of placing additional filter pack material in the well.

11.6 Protection of the Aquifer.

11.6.1 Drilling Fluids and LCMs. The well driller shall take due care to protect the producing aquifer from clogging or contamination. Organic substances or phosphate-based substances shall not be introduced into the well or borehole during drilling or construction. Every effort shall be made to remove all substances and materials introduced into the aquifer or aquifers during well construction. "Substances and materials" shall mean all bentonite- and polymer-based drilling fluids, filter cake, and any other inorganic substances added to the drilling fluid that may seal or clog the aquifer. All polymers and additives used in any well shall be certified by NSF/ANSI approval standards for use in potable water supply wells, or equivalent standards as approved by the state engineer. The introduction of lost circulation materials (LCM's) during the drilling process shall be limited to those products which will not present a potential medium for bacterial growth or contamination. Only LCM's which are non-organic, which can be safely broken down and removed from the borehole, may be utilized. This includes, but is not limited to, paper/wood products, brans, hulls, grains, starches, hays/straws, and proteins. This is especially important in the construction of wells designed to be used as a public water system supply. All polymers and additives used in any well shall be certified by NSF/ANSI approval standards for use in potable water supply wells, or equivalent standards as

approved by the Division. The product shall be clearly labeled as meeting these standards. Polymers and additives must be designed and manufactured to meet industry standards to be nondegrading and must not act as a medium which will promote growth of microorganisms.

11.6.2 Containment of Drilling Fluid. Drilling or circulating fluid introduced into the drilling process shall be contained in a manner to prevent surface or subsurface contamination and to prevent degradation of natural or man-made water courses or impoundments. Rules regarding the discharges to waters of the state are promulgated under R317-8-2 of the Utah Administrative Code and regulated by the Utah Division of Water Quality (Tel. 801-536-6146). Pollution of waters of the state is a violation of the Utah Water Quality Act, Utah Code Annotated Title 19, Chapter 5.

11.6.3 Mineralized, Contaminated or Polluted Water. Whenever a water bearing stratum that contains nonpotable mineralized, contaminated or polluted water is encountered, the stratum shall be adequately sealed off so that contamination or co-mingling of the overlying or underlying groundwater zones will not occur (see Figure 4) Water bearing zones with differing pressures must also be isolated and sealed off in the well to avoid aquifer depletion, wasting of water, and reduction of aquifer pressures.

11.6.4 Down-hole Equipment. All tools, drilling equipment, and materials used to drill, repair, renovate, clean, or install a pump in a well shall be free of contaminants prior to beginning well construction or other in-well activity. Contaminants include lubricants, fuel, bacteria, etc. that will reduce the well efficiency, and any other item(s) that will be harmful to public health and/or the resource or reduce the life of the water well. It is recommended that excess lubricants placed on drilling equipment be wiped clean prior to insertion into the borehole.

11.6.5 Well Disinfection and Chlorination of Water. No contaminated or untreated water shall be placed in a well during construction. Water should be obtained from a chlorinated municipal system. Where this is not possible, the water must be treated to give at least 100 parts per million free chlorine residual. Upon completion of a well or work on a well, the driller or pump installer shall disinfect the well using accepted disinfection procedures to give at least 100 parts per million free chlorine residual equally distributed in the well water from static level to the bottom of the well. A chlorine solution designated for potable water use prepared with either calcium hypochlorite (powdered, granular, or tablet form) or sodium hypochlorite in liquid form shall be used for water well disinfection. Off-the-shelf chlorine compounds intended for home laundry use, pool or fountain use should not be used if they contain additives such as antifungal agents, silica ("Ultra" brands), scents, etc. Table 7 provides the amount of chlorine compound required per 100 gallons of water or 100 feet linear casing volume of water to mix a 100 parts per million solution. Disinfection situations not depicted in Table 7 must be approved by the state engineer. Additional recommendations and guidelines for water well system disinfection are available from the state engineer upon request.

TABLE 7

AMOUNT OF CHLORINE COMPOUND FOR EACH 100 FEET OF WATER STANDING IN WELL (100 ppm solution)

Well Diameter (inches)	Ca-HyCLT* (25% HOCL) (ounces)	Ca-HyCLT (65% HOCL) (ounces)	Na-HyCLT** (12-trade %) (fluid ounces)	Liquid CL*** (100% Cl2) (lbs)
2	1.00	0.50	3.5	0.03
4	3.50	1.50	7.0	0.06
6	8.00	3.00	16.0	0.12
8	14.50	5.50	28.0	0.22
10	22.50	8.50	45.0	0.34
12	32.50	12.00	64.0	0.50
14	44.50	16.50	88.0	0.70
16	58.00	26.00	112	0.88
20	90.50	33.00	179	1.36
For every 100 gal. of water add:	5.50	2.00	11.5	0.09

NOTES: *Calcium Hypochlorite (solid)
**Sodium Hypochlorite (liquid)
***Liquid Chlorine

11.7 Special Requirements.

11.7.1 Explosives. Explosives used in well construction shall not be detonated within the section of casing designed or expected to serve as the surface seal of the completed well, whether or not the surface seal has been placed. If explosives are used in the construction of a well, their use shall be reported on the official well log. In no case shall explosives, other than explosive shot perforators specifically designed to perforate steel casing, be detonated inside the well casing or liner pipe.

11.7.2 Access Port. Every well shall be equipped with a usable access port so that the position of the water level, or pressure head, in the well can be measured at all times.

11.7.3 Completion or Abandonment. A licensed driller shall not remove his drill rig from a well site unless the well is completed or abandoned. Completion of a well shall include all surface seals, gravel packs or curbs required. Dry boreholes, or otherwise unsuccessful attempts at completing a well, shall be properly abandoned in accordance with Section R655-4-14. Upon completion, all wells shall be equipped with a watertight, tamper-resistant casing cap or sanitary seal.

11.7.4 Surface Security. If it becomes necessary for the driller to temporarily discontinue the drilling operation before completion of the well or otherwise leave the well or borehole unattended, the well and/or borehole must be covered securely to prevent contaminants from entering the casing or borehole and rendered secure against entry by children, vandals, domestic animals, and wildlife.

11.7.5 Pitless Adapters/Units. Pitless adapters or units are acceptable to use with steel well casing as long as they are installed in accordance with manufacturers recommendations and specifications as well as meet the Water Systems Council Pitless Adapter Standard (PAS-97) which are incorporated herein by reference and are available from Water Systems Council, 13 Bentley Dr., Sterling, VA 20165, phone 703-430-6045, fax 703-430-6185 (watersystemscouncil.org). The pitless adaptor, including the cap or cover, casing extension, and other attachments, must be so designed and constructed to be secure, water tight, and to prevent contamination of the potable water supply from external sources. Pitless wellhead configurations shall have suitable access to the interior of the well in order to measure water level and for well disinfection purposes. Pitless configurations shall be of watertight construction throughout and be constructed of materials at least equivalent to and having wall thickness and strength compatible to the casing. Pitless adapters or units are not recommended to be mounted on PVC well casing. If a pitless adapter is to be used with PVC casing, it should be designed for use with PVC casing, and the driller should ensure that the weight of the pump and column do not exceed the strength of the PVC well casing. If it is known that a pitless adapter/unit will be installed on a well, a cement grout seal shall not be allowed within the pitless unit or pitless adaptor sealing interval as the well is being constructed. The pitless adapter or unit sealing interval shall be sealed with unhydrated bentonite as the well is constructed and before pitless installation. Upon pitless adapter/unit installation, the

surface seal below the pitless connection shall be protected and maintained. After the pitless adapter/unit has been installed, the associated excavation around the well from the pitless connection to ground surface shall be backfilled and compacted with low permeability fill that includes clay. The pitless adapter or unit, including the cap or cover, pitless case and other attachments, shall be designed and constructed to be watertight to prevent the entrance of contaminants into the well from surface or near-surface sources.

11.7.6 Hydraulic Fracturing. The hydraulic fracturing pressure shall be transmitted through a drill string and shall not be transmitted to the well casing. Hydraulic fracturing intervals shall be at least 20 feet below the bottom of the permanent casing of a well. All hydraulic fracturing equipment shall be thoroughly disinfected with a 100 part per million chlorine solution prior to insertion into the well. The driller shall include the appropriate hydraulic fracturing information on the well log including methods, materials, maximum pressures, location of packers, and initial/final yields. In no case shall hydrofacturing allow commingling of waters within the well bore. Clean sand or other material (propping agents) approved by the Division may be injected into the well to hold the fractures open when pressure is removed.

11.7.7 Static Water Level, Well Development, and Well Yield. To fulfill the requirements of Subsection R655-4-4.5.2, new wells designed to produce water shall be developed to remove drill cuttings, drilling mud, or other materials introduced into the well during construction and to restore the natural groundwater flow to the well to the extent possible. After a water production well is developed, a test should be performed to determine the rate at which groundwater can be reliably produced from the well. Following development and testing, the static water level in the well should also be measured. Static water level, well development information, and well yield information shall be noted on the official submittal of the Well Log by the well driller.

11.7.8 Packers. Packers shall be of a material that will not impart taste, odor, toxic substances or bacterial contamination to the water in the well.

11.7.9 Screens. Screens must be constructed of corrosion-resistant material and sufficiently strong to withstand stresses encountered during and after installation. Screen slot openings, screen length, and screen diameter should be sized and designed to provide sufficient open area consistent with strength requirements to transmit sand-free water from the well. Screens should be installed so that exposure above pumping level will not occur.

11.7.10 Openings in the Casing. There shall be no opening in the casing wall between the top of the casing and the bottom of the required casing seal except for pitless adapters, measurement access ports, and other approved openings installed in conformance with these standards. In no case shall holes be cut in the casing wall for the purpose of lifting or lowering casing into the well bore unless such holes are properly welded closed and watertight prior to placement into the well bore.

11.7.11 Casing vents. If a well requires venting, it must terminate in a down-turned position at least 18-inches above ground (land) level, at or above the top of the casing or pitless unit and be covered with a 24 mesh corrosion-resistant screen.

R655-4-12. Special Wells.

12.1 Construction Standards for Special Wells.

12.1.1 General. The construction standards outlined in Section R655-4-11 are meant to serve as minimum acceptable construction standards. Certain types of wells such as cathodic protection wells, closed-loop heating or cooling exchange wells, recharge and recovery wells, and public supply wells require special construction standards that are addressed in this section or in rules promulgated by other regulating agencies. At a minimum, when constructing special wells as listed above, the well shall be constructed by a licensed well driller, and the minimum construction standards of Section R655-4-11 shall be followed in addition to the following special standards.

12.1.2 Public Water Supply Wells. Public water supply wells are subject to the minimum construction standards outlined in Section R655-4-11 in addition to the requirements established by the Department of Environmental Quality, Division of Drinking Water under Rules R309-515 and R309-600. Rules and requirements in R309-515 and R309-600 are regulated by the Division of Drinking Water and not by the Division of Water Rights and may include a preliminary evaluation report related to drinking water source protection, well plan and specification review and approval, and mandatory grout seal inspection (The Division of Drinking Water should be contacted to determine specific and current rules and requirements).

12.1.3 Cathodic Protection Well Construction. Cathodic protection wells shall be constructed in accordance with the casing, joint, surface seal, and other applicable requirements outlined in Section R655-4-11. Any annular space existing between the base of the annular surface seal and the top of the anode and conductive fill interval shall be filled with appropriate fill or sealing material. Fill material shall consist of washed granular material such as sand, pea gravel, or sealing material. Fill material shall not be subject to decomposition or consolidation and shall be free of pollutants and contaminants. Fill material shall not be toxic or contain drill cuttings or drilling mud. Additional sealing material shall be placed below the minimum depth of the annular surface seal, as needed, to prevent the cross-connection and commingling of separate aquifers and water bearing zones. Vent pipes, anode access tubing, and any other tubular materials (i.e., the outermost casing) that pass through the interval to be filled and sealed are considered casing for the purposes of these standards and shall meet the requirements of Subsections R655-4-11.2 and 11.3. Cathodic protection well casing shall be at least 2 inches in internal diameter to facilitate eventual well abandonment. Figure 6 illustrates the construction of a typical cathodic protection well.

12.1.4 Closed-loop Heating/Cooling Exchange Wells. Wells or boreholes utilized for heat exchange or thermal heating in a closed-loop fashion, which are greater than 30 feet in depth and encounter formations containing groundwater, must be drilled by a licensed driller and the owner or applicant must have an approved application for that specific purpose as outlined in Section R655-4-9. Wells or boreholes installed for heat or thermal exchange process must comply with the minimum construction standards of Section R655-4-11. Direct exchange (DX) systems are not allowed unless case by case permission is provided by the state engineer.

12.1.4.1 For open-loop systems where groundwater is removed, processed, and re-injected, a non-consumptive use water right approval must be obtained from the state engineer. Approval to re-inject water underground is also required from the Utah Division of Water Quality. Open-loop system wells shall be constructed in accordance with the requirements found in Section 11. If a separate well or borehole is required for re-injection purposes, it must also comply with these standards and the groundwater must be injected into the same water bearing zones as from which it is initially withdrawn. The quality and quantity of groundwater shall not be diminished or degraded upon re-injection.

12.1.4.2 Closed-loop heat exchange wells must also comply with the guidelines set forth in the National Ground Water Association Guidelines for Construction of Vertical Boreholes for Closed Loop Heat Pump Systems (guidelines are copyrighted and available from the National Ground Water Association at 601 Dempsey Rd, Westerville, OH 43081-8978, Phone 614-898-7791, Fax 614.898-7786, website www.ngwa.org, email customerservice@ngwa.org) or standards set forth in the Design and Installation Standards for Closed-Loop/Geothermal Heat Pump Systems (standards are copyrighted and available from the International Ground Source Heat Pump Association (374 Cordell South, Oklahoma State University, Stillwater, OK 74078-8018, www.igshpa.okstate.edu). These guidelines and standards may be viewed during normal business hours at the Division's main office at 1594 West North Temple, SLC, UT 84116). For closed-loop systems where groundwater is not removed in the process, non-production well approval must be obtained from the state engineer. Specific requirements for closed-loop wells include:

a. The location of closed loop heat pump wells must comply with applicable ordinances, regulations, or other enforceable instruments of local governments to ensure adequate protection of public water systems from encroachments or any impairment of the groundwater resource. During drilling and construction, provisions shall be made to reduce entry of foreign matter or surface runoff into the well or borehole.

b. Closed-loop system wells must be sealed from the bottom of the well/boring to ground surface using acceptable materials and placement methods described in Section 11.4. Sand may be added to the seal mix to enhance thermal conductivity as long as the seal mix meets permeability and gel strength standards outlined in Section 11.4.

c. Borehole Diameter: The borehole diameter of a closed loop heat pump well must be of sufficient size to allow placement of the pipe and placement of a tremie to emplace the grout. In general, for loop piping with a nominal diameter of 3/4 to 1 inch, the borehole diameter shall be at least 4.75 inches. For loop piping with a nominal diameter of 1.25 inches, the borehole diameter shall be at least 5.25 inches. For loop piping with a nominal diameter of 1.5 to 2.0 inches, the borehole diameter shall be at least 6.0 inches.

d. Grouting of Vertical Ground Water Heat Pump Wells: Grouting the annulus of a heat pump well shall be completed within 24 hours from the time the borehole is drilled and loaded with the U-bend assembly and within at least 6 hours from the time the drill rig moves off the borehole. Full-length grout placement is required on all vertical closed loop heat pump boreholes.

e. Placement of Grout Material: Full-length grout material must be placed by tremie from the bottom of the borehole to the top. The tremie pipe shall be continuously submerged in grout during placement. The tremie pipe must not be left in the borehole. The grout must fill the entire borehole. Grout must not be allowed to free-fall. Once the grout has settled for at least 48 hours, borehole shall be topped off with additional grout as necessary to maintain seal material to ground surface.

f. Pipe: Pipe material, joining methods, and installation must meet the guidelines and standards referenced in the National Ground Water Association Guidelines for Construction of Vertical Boreholes for Closed Loop Heat Pump Systems, (guidelines are copyrighted and available from the National Ground Water Association at 601 Dempsey Rd, Westerville, OH 43081-8978, Phone 614-898-7791, Fax 614.898-7786, email customerservice@ngwa.org) and in the Design and Installation Standards for Closed-Loop/Geothermal Heat Pump Systems (standards are copyrighted and available from the International Ground Source Heat Pump Association (374 Cordell South, Oklahoma State University, Stillwater, OK 74078-8018, www.igshpa.okstate.edu). Guidelines and standards may be viewed during normal business hours at the Division's main office at 1594 West North Temple, SLC, UT 84116). U-bend connections shall be factory jointed and piping shall not have any fusion joints below a depth of 30 feet.

g. Pressure Testing: Loop piping shall be filled with water and pressure tested prior to installation into the borehole. Loop piping failing this initial pressure testing shall not be installed. The installed system must be pressure tested at a minimum of 2 times the system operating pressure to ensure the integrity of the system. If a pressure loss is detected, the cause must be properly repaired or material replaced or properly plugged. The system shall be pressure tested again following any repairs. Pressure testing procedures shall follow the guidelines and standards in the National Ground Water Association Guidelines for Construction of Vertical Boreholes for Closed Loop Heat Pump Systems, (guidelines are copyrighted and available from the National Ground Water Association at 601 Dempsey Rd, Westerville, OH 43081-8978, Phone 614-898-7791, Fax 614.898-7786, email customerservice@ngwa.org) and in the Design and Installation Standards for Closed-Loop/Geothermal Heat Pump Systems (standards are copyrighted and available from the International Ground Source Heat Pump Association (374 Cordell South, Oklahoma State University, Stillwater, OK 74078-8018, www.igshpa.okstate.edu). Guidelines and standards may be viewed during normal business hours at the Division's main office at 1594 West North Temple, SLC, UT 84116).

h. Heat transfer fluid, additives, and inhibitors. The heat transfer fluids, additives, and inhibitors used inside the closed-loop assembly must be nontoxic, safe to install, provide corrosion protection, not promote bacterial growth, and not produce an unacceptable risk to the environment in the event of a system leak. Potassium acetate or ethylene glycol shall not be used as a heat transfer fluid. Water used in the heat transfer fluid mix must be from a treated potable source or be disinfected in accordance with these rules. Use and placement of fluids, additives, and inhibitors shall be in accordance with the guidelines and standards in the National Ground Water Association Guidelines for Construction of Vertical Boreholes for Closed Loop Heat Pump Systems, (guidelines are copyrighted and available from the National Ground Water Association at 601 Dempsey Rd, Westerville, OH 43081-8978, Phone 614-898-7791, Fax 614.898-7786, email customerservice@ngwa.org) and in the Design and Installation Standards for Closed-Loop/Geothermal Heat Pump Systems (standards are copyrighted and available from the International Ground Source Heat Pump Association (374 Cordell South, Oklahoma State University, Stillwater, OK 74078-8018, www.igshpa.okstate.edu). Guidelines and standards may be viewed during normal business hours at the Division's main office at 1594 West North Temple, SLC, UT 84116).

i. Abandonment: When closed-loop heat exchange wells are required to be permanently abandoned (decommissioned and sealed), the most recent version of the standards referenced in the previous section shall be followed. The state engineer shall be notified prior to loop field abonnement. All heat transfer fluids shall be flushed and removed from loop piping prior to abandonment. Below ground loop piping to be abandoned shall be filled completely with acceptable grout and the loop piping ends properly capped or sealed.

12.1.4.3 The rules herein pertain only to the heating and cooling exchange well constructed to a depth greater than 30

feet and are not intended to regulate the incidental work that may occur up to the well such as plumbing, electrical, piping, trenching, and backfilling activities.

12.1.5 Recharge and Recovery Wells. Any well drilled under the provisions of Title 73, Chapter 3b (Groundwater Recharge and Recovery Act) shall be constructed in a manner consistent with these rules and shall be drilled by a currently licensed driller. Special rules regarding the injection of water into the ground are also promulgated under the jurisdiction of the Utah Department of Environmental Quality, Division of Water Quality (Rule R317-7 "Underground Injection Control Program" of the Utah Administrative Code) and must be followed in conjunction with the Water Well Drilling rules.

R655-4-13. Deepening, Rehabilitation, and Renovation of Wells.

13.1 Sealing of Casing.

13.1.1 If in the repair of a drilled well, the old casing is withdrawn, the well shall be recased and resealed in accordance with the rules provided in Subsection R655-4-11(11.4).

13.2 Inner Casing.

13.2.1 If an inner casing is installed to prevent leakage of undesirable water into a well, the space between the two well casings shall be completely sealed using packers, casing swedging, pressure grouting, etc., to prevent the movement of water between the casings.

13.3 Outer Casing.

13.3.1 If the "over-drive" method is used to eliminate leakage around an existing well, the casing driven over the well shall meet the minimum specifications listed in Subsection R655-4-11(11.4).

13.4 Artesian Wells.

13.4.1 If upon deepening an existing well, an artesian zone is encountered, the well shall be cased and completed as provided in Subsection R655-4-11(11.4).

13.5 Drilling in a Dug Well.

13.5.1 A drilled well may be constructed through an existing dug well provided that:

13.5.1.1 Unperforated Casing Requirements. An unperforated section of well casing extends from a depth of at least ten (10) feet below the bottom of the dug well and at least 20 feet below land surface to above the maximum static water level in the dug well.

13.5.1.2 Seal Required. A two foot thick seal of neat cement grout, sand cement grout, or bentonite grout is placed in the bottom of the dug well so as to prevent the direct movement of water from the dug well into the drilled well.

13.5.1.3 Test of Seal. The drilled well shall be pumped or bailed to determine whether the seal described in Subsection R655-4-13(13.5.1.2) is adequate to prevent movement of water from the dug well into the drilled well. If the seal leaks, additional sealing and testing shall be performed until a water tight seal is obtained.

13.6 Well Rehabilitation and Cleaning.

13.6.1 Tools used to rehabilitate or clean a well shall be cleaned, disinfected, and free of contamination prior to placement in a well.

13.6.2 The driller shall use rehabilitation and cleaning tools properly so as not to permanently damage the well or aquifer. If the surface seal is damaged or destroyed in the process of rehabilitation or cleaning, the driller shall repair the surface seal to the standards set forth in Subsection R655-4-11(11.4).

13.6.3 Debris, sediment, and other materials displaced inside the well and surrounding aquifer as a result of rehabilitation or cleaning shall be completely removed by pumping, bailing, well development, or other approved methods.

13.6.4 Detergents, chlorine, acids, or other chemicals placed in wells for the purpose of increasing or restoring yield, shall be specifically designed for that purpose and used according to the manufacturer's recommendations.

13.6.5 Any renovation, rehabilitation, cleaning, or other work on a well that requires alteration of the well itself shall be conducted by a licensed well driller.

13.6.6 Following completion of deepening, renovation, rehabilitation, cleaning, or other work on a well, the well shall be properly disinfected in accordance with Subsection R655-4-11(11.6.5).

R655-4-14. Abandonment of Wells.

14.1 Temporary Abandonment.

14.1.1 When any well is temporarily removed from service, the top of the well shall be sealed with a tamper resistant, water-tight cap or seal. If a well is in the process of being drilled and is temporarily abandoned, the well shall be sealed with a tamper resistant, water-tight cap or seal and a surface seal installed in accordance with Subsection R655-4-11(11.4). The well may be temporarily abandoned during construction for a maximum of 90 days. After the 90 day period, the temporarily abandoned well shall be completed as a well that meets the standards of Section 11 or permanently abandoned in accordance with the following requirements, and an official well abandonment report (abandonment log) must be submitted in compliance with Section R655-4-4.

14.2 Permanent Abandonment.

14.2.1 The rules of this section apply to the abandonment of the type of wells listed in Subsection R655-4-1(1.2) including private water wells, public supply wells, monitor wells, cathodic protection wells, and heating or cooling exchange wells. A licensed driller shall notify the state engineer prior to commencing abandonment work of an existing well and submit a complete and accurate abandonment log following abandonment work in accordance with Section R655-4-4 of these rules. Prior to commencing abandonment work, the driller shall obtain a copy of the well log of the well proposed to be abandoned from the well owner or the state engineer, if available, in order to determine the proper abandonment procedure. Any well that is to be permanently abandoned shall be completely filled from bottom to top in a manner to prevent vertical movement of water within the borehole as well as preventing the annular space surrounding the well casing from becoming a conduit for possible contamination of the groundwater supply. A well driller who wishes to abandon a well in a manner that does not comply with the provisions set forth in this section must request approval from the state engineer.

14.3 License Required.

14.3.1 Well abandonment shall be accomplished under the direct supervision of a currently licensed water well driller who shall be responsible for verification of the procedures and materials used.

14.4 Acceptable Materials.

14.4.1 Neat cement grout, sand cement grout, unhydrated bentonite, or bentonite grout in accordance with Section R655-4-11.4 shall be used to abandon wells and boreholes. Other sealing materials or additives, such as fly ash, may be used in the preparation of grout upon approval of the state engineer. Drilling mud or drill cuttings shall not be used as any part of a sealing materials for well abandonment. The liquid phase of the abandonment fluid shall be water from a potable municipal system or disinfected in accordance with Subsection R655-4-11(11.6.5).

14.5 Placement of Materials.

14.5.1 Neat cement and sand cement grout shall be introduced at the bottom of the well or required sealing interval and placed progressively upward to the top of the

well. The sealing material shall be placed by the use of a grout pipe, tremie line, dump bailer or equivalent in order to avoid freefall, bridging, or dilution of the sealing materials or separation of aggregates from sealants. Sealing material shall not be installed by freefall (gravity) unless the interval to be sealed is dry and no deeper than 30 feet below ground surface. If the well to be abandoned is a flowing artesian well, the well may be pressure grouted from the surface. The well should be capped immediately after placement of seal materials to allow the seal material to set up and not flow out of the well.

14.5.2 Bentonite-based abandonment products shall be mixed and placed according to manufacturer's recommended procedures and result in a seal free of voids or bridges. Granular or powered bentonite shall not be placed under water. When placing unhydrated bentonite, a sounding or tamping tool shall be run in the sealing interval during pouring to measure fill-up rate, verify a continuous seal placement, and to break up possible bridges or cake formation.

14.5.3 If seal material settlement occurs during placement and set up, the top of the abandoned well casing or borehole shall be topped off with approved sealing material until the seal top remains at the natural ground surface.

14.5.4 Abandonment materials placed opposite any non-water bearing intervals or zones shall be at least as impervious as the formation or strata prior to penetration during the drilling process.

14.5.5 Prior to well or borehole abandonment, all pump equipment, piping, and other debris shall be removed to the extent possible. The well shall also be sounded immediately before it is plugged to make sure that no obstructions exist that will interfere with the filling and sealing. If the well contains lubricating oil that has leaked from a turbine shaft pump, it shall be removed from the well prior to abandonment and disposed of in accordance with applicable state and federal regulations.

14.5.6 Verification shall be made that the volume of sealing and fill material placed in a well during abandonment operations equals or exceeds the volume of the well or borehole to be filled and sealed.

14.6 Termination of Casing.

14.6.1 The casings of wells to be abandoned shall be severed to the natural ground surface or deeper if necessitated by development of the area. If the casing is severed below ground surface, compacted native material shall be placed above the abandoned well upon completion.

14.7 Abandonment of Artesian Wells.

14.7.1 A neat cement grout, sand-cement grout, or concrete plug shall be placed in the confining stratum overlying the artesian zone so as to prevent subsurface leakage from the artesian zone. The remainder of the well shall be filled with sand-cement grout, neat cement grout, bentonite abandonment products, or bentonite grout. The uppermost ten (10) feet of the well shall be abandoned as required in Subsection R655-4-14(14.5.3).

14.8 Abandonment of Drilled and Jetted Wells.

14.8.1 A neat cement grout or sand cement grout plug shall be placed opposite all perforations, screens or openings in the well casing. The remainder of the well shall be filled with cement grout, neat cement, bentonite abandonment products, concrete, or bentonite slurry. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-14(14.5.3).

14.9 Abandonment of Gravel Packed Wells.

14.9.1 All gravel packed wells shall be pressure grouted throughout the perforated or screened section of the well. The remainder of the well shall be filled with sand cement grout, neat cement grout, bentonite abandonment products, or bentonite grout. If gravel pack extends above or below the perforated/screened interval in the annular space between the casing and borehole wall, additional perforations in that blank interval of casing shall be required. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-14(14.5.3).

14.10 Removal of Casing.

14.10.1 Where possible, it is recommended that the well casing be removed during well abandonment, and when doing so, the abandonment materials shall be placed from the bottom of the well or borehole progressively upward as the casing is removed. The well shall be sealed with sand cement grout, neat cement grout, bentonite abandonment products, or bentonite grout. In the case of gravel packed wells, the entire gravel section shall be pressure grouted. The uppermost ten feet of the well shall be abandoned as required in Subsection R655-4-14(14.5.3).

14.11 Replacement Wells.

14.11.1 Wells which are to be removed from operation and replaced by the drilling of a new well under an approved replacement application, shall be abandoned in a manner consistent with the provisions of Section R655-4-14 before the rig is removed from the site of the newly constructed replacement well, unless written authorization to remove the rig without abandonment is provided by the state engineer. Also refer to the requirements provided in Subsection R655-4-4(4.4).

14.12 Abandonment of Cathodic Protection Wells.

14.12.1 The general requirements for permanent well abandonment in accordance with Section R655-4-14 shall be followed for the abandonment of cathodic protection wells.

14.12.2 A cathodic protection well shall be investigated before it is destroyed to determine its condition, details of its construction and whether conditions exist that will interfere with filling and sealing.

14.12.3 Casing, cables, anodes, granular backfill, conductive backfill, and sealing material shall be removed as needed, by re-drilling, if necessary, to the point needed to allow proper placement of abandonment material. Casing that cannot be removed shall be adequately perforated or punctured at specific intervals to allow pressure injection of sealing materials into granular backfill and all other voids that require sealing.

R655-4-15. Monitor Well Construction Standards.

15.1 Scope.

15.1.1 Certain construction standards that apply to water wells also apply to monitor wells. Therefore, these monitoring well standards refer frequently to the water well standard sections of the rules. Standards that apply only to monitor wells, or that require emphasis, are discussed in this section. Figure 7 illustrates a schematic of an acceptable monitor well with an above-ground surface completion. Figure 8 illustrates a schematic of an acceptable monitor well with a flush-mount surface completion. Figures 7 and 8 can be viewed in the publication, State of Utah Administrative Rules for Water Wells, most recent edition, available at the Division of Water Rights, 1594 West North Temple, Salt Lake City, Utah.

15.1.2 These standards are not intended as a complete manual for monitoring well construction, alteration, maintenance, and abandonment. These standards serve only as minimum statewide guidelines towards ensuring that monitor wells do not constitute a significant pathway for the movement of poor quality water, pollutants, or contaminants. These standards provide no assurance that a monitor well will perform a desired function. Ultimate responsibility for the design and performance of a monitoring well rests with the well owner and/or the owner's contractor, and/or technical

representative(s). Most monitor well projects are the result of compliance with the Environmental Protection Agency (EPA), Federal Regulations such as the Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund"), or specific State Solid and Hazardous Waste requirements. The contracts governing their installation are tightly written containing specific requirements as to site location, materials used, sampling procedures and overall objectives. Therefore specific construction requirements for monitor well installation shall be governed by applicable contracts and regulations providing they meet or exceed state requirements and specifications. Guidelines and recommended practices dealing with the installation of monitor wells may be obtained from the state engineer upon request. Additional recommended information may be obtained from the Environmental Protection Agency (EPA), Resource Conservation and Recovery Act (RCRA), Groundwater Monitoring Enforcement and Compliance Document available from EPA's regional office in Denver, Colorado and from the Handbook of Suggested Practices for the Design and Installation of Groundwater Monitoring Wells, available from the National Groundwater Association in Dublin, Ohio.

15.2 Installation and Construction.

15.2.1 Materials and Equipment Contaminant-Free. All material used in the installation of monitor wells shall be contaminant-free when placed in the ground. Drilling equipment shall be clean and contaminant free in accordance with Subsection R655-4-11(11.6.4). During construction contaminated water should not be allowed to enter contaminant-free geologic formations or water bearing zones.

15.2.2 Borehole Integrity. Some minor cross-contamination may occur during the drilling process, but the integrity of the borehole and individual formations must then be safeguarded from permanent cross connection.

15.2.3 Casing and Screen. The well casing should be perforated or screened and filter packed with sand or gravel where necessary to provide adequate sample collection at depths where appropriate aquifer flow zones exist. The casing and screen selected shall not affect or interfere with the chemical, physical, radiological, or biological constituents of interest. Screens in the same well shall not be placed across separate water bearing zones in order to minimize interconnection, aquifer commingling, and cross contamination. Screens in a nested well can be placed in separate water bearing zones as long as the intervals between the water bearing zones are appropriately sealed and aquifer cross connection and commingling does not occur. Monitor well casing and screen shall conform to ASTM standards, or consist of at least 304 or 316 stainless steel, PTFE (Teflon), or Schedule 40 PVC casing.

15.2.4 Gravel/Filter Pack. If installed, the gravel or filter pack should generally extend two (2) feet to ten (10) feet above screened or perforated areas to prevent the migration of the sealing material from entering the zones being sampled. Gravel or filter pack material shall meet the requirements of Subsection R655-4-11(11.5.2). Gravel/filter pack for monitoring wells does not require disinfection. Drill cutting should not be placed into the open borehole annulus. The well driller shall ensure that a bridge or voids do not occur in the annular space during the placement of the gravel pack by means of a sounding device or other mechanism.

15.2.5 Annular Seal. All monitor wells constructed shall have a continuous surface seal, which seals the annular space between the borehole and the permanent casing, in accordance with the provisions in Section R655-4-11. The surface seal depth requirements of Section R655-4-11 do not apply to monitor wells. The surface seal may be more or less than 50 feet depending on the screen/perforation and/or gravel pack interval. Seals shall also be constructed to prevent interconnection and commingling of separate aquifers penetrated by the well, prevent migration of surface water and contaminations into the well and aquifers, and shall provide casing stability. The seal shall have a minimum diameter of four inches larger than the nominal size of the permanent casing, and shall extend from land surface to the top of the filter pack. After the permanent casing and filter pack (optional) has been set in final position, a layer of bentonite or fine sand (e.g., mortar sand) shall be placed on top of the filter pack to maintain separation between the seal material and the screened interval in order to insure that the seal placement will not interfere with the filter pack. The remaining annular space shall be filled to land surface in a continuous operation with unhydrated bentonite, neat cement grout, sand-cement grout, or bentonite grout. Only potable water should be used to hydrate any grout or slurry mixture. The completed annular space shall fully surround the permanent casing, be evenly distributed, free of voids, and extend from the permanent casing to undisturbed or recompacted soil. All sealing materials and placement methods shall conform to the standards in Section R655-4-2 and Subsection R655-4-11(11.4). The well driller shall ensure that a bridge or voids do not occur in the annular space during the placement of the seal.

15.2.6 Cuttings, Decon Water, Development Water, and Other IDW. Drill cuttings, decontamination (Decon) water, monitor well development water, and other investigation derived waste (IDW) shall be managed and disposed of in accordance with applicable state and federal environmental regulations. It is the responsibility of the driller to know and understand such requirements.

15.3 Minimum Surface Protection Requirements.

15.3.1 If a well is cased with metal and completed above ground surface, a locking water resistant cap shall be installed on the top of the well.

15.3.2 If the well is not cased with metal and completed above ground surface, a protective metal casing shall be installed over and around the well. The protective casing shall be cemented at least two feet into the ground around the nonmetallic casing. A water tight cap shall be installed in the top of the well casing. A locking cap shall be installed on the top of the protective casing.

15.3.3 Monitor wells completed above ground and potentially accessible to vehicular damage shall be protected in the following manner. At least three metal posts, at least three inches in diameter, shall be cemented in place around the casing. Each post shall extend at least three feet above and two feet below ground surface. A concrete pad may be installed to add protection to the surface completion. If installed, the concrete pad shall be at least four (4) inches thick and shall slope to drain away from the well casing. The base shall extend at least two (2) feet laterally in all directions from the outside of the well boring. When a concrete pad is used, the well seal may be part of the concrete pad.

15.3.4 If the well is completed below land surface, a water tight cap with a lock shall be attached to the top of the well casing. A metal monument or equivalent shall be installed over and around the well. The monument shall serve as a protective cover and be installed level with the land surface and be equipped with a waterproof seal to prevent inflow of any water or contaminants. Drains will be provided, when feasible, to keep water out of the well and below the well cap. The monument and cover must be designed to withstand the maximum expected load.

15.4 Abandonment.

15.4.1 Abandonment of monitor wells shall be completed in compliance with the provisions of Section

R655-4-14. The provisions of Section R655-4-14 are not required for the permanent abandonment of monitor wells completed at a depth of 30 feet below natural ground surface.

R655-4-16. Pump Installation and Repair.

16.1 Pump installation practices. All pump installations shall be completed in such a manner as to prevent waste and contamination of groundwater by pollution material entering the well from pumping equipment, casing connectors, fittings, piping, sanitary seals or caps.

16.2 Surface Seal. If in the process of pump installation or repair, the well's surface seal is disturbed or damaged, it shall be repaired and resealed in accordance with the standards provided in Subsection R655-4-11(11.4).

16.3 Tools, Equipment, and Materials. Down-hole tools and equipment used in performance of pump installation and repair shall be cleaned, disinfected, and free of contamination prior to placement in a well. All tools, drilling equipment, and materials used to drill a well shall be free of contaminants prior to beginning pump-related work. Contaminants include lubricants, fuel, bacteria, etc. that will reduce the well efficiency, and any other item(s) that will be harmful to public health and/or the resource or reduce the life of the water well. It is recommended that excess lubricants placed on equipment be wiped clean prior to insertion into the well. Thread Compounds, Sealants, and Lubricants must not exceed the maximum contaminant levels for chemicals, taste, and odor. The licensee shall use pump-related tools and equipment properly so as not to permanently damage the well or aquifer.

16.4 Disinfection. Following completion of pump installation and repair work on a well, the well, pump, and in-well discharge piping shall be properly disinfected in accordance with Subsection R655-4-11(11.6.5).

16.5. Product, material, and Process Standards. Any product, material or procedure designed for use related to pump installation and repair of water production or non-production wells, which has received certification and approval for its intended use by the National Sanitation Foundation (NSF) under ANSI/NSF Standard 60 or 61, the American Society for Testing Materials (ASTM), the American Water Works Association (AWWA) or the American National Standards Institute (ANSI) may be utilized. Other products, materials or procedures may also be utilized for their intended purpose upon manufacturers certification that they meet or exceed the standards or certifications referred to in this section and upon state engineer approval. Organic substances shall not be introduced into the well or borehole during pump installation and repair work.

16.6 Surface Completions. Pump installers shall leave the well surface completion upon completion of pump installation/repair work in accordance with the standards in Subsection R655-4-11 as it pertains to casing stick up, steel/PVC casing extensions, sanitary capping and venting, and protective casings. Upon completion, all wells shall be equipped with a watertight, tamper-resistant casing cap or sanitary seal.

16.7 Flowing Artesian Wells. In accordance with Subsection R655-4-11(11.4.3.5, artesian wells that flow naturally at the surface, the well shall be equipped with a control valve so that the flow can be completely stopped. The control valve must be available for inspection by the state engineer at all times.

16.8 Seals Between Casings. If the well is constructed of multiple casing strings at or near the ground surface and if a pitless adapter/unit is installed, the standards of Subsection R655-4-11(11.5.5) shall be employed to ensure proper sealing between casings is maintained.

16.9 Water Level and Flow Measurement. Following pump installation and repair work, the well shall be left in such a manner to allow for access to water level measurements in accordance with R655-4-11(11.7.2). After pump installation and repair work is completed on a well, the static water level should be measured after which a test should be performed to determine the rate at which groundwater can be reliably produced from the well. Pumping water level should be measured and recorded during this test. Static water level and well testing information shall be noted on the official submittal of the Pump Log by the pump installer or well driller.

16.10 Surface Security. If it becomes necessary for the pump installer to temporarily discontinue operation on a well before completion or otherwise leave the well unattended, the well must be covered securely to prevent contaminants from entering the casing and rendered secure against entry by children, vandals, domestic animals, and wildlife.

16.11 Above-grade connections. An above-grade connection into the top or side of a well casing shall be at least eighteen inches (18") above the land surface and shall be constructed so as to exclude dirt or other foreign matter by at least one of the following methods, as may be applicable:

(A) Threaded connection;
(B) Welded connection;
(C) Expansion sealer;
(D) Bolted flanges with rubber gaskets;
(E) Overlapping well cap; or
(F) If a water well pump is mounted or sealed on a concrete pedestal, the casing shall extend at least to the top of the pedestal and at least eighteen inches (18") above the land surface.

16.12 Pitless Connections. Pitless adapters and units shall be installed in accordance with the standards set forth in Subsection R655-4-11(11.7.5). Pitless adapters shall be installed below the frost line. A below-ground connection shall not be submerged in water at the time of installation. Holes cut in the casing through which the pitless adapters are installed must be sized and constructed so as to guarantee a watertight seal with the pitless adapter in place.

16.13 Backflow Protection. When a check valve or foot valve is not a part of the pump, a check valve or back-siphon prevention device shall be installed on the pump discharge line within the well or beyond the well to eliminate the opportunity for contaminated water to backflush into the well. Such device must be designed to direct or isolate the water flow to prevent water in the distribution line from running back down the well during removal or repair to the pump and pumping equipment. When a flow meter is installed on a well the meter must be located downstream from the backflow preventer and be placed in accordance with manufacturer spacing specifications.

16.14 Hand Pumps. Hand pumps shall be of the force type equipped with a packing gland around the pump rod, a delivery spout which is closed and downward directed, and a one-piece bell-type base which is part of the pump stand or is attached to the pump column in a watertight manner. The bell base of the pump shall be bolted with a gasket to a flange which is securely attached to the casing or pipe sleeve.

16.15 Pumping Water Level. In a screened or perforated well, the well pump setting and suction inlet shall be located so that the pumping level of the water cannot be drawn below the top of the screen.

16.16 Pump and Column/Drop Pipe Removal. During any repair or installation of a water well pump, the licensed installer shall make a reasonable effort to maintain the integrity of ground water and to prevent contamination by elevating the pump column and fittings, or by other means suitable under the circumstances.

KEY: water wells, pump installers, well drillers license
April 9, 2018 73-3
Notice of Continuation July 27, 2019

R655. Natural Resources, Water Rights.
R655-13. Stream Alteration.
R655-13-1. Authority.

(1) The following rule is established under the authority of Section 73-2-1(4)(d). Additional procedures may be required to comply with other governing state statute, federal law, federal regulation, or local ordinance.

R655-13-2. Purpose.

(1) The purpose of this rule is to clarify the procedures necessary to obtain approval of an application by the state engineer for any project that proposes to alter a natural stream within the state of Utah. Approval does not grant access, authorize trespass, supercede property rights, or address safety considerations of the proposal.

R655-13-3. Applicability.

(1) These rules apply to all stream alteration projects within the state of Utah.

R655-13-4. Definitions.

(1) Alteration: To obstruct, diminish, enhance, destroy, alter, modify, relocate, realign, change, or potentially affect the existing condition or shape of a channel, or to change the path or characteristics of water flow within a natural channel. It includes processes and results of removal or placement of material or structures within the jurisdiction delineated in this rule.

(2) Bankfull discharge: The flow corresponding to the elevation of the water surface, in a natural stream, where overflowing onto the floodplain normally begins. Bankfull discharge is considered analogous to ordinary high water or average seasonal high flow. In urbanized streams this is often lower than the top of bank.

(3) Bank(s): The confining sides of a natural stream channel, including the adjacent complex that provides stability, erosion resistance, aquatic habitat, or flood capacity.

(4) Bed: The bottom of a natural stream channel.

(5) Channel: The bed and banks of a natural stream.

(6) Clearance: The vertical distance between a given water surface and the lowest point on any structure crossing a natural channel.

(7) Ecosystem: The assemblage of organisms and their environment functioning as an ecological unit in nature.

(8) Floodplain: The maximum area that will accommodate water when flow exceeds bankfull discharge.

(9) Flowline: The lowest part of a bed when viewed in cross-section.

(10) Fluvial: 1: Of, relating to, or living in a stream or river. 2: Produced by stream action.

(11) Natural stream: Any waterway, along with its fluvial system, that receives sufficient water to sustain an ecosystem that distinguishes it from the surrounding upland environment.

(12) State Engineer: Director of the Division of Water Rights.

(13) Waterway: A topographic low that collects and conveys water.

R655-13-5. Jurisdiction.

(1) The jurisdictional limit along a natural stream is two times the bankfull width from the bankfull edge of water in a direction perpendicular and horizontal to the flow and away from the channel up to a maximum of 30 feet on both sides of the channel.

R655-13-6. Application Requirements.

(1) Blank application forms are available through the Division of Water Rights or on the Division of Water Rights website. In addition to the information requested on the application, any other information the state engineer determines is necessary to evaluate the proposal shall be submitted.

R655-13-7. Specific Stream Alteration Activities.

(1) The following subsections address specific types of stream alteration activities and the nature of special information that shall be provided to the state engineer. These subsections are not intended to be comprehensive and other requirements may be imposed at the discretion of the state engineer. All requirements may be waived at the discretion of the state engineer.

(a) Applications that propose to install a utility (sewer, water, fiber-optic cable, etc.) beneath a natural stream will be subject to the following conditions and requirements:

(i) The top of the utility shall be a minimum of three (3) feet below the existing natural elevation of the bed. In some instances, a greater depth may be required if there is significant evidence of on-going erosion.

(ii) Where utility crossings occur on river bends or areas of significant on-going bank erosion, the utility shall be kept at an elevation below that of the bed of the stream, laterally away from the stream, to a distance where erosion will not expose the utility at a later date.

(b) Applications that propose to span natural streams by way of bridges or other structures will be subject to the following conditions and requirements:

(i) Clearance of the lowest part of the span shall be a minimum of three (3) feet above bankfull stage unless specifically exempted by the state engineer.

(c) Applications that propose installation of a culvert or other similar structure will be subject to the following conditions and requirements:

(i) The bottom of the culvert should contain natural bed material. This may require installing the culvert flowline below the bed of the channel or installation of an open bottom culvert.

(ii) Bedding and backfill placed around the culvert shall not be more free-draining than the adjacent bed and bank materials and shall be compacted to in-place densities at least as great as those of similar adjacent materials.

(iii) The culvert design should include energy dissipation structures or devices when necessary.

(d) Woody debris within the jurisdictional limits established in R655-13-5 may be removed without written authorization by the state engineer provided that removal can be accomplished by way of manual methods or through use of equipment located outside the channel.

(e) Applications that propose to relocate a natural stream channel will be considered if:

(i) the existing channel is degraded or impaired and relocating the channel will enhance the natural stream environment; or

(ii) the existing channel location represents a significant hazard to existing permanent structures, residential areas, transportation routes, or established utilities; and other bank stabilization methods can be shown to be inappropriate or infeasible for reducing or eliminating the hazard.

(iii) Detailed drawings of the new channel (plan, cross-section(s), and profile views) and vegetation plans for the channel and surrounding area accompany the application.

(iv) Monitoring and reporting plan for planted vegetation is submitted.

(f) Applications that propose to remove beaver dams will be considered if:

(i) the dam(s) interferes with the operation or maintenance or threaten the integrity of a bridge, culvert, an authorized man-made dam, or authorized water diversion

works; or

(ii) the presence of the dam(s) causes or may reasonably be expected to cause flooding of pre-existing developed areas, buildings, transportation routes, or established utilities; or

(iii) the dam(s) exists in areas of highly erosive soil or recently authorized stream restoration activities; or

(iv) the presence of the dam(s) represents a detriment to fish management.

(v) Removal of established beaver dams for the sole purpose of obtaining impounded water to supplement other water sources may not be approved on that basis alone.

KEY: stream alterations
July 25, 2019 **73-3-29**
Notice of Continuation December 7, 2018

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking big game.

R657-5-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Draw-lock" means a mechanical device used to hold and support the draw weight of a conventional or compound bow at any increment of draw until released by the archer using a trigger mechanism and safety attached to the device.

(l) "Drone" means an autonomously controlled, aerial vehicle of any size or configuration that is capable of controlled flight without a human pilot aboard.

(m) "Ewe" means a female bighorn sheep or any bighorn sheep younger than one year of age.

(n) "Hunter's choice" means either sex may be taken.

(o) "Immediate family member" means the 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, grandchild, grandfather, and grandmother.

(p) "Limited entry hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.

(q) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, wildlife expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(r) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the guidebook of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(s) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, wildlife expo permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(t) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep older than one year of age.

(u) "Spike bull" means a bull elk which has at least one antler beam with no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

R657-5-3. License, Permit, and Tag Requirements.

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or its parts in accordance with Section 23-19-1 and the rules or guidebooks of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

(3) A person must possess or obtain a Utah hunting or combination license to apply for or obtain any big game hunting permit.

R657-5-4. Age Requirements and Restrictions.

(1)(a) A person 12 years of age or older may apply for or obtain a permit to hunt big game.

(b) A person 11 years of age may apply for a permit to hunt big game, provided that person's 12th birthday falls within the calendar year for which the permit is issued and that person does not use the permit to hunt big game before their 12th birthday.

(2)(a) A person at least 12 years of age and under 16 years of age must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

R657-5-5. Duplicate License and Permit.

(1) Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office or online license agent, for ten dollars or half of the price of the original license, permit, or certificate of registration, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or certificate of registration provided the person did not receive the original license, permit, tag or certificate of registration.

R657-5-6. Hunting Hours.

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

R657-5-7. Prohibited Weapons.

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use:

(a) a firearm capable of being fired fully automatic;

(b) any light enhancement device or aiming device that casts a visible beam of light; or

(c) a firearm equipped with a computerized targeting system that marks a target, calculates a firing solution and automatically discharges the firearm at a point calculated most likely to hit the acquired target.

(3) Nothing in this Section shall be construed as prohibiting laser range finding devices or illuminated sight pins for archery equipment.

R657-5-8. Rifles, Shotguns, Airguns, and Crossbows.

(1) A rifle used to hunt big game must fire centerfire cartridges and expanding bullets.

(2) A shotgun used to hunt big game must be 20 gauge or larger, firing only 00 or larger buckshot or slug ammunition.

(3) An airgun used to hunt big game must:

(a) be pneumatically powered;

(b) be pressurized solely through a separate charging device; and

(c) may only fire a bolt or arrow:

(i) no less than 16 inches long;

(ii) with a fixed or expandable broadhead at least 7/8 inch wide at its widest position; and

(iii) traveling no less than 400 feet per second at the muzzle.

(4)(a) A crossbow used to hunt big game must have a minimum draw weight of 125 pounds and a positive mechanical safety mechanism.

(b) A crossbow arrow or bolt used to hunt big game must be at least 16 inches long and have:

(i) fixed broadheads that are at least 7/8 inch wide at the widest point; or

(ii) expandable, mechanical broadheads that are at least 7/8 inch wide at the widest point when the broadhead is in the open position.

(c) Unless otherwise authorized by the division through a certificate of registration, it is unlawful for any person to:

(i) hunt big game with a crossbow or airgun during a big game archery hunt;

(ii) carry a cocked crossbow containing an arrow or a bolt while in or on any motorized vehicle on a public highway or other public right-of-way; or

(iii) hunt any protected wildlife with a crossbow utilizing a bolt that has any chemical, explosive or electronic device attached.

(5) A crossbow used to hunt big game may have a fixed or variable magnifying scope only during an any weapon hunt.

R657-5-9. Handguns.

(1) A handgun may be used to take deer and pronghorn, provided the handgun:

(a) is a minimum of .24 caliber;

(b) fires a centerfire cartridge with an expanding bullet; and

(c) develops 500 foot-pounds of energy at the muzzle.

(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat, provided the handgun;

(a) is a minimum of .24 caliber;

(b) fires a centerfire cartridge with an expanding bullet; and

(c) develops 500 foot-pounds of energy at 100 yards.

R657-5-10. Muzzleloaders.

(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:

(a) can be loaded only from the muzzle;

(b) has open sights, peep sights, or a variable or fixed power scope, including a magnifying scope;

(c) has a single barrel;

(d) has a minimum barrel length of 18 inches;

(e) is capable of being fired only once without reloading;

(f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;

(g) is loaded with black powder or black powder substitute, which must not contain smokeless powder.

(2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.

(b) A bullet 130 grains or heavier, or a sabot 170 grains or heavier, must be used for taking deer and pronghorn.

(c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.

(3)(a) A person who has obtained a muzzleloader permit for a big game hunt may:

(i) use only muzzleloader equipment authorized in this Subsections (1) and (2) to take the species authorized in the permit; and

(ii) not possess or be in control of a rifle or shotgun while in the field during the muzzleloader hunt.

(b) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found, but does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

(c) The provisions of Subsection (a) do not apply to:

(i) a person lawfully hunting upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

(4) A person who has obtained an any weapon permit for a big game hunt may use muzzleloader equipment authorized in this Section to take the species authorized in the permit.

R657-5-11. Archery Equipment.

(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:

(a) the minimum bow pull is 30 pounds at the draw or the peak, whichever comes first;

(b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(c) expanding arrowheads cannot pass through a 7/8 inch ring when expanded, and

(d) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock.

(2) The following equipment or devices may not be used to take big game:

(a) a crossbow, except as provided in Subsection (5) and Rule R657-12;

(b) arrows with chemically treated or explosive arrowheads;

(c) a mechanical device for holding the bow at any increment of draw, except as provided in Subsection (5) and Rule R657-12;

(d) a release aid that is not hand held or that supports the draw weight of the bow, except as provided in Subsection (5) and Rule R657-12;

(e) a bow with a magnifying aiming device; or

(f) an airgun, except as provided in Subsection (5).

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained an archery permit for a big game hunt may:

(i) only use archery equipment authorized in Subsections (1) and (2) to take the species authorized in the permit; and

(ii) not possess or be in control of a crossbow, draw-lock, rifle, shotgun or muzzleloader while in the field during an archery hunt.

(b) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found, but does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

(c) The provisions of Subsection (a) do not apply to:

(i) a person lawfully hunting upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery hunt, provided the person is in compliance with the regulations of that hunt and possesses only the weapons authorized for that hunt;

(iii) livestock owners protecting their livestock;

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife; or

(v) a person possessing a crossbow or draw-lock under a certificate of registration issued pursuant to R657-12.

(5) A person who has obtained an any weapon permit for a big game hunt may use archery equipment authorized in this Section to take the species authorized in the permit, and may also use a crossbow, draw-lock, or airgun satisfying the minimum requirements of this rule.

(6)(a) A person hunting an archery-only season on a once-in-a-lifetime hunt may:

(i) only use archery equipment authorized in Subsections (1) and (2) to take the species authorized in the permit; and

(ii) not possess or be in control of a crossbow, draw-lock, rifle, shotgun, muzzleloader, or airgun while in the field during the archery-only season.

(b) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found, but does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

R657-5-12. Areas With Special Restrictions.

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-614-4.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may:

(a) only use archery equipment to take buck deer and bull elk south of I-80 and east of I-15;

(b) only use archery equipment to take big game in Emigration Township; and

(c) not hunt big game within one-half mile of Silver Lake in Big Cottonwood Canyon.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the guidebook of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Scott M. Matheson Wetland Preserve.

(10) A person may not discharge a firearm, except a shotgun or muzzleloader, from, upon, or across the Green River located near Jensen, Utah from the Highway 40 bridge upstream to the Dinosaur National Monument boundary.

R657-5-13. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to:

(i) take protected wildlife; or

(ii) locate protected wildlife while in possession of a rifle, shotgun, archery equipment, crossbow, muzzleloader, or airgun.

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is probable cause of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of headlights, illuminated sight pins on a bow, or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-5-14. Use of Vehicle or Aircraft.

(1)(a) A person may not use an airplane, drone, or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.

(b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by any vehicle, device, or conveyance listed in Subsection (a).

(c) Big game may be taken from a vessel provided:

(i) the motor of a motorboat has been completely shut off;

(ii) the sails of a sailboat have been furled; and

(iii) the vessel's progress caused by the motor or sail has ceased.

(2) A person may not use any type of aircraft, drone, or other airborne vehicle or device from 48 hours before any big game hunt begins in the area where they are flying through 48 hours after any big game hunting season ends in the area where they are flying to locate, or attempt to observe or locate any protected wildlife.

(3)(a) The provisions of this section do not apply to the operation of an aircraft, drone, or other airborne vehicle or device used for the purposes of transporting hunters, equipment, or legally harvested wildlife, provided the aircraft takes off and lands only from an improved airstrip, where there is no attempt or intent to locate protected wildlife.

(b) Hunters that are transported by aircraft into an area may not hunt protected wildlife until the following day.

(c) For the purposes of this section, "improved airstrip" means a take-off and landing area with a graded or otherwise mechanically improved surface free of barriers or other hazards that is traditionally used by pilots for the purposes of air travel.

R657-5-15. Party Hunting and Use of Dogs.

(1) A person may not take big game for another person, except as provided in Section 23-19-1 and Rule R657-12.

(2) A person may not use the aid of a dog to take, chase,

harm or harass big game. The use of one blood-trailing dog controlled by leash during lawful hunting hours within 72 hours of shooting a big game animal is allowed to track wounded animals and aid in recovery.

R657-5-16. Big Game Contests.

A person may not enter or hold a big game contest that:

(1) is based on big game or its parts; and

(2) offers cash or prizes totaling more than $500.

R657-5-17. Tagging.

(1) The carcass of any species of big game must be tagged in accordance with Section 23-20-30.

(2) A person may not hunt or pursue big game after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

R657-5-18. Transporting Big Game Within Utah.

(1) A person may transport big game within Utah only as follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal receipt from the division or a donation slip as provided in Section 23-20-9.

R657-5-19. Exporting Big Game From Utah.

(1) A person may export big game or its parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

R657-5-20. Purchasing or Selling Big Game or its Parts.

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or its parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;

(b) Untanned hides of legally taken big game may be purchased or sold only on the dates published in the guidebook of the Wildlife Board for taking big game;

(c) Inedible byproducts, excluding hides, antlers and horns of legally possessed big game as provided in Subsection 23-20-3, may be purchased or sold at any time;

(d) tanned hides of legally taken big game may be purchased or sold at any time; and

(e) shed antlers and horns may be purchased or sold at any time.

(2)(a) Protected wildlife that is obtained by the division by any means may be sold or donated at any time by the division or its agent.

(b) A person may purchase or receive protected wildlife from the division, which is sold or donated in accordance with Subsection (2)(a), at any time.

(3) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(4) Subsection (3) does not apply to scouting programs or other charitable organizations using untanned hides.

R657-5-21. Possession of Antlers and Horns.

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully obtained as provided in Section R657-5-20; or

(c) shed antlers or shed horns.

(2)(a) A person may gather shed antlers or shed horns or parts of shed antlers or shed horns at any time. An authorization is required to gather shed antlers or shed horns or parts of shed antlers or shed horns during the shed antler and shed horn season published in the guidebook of the Wildlife Board for taking big game.

(b) A person must complete a wildlife harassment and habitat destruction prevention course annually to obtain the required authorization to gather shed antlers during the antler gathering season.

(3) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.

(4) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

R657-5-22. Poaching-Reported Reward Permits.

(1) Big Game poaching-reported reward permits are issued pursuant to rule R657-51 Poaching-Reported Reward Permits.

R657-5-23. General Archery Buck Deer Hunt.

(1) The dates of the general archery buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer may use archery equipment prescribed in R657-5-11 to take:

(a) one buck deer within the general hunt area specified on the permit for the time specified in the guidebook of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within extended archery areas as provided in the guidebook of the Wildlife Board for taking big game.

(c) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(d) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within premium limited entry deer or limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3)(a) A person who obtains a general archery buck deer

permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within extended archery areas during the extended archery area seasons as provided in the guidebook of the Wildlife Board for taking big game and as provided in Subsection (b).

(b)(i) A person must complete the Archery Ethics Course annually to hunt any extended archery areas during the extended archery season.

(ii) A person must possess an Archery Ethics Course Certificate of Completion while hunting.

(4) A person who has obtained a general archery buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer and extended archery areas.

(5) If a person 17 years of age or younger obtains a general archery buck deer permit, that person may only hunt during the general archery deer season and the extended archery season as provided Section R657-5-23(3).

R657-5-24. General Any Weapon Buck Deer Hunt.

(1) The dates for the general any weapon buck deer hunts are provided in the guidebook of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general any weapon buck permit may use any legal weapon to take one buck deer within the hunt area and season dates specified on the permit as published in the guidebook of the Wildlife Board for taking big game.

(b) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3) A person who has obtained a general any weapon buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer, as provided in R657-5-27; and

(b) any person 17 years of age or younger on July 31 of the current year, may hunt the general archery, extended archery, general any weapon and general muzzleloader buck deer seasons applicable to the unit specified on the general any weapon buck deer permit, using the appropriate equipment as provided in Sections R657-5-7 through R657-5-11, respectively.

R657-5-25. General Muzzleloader Buck Deer Hunt.

(1) The dates for the general muzzleloader buck deer hunt are provided in the guidebook of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general muzzleloader buck permit may use a muzzleloader, as prescribed in R657-5-10, to take one buck deer within the general hunt area specified on the permit as published in the guidebook of the Wildlife Board for taking big game.

(b) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within any deer Cooperative Wildlife Management unit.

(c) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within premium limited entry deer or limited entry deer areas, except as provided by the Wildlife Board in the guidebooks for big game.

(3)(a) A person who has obtained a general muzzleloader buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer, as provided in R657-5-27.

(b) If a person 17 years of age or younger purchases a general muzzleloader buck deer permit, that person may only hunt during the general muzzleloader deer season.

R657-5-26. Premium Limited Entry and Limited Entry Buck Deer Hunts.

(1)(a) To hunt in a premium limited entry or limited entry buck deer area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck deer, general any weapon buck deer, or general muzzleloader buck deer hunting, except as specified in the guidebook of the Wildlife Board for taking big game.

(b)(i) The Wildlife Board may establish in guidebook a limited entry buck deer hunt on a general season buck deer unit.

(ii) The season dates for a limited entry hunt under this Subsection will not overlap the season dates for the underlying general season hunt on the unit.

(iii) A landowner association under R657-43 is not eligible to receive limited entry permits that occur on general season units.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, excluding deer cooperative wildlife management units located within the limited entry unit.

(3)(a) A person who has obtained a premium limited entry, limited entry, management, or cooperative wildlife management unit buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck deer.

(b) Limited entry and cooperative wildlife management unit buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, management, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(3).

(4) A person who has obtained a premium limited entry or limited entry buck permit may not:

(a) obtain any other deer permit, except an antlerless deer permit as provided in R657-5-27 and the guidebooks of the Wildlife Board; or

(b) hunt during any other deer hunt, except unsuccessful archery hunters may hunt within extended archery areas as provided in Subsection (7).

(5)(a) The Wildlife Board may establish a multi-season hunting opportunity in the big game guidebooks for selected premium limited entry and limited entry buck deer hunts.

(b) A person that obtains a premium limited entry or limited entry buck deer permit with a multi-season opportunity may hunt during any of the following limited entry buck deer seasons established in the guidebooks of the Wildlife Board for the unit specified on the premium limited entry or limited entry buck deer permit:

(i) archery season, using only archery equipment prescribed in R657-5-11 for taking deer;

(ii) muzzleloader season, using only muzzleloader equipment prescribed in R657-5-10 for taking deer; and

(iii) any weapon season, using any legal weapon prescribed in R657-5 for taking deer.

(c) A landowner association under R657-43 is not eligible to receive a multi-season hunting opportunity for premium limited entry or limited entry units.

(6) A premium limited entry or limited entry buck deer permit, including a permit with a multi-season opportunity, is valid only within the boundaries of the unit designated on the permit, excluding:

(a) areas closed to hunting;

(b) deer cooperative wildlife management units; and

(c) Indian tribal trust lands.

(7) A person who possesses an archery buck deer permit for a premium limited entry or limited entry unit, including a permit with a multi-season opportunity, may hunt buck deer within any extended archery area during the established extended archery season for that area, provided the person:

(a) did not take a buck deer during the premium limited entry or limited entry hunt;

(b) uses the prescribed archery equipment for the extended archery area;

(c) completes the annual Archery Ethics Course required to hunt extended archery areas during the extended archery season; and

(d) possesses on their person while hunting:

(i) the multi-season limited entry or limited entry buck deer permit; and

(ii) the Archery Ethics Course Certificate of Completion.

R657-5-27. Antlerless Deer Hunts.

(1)(a) To hunt antlerless deer, a hunter must obtain an antlerless deer permit.

(b) A person may obtain only one antlerless deer permit or a two-doe antlerless deer permit through the division's antlerless big game drawing.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer using the weapon type, within the area, and during season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A two-doe antlerless deer permit allows a person to take two antlerless deer using the weapon type, within the area, and during the season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(c) A person may not hunt antlerless deer on any deer cooperative wildlife management unit unless that person obtains an antlerless deer permit for that specific cooperative wildlife management unit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permits, except as provided in R657-44-3.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b) may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the applicable permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used, if hunting antlerless deer during an archery season or hunt; and

(iii) the appropriate muzzleloader hunt equipment is used, if hunting antlerless deer during a muzzleloader season or hunt.

(b)(i) General buck deer for archery, muzzleloader, any weapon, or dedicated hunter;

(ii) General bull elk for archery, muzzleloader, any weapon, or multi-season;

(iii) Premium limited entry buck deer for archery, muzzleloader, any weapon, or multi-season;

(iv) Limited entry buck deer for archery, muzzleloader, any weapon, or multi-season;

(v) Limited entry bull elk for archery, muzzleloader, any weapon, or multi-season; or

(vi) Antlerless elk.

(c) A person that possess an unfilled antlerless deer permit and harvests an animal under authority of a permit listed in Subsection (b), may continue hunting antlerless deer as prescribed in Subsections (a) and (b) during the remaining portions of the Subsection (b) permit season.

R657-5-28. General Archery Elk Hunt.

(1) The dates of the general archery elk hunt are provided in the guidebooks of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general archery elk permit may use archery equipment to take:

(i) an antlerless elk or a bull elk on a general any bull elk unit, excluding elk cooperative wildlife management units;

(ii) an antlerless elk or a spike bull elk on a general spike bull elk unit, excluding elk cooperative wildlife management units;

(iii) an antlerless elk or a bull elk on extended archery areas as provided in the guidebook of the Wildlife Board for taking big game.

(3)(a) A person who obtains a general archery elk permit may hunt within the extended archery areas during the extended archery area seasons as provided in the guidebook of the Wildlife Board for taking big game and as provided in Subsection (b).

(b)(i) A person must complete the Archery Ethics Course annually to hunt the extended archery areas during the extended archery season.

(ii) A person must possess an Archery Ethics Course Certificate of Completion on their person while hunting.

(4) A person who has obtained an archery elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3) and by the guidebooks of the Wildlife Board for taking big game.

R657-5-29. General Season Bull Elk Hunt.

(1) The dates and areas for the general season bull elk hunts are provided in the guidebooks of the Wildlife Board for taking big game, except the following areas are closed to general any weapon bull elk hunting:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) A person may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull elk units are closed to spike bull elk permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk, on a general season any bull elk unit. Spike bull elk units are closed to any bull elk permittees.

(3) A person who has obtained a general season bull elk permit may use any legal weapon to take a spike bull elk or any bull elk, as specified on the permit.

(4) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3).

(5) The Wildlife Board may establish multi-season hunting opportunities in the big game guidebooks for general season spike and bull elk hunts consistent with the following

parameters:

(a) an individual with a multi-season spike elk permit may use:

(i) archery equipment as prescribed in R657-5-11 to take an antlerless elk or spike bull elk on a general season spike unit during the archery season;

(ii) archery equipment as prescribed in R657-5-11 to take an antlerless elk or any bull elk on a general season any bull unit during the archery season;

(iii) muzzleloader equipment as prescribed in R657-5-10 to take spike bull elk on general season spike units during the muzzleloader season; or

(iv) any legal weapon as prescribed in R657-5 to take a spike bull elk on a general season spike unit during the any legal weapon season.

(b) An individual with a multi-season any bull elk permit may use:

(i) archery equipment as prescribed in R657-5-11 to take an antlerless elk or spike elk on a general season spike unit during the archery season;

(ii) archery equipment as prescribed in R657-5-11 to take an antlerless elk or any bull elk on a general season any bull unit during the archery season;

(iii) muzzleloader equipment as prescribed in R657-5-10 to take any bull elk on general season any bull units during the muzzleloader season; or

(iv) any legal weapon as prescribed in R657-5 to take any bull elk on a general season any bull unit during the any legal weapon season.

(c) An individual who obtains a multi-season bull elk permit may hunt within the extended archery areas during the extended archery area seasons described in the guidebook of the Wildlife Board for taking big game, provided that individual:

(i) completes the Archery Ethics Course prior to going afield; and

(ii) possesses the Archery Ethics Course Certificate of Completion on their person while hunting.

R657-5-30. General Muzzleloader Bull Elk Hunt.

(1) The dates and areas for general muzzleloader bull elk hunts are provided in the guidebooks of the Wildlife Board for taking big game, except the following areas are closed to general muzzleloader bull elk hunting:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) General muzzleloader bull elk hunters may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general muzzleloader spike bull elk permit may use a muzzleloader, prescribed in R657-5-10, to take a spike bull elk on an any general spike bull elk unit. Any bull units are closed to spike bull muzzleloader permittees.

(c) A person who has obtained a general muzzleloader any bull elk permit may use a muzzleloader, as prescribed in R657-5-10, to take any bull elk on an any bull elk unit. Spike bull units are closed to any bull muzzleloader permittees.

(3) On selected units identified in the guidebook of the Wildlife Board for taking big game, a person who has obtained a general muzzleloader bull elk permit may use muzzleloader equipment to take either an antlerless elk or a bull elk.

(4) A person who has obtained a general muzzleloader bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-33(3).

R657-5-31. Youth General Any Bull Elk Hunt.

(1)(a) For purposes of this section "youth" means any person 17 years of age or younger on July 31 of the current year.

(b) A youth may apply for or obtain a youth any bull elk permit.

(c) A qualified person may obtain a youth any bull elk permit only once during their life.

(2) The youth any bull elk hunting season and areas are published in the guidebook of the Wildlife Board for taking big game.

(3)(a) A youth who has obtained a youth general any bull elk permit may take any bull elk, including antlerless elk, on a general any bull elk unit. Spike bull elk units are closed to youth general any bull elk permittees.

(b) A youth who has obtained a youth general any bull elk permit may use any legal weapon to take any bull elk or antlerless elk as specified on the permit.

(4) A youth who has obtained a youth general any bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-33(3).

(5) Preference points shall not be awarded or utilized when applying for or obtaining a youth general any bull elk permit.

R657-5-32. Limited Entry Bull Elk Hunts.

(1) To hunt in a limited entry bull elk area, a hunter must obtain a limited entry bull elk permit for the area.

(2)(a) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except as provided in Subsection (5) and excluding elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3)(a) The Wildlife Board may establish a multi-season hunting opportunity in the big game guidebooks for selected limited entry bull elk units.

(b) A person that obtains a limited entry bull elk permit with a multi-season opportunity may hunt during any of the following limited entry bull elk seasons established in the guidebooks of the Wildlife Board for the unit specified on the limited entry bull elk permit:

(i) archery season, using only archery equipment prescribed in R657-5-11 for taking elk;

(ii) muzzleloader season, using only muzzleloader equipment prescribed in R657-5-10 for taking elk; and

(iii) any weapon season, using any legal weapon prescribed in R657-5 for taking elk.

(c) A landowner association under R657-43 is not eligible to receive a multi-season hunting opportunity for limited entry units.

(4) A limited entry bull elk permit, including a permit with a multi-season opportunity, is valid only within the boundaries of the unit designated on the permit, excluding:

(a) areas closed to hunting;

(b) elk cooperative wildlife management units; and

(c) Indian tribal trust lands.

(5) A person who possesses any limited entry archery bull elk permit, including a permit with a multi-season opportunity, may hunt bull elk within any extended archery area during the established extended archery season for that area, provided the person:

(a) did not take a bull elk during the limited entry hunt;

(b) uses the prescribed archery equipment for the extended archery area;

(c) completes the annual Archery Ethics Course required to hunt extended archery areas during the extended archery season; and

(d) possesses on their person while hunting:
(i) the limited entry bull elk permit; and
(ii) the Archery Ethics Course Certificate of Completion.
(6) "Prescribed legal weapon" means for purposes of this subsection:
(a) archery equipment, as defined in R657-5-11, when hunting the archery season, excluding a crossbow, draw-lock, and airgun;
(b) muzzleloader equipment, as defined in R657-5-10, when hunting the muzzleloader season; and
(c) any legal weapon, including a muzzleloader, crossbow with a fixed or variable magnifying scope or draw-lock, or airgun when hunting during the any weapon season.
(7)(a) A person who has obtained a limited entry or cooperative wildlife management unit bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull elk.
(b) Limited entry and cooperative wildlife management unit bull elk permit holders must report hunt information by telephone, or through the division's Internet address.
(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.
(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).
(8) A person who has obtained a limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsections (5) and R657-5-33(3).

R657-5-33. Antlerless Elk Hunts.
(1) To hunt antlerless elk, a hunter must obtain an antlerless elk permit.
(2)(a) An antlerless elk permit allows a person to take one antlerless elk using the weapon type, within the area, and during season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.
(b) A person may not hunt antlerless elk on an elk cooperative wildlife management unit unless that person obtains an antlerless elk permit for that specific cooperative wildlife management unit.
(3)(a) A person may obtain three elk permits each year, in combination as follows:
(i) a maximum of one bull elk permit;
(ii) a maximum of one antlerless elk permit issued through the division's antlerless big game drawing; and
(iii) a maximum of two antlerless elk permits acquired over the counter or on-line after the antlerless big game drawing is finalized, including antlerless elk:
(A) control permits, as described in Subsection (5);
(B) depredation permits, as described in R657-44-8;
(C) mitigation permit vouchers, as defined in R657-44-2(2); and
(D) private lands only permits, as described in Subsection (6).
(b) Antlerless elk mitigation permits obtained by a landowner or lessee under R657-44-3 do not count towards the annual three elk permit limitation prescribed in this subsection.
(i) "Mitigation permit" has the same meaning as defined in R657-44-2(2).
(c) For the purposes of obtaining multiple elk permits, a hunter's choice elk permit is considered a bull elk permit.
(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the applicable permits listed in Subsection (b), provided:
(i) the permits are both valid for the same area;
(ii) the appropriate archery equipment is used, if hunting antlerless elk during an archery season or hunt; and
(iii) the appropriate muzzleloader hunt equipment is used, if hunting antlerless elk during a muzzleloader season or hunt.
(b)(i) General buck deer for archery, muzzleloader, any legal weapon, or dedicated hunter;
(ii) General bull elk for archery, muzzleloader, any legal weapon, or multi-season;
(iii) Premium limited entry buck deer for archery, muzzleloader, any weapon, or multi-season;
(iv) Limited entry buck deer for archery, muzzleloader, any legal weapon, or multi-season;
(v) Limited entry bull elk for archery, muzzleloader or any legal weapon, or multi-season.
(vi) Antlerless deer or elk, excluding antlerless elk control permits.
(c) A person that possess an unfilled antlerless elk permit and harvests an animal under authority of a permit listed in Subsection (b), may continue hunting antlerless elk as prescribed in Subsections (a) and (b) during the remaining portions of the Subsection (b) permit season.
(5)(a) To obtain an antlerless elk control permit, a person must first obtain a big game buck, bull, or a once-in-a-lifetime permit.
(b) An antlerless elk control permit allows a person to take one antlerless elk using the same weapon type, during the same season dates, and within areas of overlap between the boundary of the buck, bull, or once-in-a-lifetime permit and the boundary of the antlerless elk control permit, as provided in the Antlerless guidebook by the Wildlife Board.
(c) Antlerless elk control permits are sold over the counter or online after the division's antlerless big game drawing is finalized.
(d) A person that possess an unfilled antlerless elk control permit and harvests an animal under the buck, bull, or once-in-a-lifetime permit referenced in Subsection (b), may continue hunting antlerless elk as prescribed in Subsection (b) during the remaining portions of the buck, bull, or once-in-a-lifetime permit season.
(6)(a) A private lands only permit allows a person to take one antlerless elk on private land within a prescribed unit using any weapon during the season dates and area provided in the Big Game guidebook by the Wildlife Board.
(b) No boundary extension or buffer zones on public land will be applied to private lands only permits.
(c) Private lands only permits are sold over the counter or online after the division's antlerless big game drawing is finalized.
(d) "Private lands" means, for purposes of this subsection, any land owned in fee by an individual or legal entity, excluding:
(i) land owned by the state or federal government;
(ii) land owned by a county or municipality;
(iii) land owned by an Indian tribe;
(iv) land enrolled in a Cooperative Wildlife Management Unit under R657-37; and
(v) land where public access for big game hunting has been secured.

R657-5-34. Buck Pronghorn Hunts.
(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.
(2) A person who has obtained a buck pronghorn permit

may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3)(a) A person who has obtained a limited entry or cooperative wildlife management unit buck pronghorn permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck pronghorn.

(b) Limited entry and cooperative wildlife management unit buck pronghorn permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

(4) A buck pronghorn permit allows a person to take one buck pronghorn within the area, during the season, and using the weapon type specified on the permit, except on a pronghorn cooperative wildlife management unit located within a limited entry unit.

R657-5-35. Doe Pronghorn Hunts.

(1)(a) To hunt doe pronghorn, a hunter must obtain a doe pronghorn permit.

(b) A person may obtain only one doe pronghorn permit or a two-doe pronghorn permit through the division's antlerless big game drawing.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn using the weapon type, within the area, and during the season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A two-doe pronghorn permit allows a person to take two doe pronghorn using the weapon type, within the area, and during the season dates specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(c) A person may not hunt doe pronghorn on any pronghorn cooperative wildlife management unit unless that person obtains an antlerless pronghorn permit for that specific cooperative wildlife management unit.

(3) Except for mitigation permits issued pursuant to R657-44-8, a person who has obtained a doe pronghorn permit may not hunt pronghorn during any other pronghorn hunt or obtain any other pronghorn permit.

R657-5-36. Antlerless Moose Hunts.

(1) To hunt antlerless moose, a hunter must obtain an antlerless moose permit.

(2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A person may not hunt antlerless moose on a moose cooperative wildlife management unit unless that person obtains an antlerless moose permit for that specific cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless moose permit may not hunt moose during any other moose hunt or obtain any other moose permit for that hunt year.

R657-5-37. Bull Moose Hunts.

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person to take one bull moose within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board, excluding any moose cooperative wildlife management unit located within a limited entry unit.

(4)(a) A person who has obtained a bull moose permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull moose.

(b) Bull moose permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-38. Bison Hunts.

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) A hunter's choice bison permit allows a person to take a bison of either sex within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board.

(4)(a) An orientation course is required for bison hunters who draw an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation.

(5) A cow bison permit allows a person to take one cow bison within the area, during the seasons, and using the weapon types as specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(6) An orientation course is required for bison hunters who draw cow bison permits. Hunters will be notified of the orientation date, time and location.

(7)(a) A person who has obtained a bison permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bison.

(b) Bison permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-39. Desert Bighorn and Rocky Mountain Bighorn Sheep Ram Hunts.

(1) To hunt a ram desert bighorn sheep or a ram Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2)(a) A person who has obtained a ram desert bighorn sheep may not obtain any other desert bighorn sheep or hunt during any other desert bighorn sheep.

(b) A person who has obtained a ram Rocky Mountain bighorn sheep permit may not obtain any other Rocky Mountain bighorn sheep permit or hunt any other Rocky Mountain bighorn sheep.

(3) Ram desert bighorn sheep and ram Rocky Mountain

bighorn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) A ram desert bighorn sheep permit allows a person to take one desert bighorn ram within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board.

(b) A ram Rocky Mountain sheep permit allows a person to take one Rocky Mountain bighorn ram within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board.

(5) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

(6)(a) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a desert bighorn sheep or Rocky Mountain bighorn sheep.

(b) Desert bighorn sheep or Rocky Mountain bighorn sheep permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus point in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-39.5. Desert Bighorn and Rocky Mountain Bighorn Ewe Hunts.

(1) To hunt a ewe desert bighorn sheep or a ewe Rocky Mountain bighorn sheep, a hunter must obtain the respective ewe permit.

(2)(a) A ewe permit allows a person to take one ewe using any legal weapon within the area and season specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(3) A person who has obtained a ewe permit may not hunt desert bighorn or Rocky Mountain bighorn sheep during any other sheep hunt or obtain any other sheep permit during that hunt year.

(4) Ewe desert bighorn sheep and ewe Rocky Mountain bighorn sheep permits are considered separate hunting opportunities.

R657-5-40. Rocky Mountain Goat Hunts.

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) A Rocky Mountain goat of either sex may be legally taken on a hunter's choice permit.

(4) The goat permit allows a person to take one goat within the area, during the seasons, and using the weapon type prescribed by the Wildlife Board.

(5) A female-only goat permit allows a person to take one femalegoat within the area, during the seasons, and using the weapon type specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(6)(a) An orientation course is required for Rocky Mountain goat hunters who draw or purchase a female-goat only permit or a hunter's choice permit.

(b) The orientation course must be completed online through the division's website.

(c) The orientation course must be completed before the hunter obtains his or her permit.

(7)(a) A person who has obtained a Rocky Mountain goat permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a Rocky Mountain goat.

(b) Rocky Mountain goat permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(d) Late questionnaires may be accepted pursuant to Rule R657-42-9(2).

R657-5-41. Depredation Hunter Pool Permits.

(1) When big game are causing damage or are considered a nuisance, control hunts not listed in the guidebook of the Wildlife Board for taking big game may be held as provided in Rule R657-44. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) For the purpose of this section, nuisance is defined as a situation where big game animals are found to have moved off formally approved management units onto adjacent units or other areas not approved for that species.

R657-5-42. Carcass Importation.

(1) It is unlawful to import dead elk, moose, mule deer, or white-tailed deer or their parts from the areas of any state, province, game management unit, equivalent wildlife management unit, or county, which has deer or elk diagnosed with Chronic Wasting Disease, except the following portions of the carcass:

(a) meat that is cut and wrapped either commercially or privately;

(b) quarters or other portion of meat with no part of the spinal column or head attached;

(c) meat that is boned out;

(d) hides with no heads attached;

(e) skull plates with antlers attached that have been cleaned of all meat and tissue;

(f) antlers with no meat or tissue attached;

(g) upper canine teeth, also known as buglers, whistlers, or ivories; or

(h) finished taxidermy heads.

(2)(a) The affected states, provinces, game management units, equivalent wildlife management units, or counties, which have deer, elk, or moose diagnosed with Chronic Wasting Disease shall be available at division offices and through the division's Internet address.

(b) Importation of harvested elk, moose, mule deer, or white-tailed deer or its parts from the affected areas are hereby restricted pursuant to Subsection (1).

(3) Nonresidents of Utah transporting harvested elk, moose, mule deer, or white-tailed deer from the affected areas are exempt if they:

(a) do not leave any part of the harvested animal in Utah and do not stay more than 24 hours in the state of Utah;

(b) do not have their deer, elk, or moose processed in Utah; or

(c) do not leave any parts of the carcass in Utah.

R657-5-43. Chronic Wasting Disease - Infected Animals.

(1) Any person who under the authority of a permit issued by the division legally takes a deer, elk, or moose that is later confirmed to be infected with Chronic Wasting

Disease may:

(a) retain the entire carcass of the animal;

(b) retain any parts of the carcass, including antlers, and surrender the remainder to the division for proper disposal; or

(c) surrender all portions of the carcass in their actual or constructive possession, including antlers, to the division and receive a free new permit the following year for the same hunt.

(2) The new permit issued pursuant to Subsection (1)(c) shall be for the same species, sex, weapon type, unit, region, and otherwise subject to all the restrictions and conditions imposed on the original permit, except season dates for the permit shall follow the guidebook of the Wildlife Board for taking big game published in the year the new permit is valid.

(3) Notwithstanding other rules to the contrary, private landowners and landowner associations may refuse access to private property to persons possessing new permits issued under Subsection (1)(c).

R657-5-44. Management Bull Elk Hunt.

(1)(a) For the purposes of this section "management bull" means any bull elk with 5 points or less on at least one antler. A point means a projection longer than one inch, measured from its base to its tip.

(b) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management bull elk archery season published in the guidebook of the Wildlife Board for taking big game.

(2)(a) Management bull elk permits shall be distributed pursuant to R657-62 with thirty percent of the permits being allocated to youth, thirty percent to seniors and the remaining forty percent to hunters of all ages.

(3) Management bull elk permit holders may take one management bull elk during the season, on the area and with the weapon type specified on the permit. Management bull elk hunting seasons, areas and weapon types are published in the guidebook of the Wildlife Board for taking big game.

(4)(a) A person who has obtained a management bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management bull elk.

(b) Management bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(5)(a) Management bull elk permit holders who successfully harvest a management bull elk, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the elk they harvest to a division office for inspection within 48 hours after the date of kill.

(6) Management bull elk permit holders may not retain possession of any harvested bull elk that fails to satisfy the definition requirements in Subsection (1)(a).

(7) A person who has obtained a management bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-33(3).

R657-5-45. General Any Weapon Buck Deer and Bull Elk Combination Hunt.

(1) Permit numbers, season dates and unit boundary descriptions for the general any weapon buck deer and bull elk combination hunt shall be established in the guidebook of the Wildlife Board for taking big game.

(2) A person who obtains a general any weapon buck deer and bull elk combination permit may use any legal weapon to take one buck deer and one bull elk during the season and within the unit specified on the permit.

(a) A general any weapon buck deer and bull elk combination permit does not authorize the holder to hunt deer or elk within any cooperative wildlife management unit.

(3) A person who has obtained a general any weapon buck deer and bull elk combination permit may not hunt during any other deer or elk hunt or obtain any other deer or elk permit, except:

(a) antlerless deer, as provided in Subsection R657-5-27, and

(b) antlerless elk, as provided in Subsection R657-5-33.

(4)(a) Lifetime license holders may obtain a general any weapon buck deer and bull elk combination permit.

(b) Upon obtaining a general any weapon buck deer and bull elk combination permit, the lifetime license holder foregoes any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general any weapon or general muzzleloader deer permit.

R657-5-46. Management Buck Deer Hunt.

(1)(a) For the purposes of this section "management buck" means any buck deer with 3 points or less on at least one antler above and including the first fork in the antler. A point means a projection longer than one inch, measured from its base to its tip. The eye guard is not counted as a point.

(b) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management buck deer archery season published in the guidebook of the Wildlife Board for taking big game.

(2) Management buck deer permits shall be distributed pursuant to rule R657-62 with thirty percent of the permits being allocated to youth, thirty percent to seniors and the remaining forty percent to hunters of all ages.

(3) Management buck deer permit holders may take one management buck deer during the season, in the area and with the weapon type specified on the permit. Management buck deer hunting seasons, areas and weapon types are published in the guidebook of the Wildlife Board for taking big game.

(4)(a) A person who has obtained a management buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management buck deer.

(b) Management buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(5)(a) Management buck deer permit holders who successfully harvest a management buck deer, as defined in Subsection (1)(a) must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the deer they harvest to a division office for inspection within 48 hours after the date of kill.

(6) Management buck deer permit holders may not retain possession of any harvested buck deer that fails to satisfy the definition requirements in Subsection (1)(a).

(7) A person who has obtained a management buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except as provided in Section R657-5-27.

R657-5-47. Cactus Buck Deer Hunt.

(1) For the purposes of this section "cactus buck" means a buck deer with velvet covering at least 50% of the antlers

during the season dates established by the Wildlife Board for a cactus buck deer hunt.

(2)(a) Cactus buck deer permit holders may take one cactus buck deer during the season, in the area, and with the weapon type specified on the permit.

(b) Cactus buck deer hunting seasons, areas and weapon types are published in the guidebooks of the Wildlife Board for taking big game.

(3)(a) A person who has obtained a cactus buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, regardless of whether the permit holder was successful or unsuccessful in harvesting a cactus buck deer.

(b) Cactus buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(4)(a) Cactus buck deer permit holders who successfully harvest a cactus buck deer, as defined in Subsection (1)(a), must have their animal inspected by the division.

(b) Successful hunters must deliver the head and antlers of the deer they harvest to a division office for inspection within 48 hours after the date of harvest.

(5) Cactus buck deer permit holders may not retain possession of any harvested buck deer that fails to satisfy the definition requirements in Subsection (1).

(6) A person who has obtained a cactus buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except as provided in Section R657-5-27.

R657-5-48. Handgun-Archery-Muzzleloader-Shotgun-Only Hunt.

(1) The division may establish Handgun-Archery-Muzzleloader-Shotgun-Only hunts for any big gamespecies.

(2) An individual may only use the following weapons on a handgun-archery-muzzleloader-shotgun-only hunt:

(a) a legal handgun for the species being hunted, consistent with R657-5-9 and Subsection (5), with no attached scope;

(b) legal archery equipment consistent with R657-5-11;

(c) a legal muzzleloader consistent with R657-5-10, with no attached scope; or

(d) a legal shotgun consistent with R657-5-8, with no attached scope.

(3) A person who has obtained a Handgun-Archery-Muzzleloader-Shotgun-Only permit may take one animal of the big game species identified on the permit.

(4) A person who has obtained a Handgun-Archery-Muzzleloader-Shotgun-Only permit may only hunt under that permit during the season dates and within the boundaries identified on the permit and in the guidebooks of the Wildlife Board for taking big game.

(5) In addition to the requirements in R657-5-9, a handgun used to take a big game animal in a Handgun-Archery-Muzzleloader-Shotgun-Only hunt must:

(a) have no more than a single barrel 15 inches or less in length, including the chamber;

(b) have a single rear handgrip without any form of a:

(i) fixed, detachable, or collapsible buttstock;

(ii) apparatus or extension behind the rear grip capable of being used to steady the handgun against the body while firing; or

(iii) vertical foregrip; and

(c) be no more than 24 inches in overall length.

(6) A Handgun-Archery-Muzzleloader-Shotgun-Only hunt is not a centerfire rifle hunt for purposes of Section 23-20-31 or R657-5-49.

R657-5-49. Hunter Orange Exceptions.

(1) A person shall wear a minimum of 400 inches of hunter orange material on the head, chest, and back while hunting any species of big game, with the following exceptions:

(a) Hunters participating in a once-in-a-lifetime, statewide conservation, or statewide sportsmen hunt;

(b) Hunters participating in an archery or muzzleloader hunt outside of an area where an any weapon general season bull elk or any weapon general season buck deer hunt is occurring;

(c) Hunters participating in a Handgun-Archery-Muzzleloader-Shotgun-Only hunt outside of an area where an any weapon general season bull elk or any weapon general season buck deer hunt is occurring;

(d) Hunters hunting on a cooperative wildlife management unit unless otherwise required by the operator of the cooperative wildlife management units; and

(e) Hunters participating in a nuisance wildlife removal hunt authorized under a certificate of registration by the division.

R657-5-50. Authorization to Remove Bighorn Sheep from Domestic Sheep Operations.

(1) The division may issue a certificate of registration to the owner of a domestic sheep operation allowing for the removal of Rocky Mountain bighorn sheep or desert bighorn sheep found to have physical contact with domestic sheep.

(2) If a domestic sheep grazing operation wishes to acquire a certificate of registration, it must submit an application to the division.

(3) In evaluating the application, the division may consider:

(a) the size and location of the domestic sheep operation;

(b) past efforts to maintain spatial separation between wild and domestic sheep;

(c) the ability of state officials to respond to potential commingling events in a timely manner;

(d) future plans to improve spatial separation between wild and domestic sheep;

(e) historical disease status of the wild sheep population; and

(f) management priorities for the wild sheep population.

(4) The division may deny an application for a certificate of registration if, in the opinion of the division, there are other means available to respond to a commingling event.

(5) The division shall require any certificate of registration holder to comply with the following provisions:

(a) the grazing operation shall immediately notify the division if a wild bighorn sheep is found within 1 mile of any domestic sheep;

(b) the grazing operation shall utilize all reasonable means to notify the division of the threatened commingling event prior to undertaking any lethal removal action;

(c) a wild bighorn sheep may only be lethally removed if it is within 1 mile of a domestic sheep;

(d) the grazing operation will inform the division within 24 hours of a lethal removal effort, or as soon as practical thereafter, considering access and logistical limitations;

(e) all lethally removed wild bighorn sheep will be field-dressed and preserved in a manner so as to allow donation for human consumption;

(f) the entire carcass of each lethally removed bighorn sheep shall be relinquished to division personnel, including intact head, horns and cape; and

(g) only legal weapons identified in R657-5 may be used in lethal removal activities.

(6)(a) Owners, employees, and immediate family members may be named as authorized individuals to act under

the authority of a certificate of registration.

(b) Any individual acting under the authority of a certificate of registration must be specifically named on the certificate of registration.

(7)(a) The division may establish a term for the validity of a certificate of registration.

(b) The division may revoke a certificate of registration where the certificate of registration holder, an individual named on the certificate, or someone acting under their direct authority violated any provision of this rule, the Wildlife Resources Code, or the certificate of registration.

(8) The procedures and rules governing any adverse action taken by the division or the Wildlife Board against a certificate of registration or an application for certificate of registration are set forth in Rule R657-2.

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23-16-5
23-16-6

R657. Natural Resources, Wildlife Resources.
R657-37. Cooperative Wildlife Management Units for Big Game or Turkey.
R657-37-1. Purpose and Authority.

(1) Under authority of Section 23-23-3, this rule provides the standards and procedures applicable to Cooperative Wildlife Management Units organized for the hunting of big game or turkey.

(2) Cooperative Wildlife Management Units are established to:

(a) increase wildlife resources;

(b) provide income to landowners;

(c) provide the general public access to private and public lands for hunting big game or turkey within a Cooperative Wildlife Management Unit;

(d) create satisfying hunting opportunities;

(e) provide adequate protection to landowners who open their lands for hunting; and

(f) provide landowners an incentive to manage lands to protect and sustain wildlife habitat and benefit wildlife.

R657-37-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-23-2.

(2) In addition:

(a) "CWMU" means Cooperative Wildlife Management Unit.

(b) "CWMU agent" means a person appointed by a landowner association member to protect private property within the CWMU.

(c) "General public" means all persons except landowner association members and their spouse or dependent children.

(d) "Landowner association" means a landowner or group of landowners of private land organized as a single entity for the purpose of applying for, becoming and operating a CWMU.

(e) "Landowner association member" means:

(i) an individual landowner or the managing members of a legal entity holding a fee interest in private property enrolled in a CWMU;

(ii) a landowner association president;

(iii) a landowner association operator; and

(iv) employees, agents, and volunteers operating under the authority of or at the direction of a landowner association president or operator.

(f) "Landowner association operator" means a person designated by the landowner association to operate the CWMU and handle day-to-day interactions of the landowner association with the public.

(g) "Landowner association president" means a representative of the landowner association who is responsible for all internal operations of the landowner association and is ultimately responsible for the CWMU.

(h) "Voucher" means a document issued by the division to a landowner association member, allowing a landowner association member to designate who may purchase a CWMU big game or turkey hunting permit from a division office.

R657-37-3. Requirements for the Establishment of a Cooperative Wildlife Management Unit.

(1) A CWMU may be established for the purposes of hunting one or more of the following:

(a) mule deer;

(b) elk;

(c) moose;

(d) pronghorn; and

(e) turkey.

(2) The Wildlife Board may approve the issuance of a certificate of registration for a CWMU, provided:

(a) the property is capable of independently maintaining the presence of the respective species and harboring them during the established hunting season;

(b) the property is capable of accommodating the anticipated number of hunters and providing a reasonable hunting opportunity;

(c) the property exhibits enforceable boundaries clearly identifiable to both the public and private hunters;

(d) the CWMU contributes to meeting division wildlife management objectives;

(e) as needed, the CWMU provides reasonable assistance to the division in minimizing and addressing damage to agricultural interests within and adjacent to the CWMU caused by wildlife; and

(f) the CWMU meets the technical specifications provided in this rule.

(3) A CWMU shall satisfy the following criteria:

(a) a CWMU for elk or moose must contain at least 10,000 contiguous acres;

(b) a CWMU for deer, pronghorn, or turkey must contain at least 5,000 contiguous acres;

(b) the CWMU shall consist of private land to the extent practicable;

(c) only private lands may be included in calculating minimum acreage requirements;

(d) land parcels adjoining corner-to-corner may not be included for the purposes of meeting minimum contiguous acreage requirements;

(e) all lands counting towards the minimum acreage requirements shall provide quality hunting opportunity and form a quality hunting unit; or

(f) the CWMU must receive approval for a variance as described in R657-37-5(4).

(4) A CWMU may include public land only if:

(a) the public land is surrounded by private land or is otherwise publicly inaccessible;

(b) the public land is necessary to establish an enforceable and identifiable hunt boundary; or

(c) inclusion of the public land is necessary to achieve statewide and unit management objectives.

(5) A CWMU may not include:

(a) any lands comprising Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20;

(b) any lands already included in another active CWMU; or

(c) differing hunt boundaries for multiple species approved on a single CWMU.

(6) The Wildlife Board may deny a CWMU that meets technical requirements of this rule but does not otherwise fulfill the purposes of the CWMU program.

R657-37-4. Cooperative Wildlife Management Unit Management Plan.

(1)(a) The landowner association shall manage the CWMU in compliance with a CWMU Management Plan approved by the division.

(b) The CWMU management plan shall be consistent with statewide and unit management objectives for the respective species hunted on the CWMU.

(2)(a) The CWMU Management Plan shall be completed as part of the certificate of registration application and renewal processes.

(b) If approved by the Wildlife Board, the CWMU management plan is incorporated into the CWMU's certificate of registration.

(c) Amendments to the CWMU Management Plan may be requested by the Wildlife Board, the division, or the CWMU landowner association operator or president, and may

result in an amendment to the certificate of registration, consistent with R657-37-5.5.

(3)(a) The CWMU Management Plan must include:

(i) species management objectives for the CWMU that are consistent with statewide and unit management objectives for the respective big game or turkey management unit;

(ii) antlerless harvest objectives;

(iii) dates that the general public with buck or bull CWMU permits will be allowed to hunt;

(iv) a detailed explanation of how comparable hunting opportunities will be provided to both the private and public permit holders on the CWMU as required in Section 23-23-7.5;

(v) an explanation of the purpose for including public land within the CWMU boundaries, if public land is included;

(vi) an explanation of how the public is compensated by the CWMU when public land is included;

(vii) rules and guidelines used to regulate a permit holder's conduct as a guest on the CWMU;

(viii) County Recorder Plat Maps or equivalent maps depicting boundaries and ownership for all property within the CWMU;

(ix) two original 1:100,000 USGS maps depicting all interior and exterior boundaries of the proposed CWMU;

(x) strategies and methods that avoid, mitigate, and if necessary compensate for adverse impacts to adjacent landowners and lessees resulting from the operation of the CWMU;

(xi) strategies and methods that avoid, mitigate, and if necessary compensate for adverse impacts to agricultural lessees within and adjacent to the CWMU;

(xii) identification of areas within the CWMU that are closed to hunting by both public and private hunters;

(xiii) any request for reciprocal agreements.

(b) The division shall review all CWMU Management Plans and make recommendations to the Wildlife Board.

(4)(a) CWMU operators are required to complete a CWMU training session provided by the division on an annual basis.

(b) Failure to complete the CWMU training session may result in the CWMU operator being referred to the CWMU Advisory Committee described in R657-37-15 or may result in administrative action taken against a certificate of registration as described in R657-37-14.

R657-37-5. Application for Certificate of Registration; Variance Process.

(1) An application for a CWMU certificate of registration satisfying the acreage and parcel configuration requirements in R657-37-3 must be completed and returned to the regional division office where the proposed CWMU is located no later than August 1.

(2) The application must be accompanied by:

(a) the CWMU Management Plan, including all maps and a GIS shapefile in NAD 83 depicting the CWMU boundary;

(b)(i) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code; or

(ii) a copy of a legal contract or agreement identifying:

(A) the private land;

(B) the duration of the contract or agreement;

(C) the names and signatures of landowners conveying the hunting rights to the CWMU landowner association;

(c) a signed waiver from each landowner or lessee holding agricultural interests within the boundaries of the proposed CWMU releasing all claims for any assistance pertaining to those lands that may otherwise be available from the division under R657-44 during the term of the certificate of registration;

(d) the name of the landowner association operator;

(e) the name of the landowner association president; and

(f) the nonrefundable handling fee.

(3)(a) The division may reject any application that is incomplete or completed incorrectly.

(b) Applicants must update the division regarding any changes to the substance of their application while it is under consideration or it may be considered incomplete or incorrect.

(4)(a) An application for a new CWMU that fails to meet the acreage or parcel configuration requirements in R657-37-3 must submit a written variance request to the division by February 1st prior to the annual August 1st application deadline.

(b) Upon receipt of a completed variance request, the division will forward the variance request to the CWMU Advisory Committee for review and recommendations.

(c) The division will review the variance request and make recommendations to the CWMU Advisory Committee.

(d) The CWMU Advisory Committee will consider the variance request and the division's recommendations and make recommendations to the Wildlife Board on the advisability of granting the CWMU application.

(5) In analyzing an application for a CWMU, the Wildlife Board shall consider:

(a) the application materials;

(b) the division's recommendation;

(c) any recommendation from the CWMU Advisory Committee regarding a variance request; and

(d) any violation of the provisions of Title 23, Wildlife Resources Code by the CWMU operator, president, or landowner association member that bears a reasonable relationship on whether the applicant should be approved to participate in the program.

(6) Upon receiving the application and recommendation from the division, the Wildlife Board may:

(a) authorize the issuance of a certificate of registration allowing the landowner association to operate a CWMU; or

(b) deny the application and provide the landowner association with reasons for the decision.

(7) A certificate of registration is issued on a three-year basis and shall expire on January 31.

(8) The CWMU application and the management plan agreement are binding upon the landowner association members and all successors in interest to the CWMU property or the hunting rights thereon as it pertains to allowing public permit holders reasonable access to all CWMU property during the applicable hunting seasons for purposes of filling the permit.

R657-37-5.5. Amendment to a Certificate of Registration; Termination of Certificate of Registration.

(1)(a) A CWMU must notify the division in writing regarding any requested change in:

(i) permit numbers or allocation;

(ii) season dates;

(iii) landowner association membership;

(iv) acreage of the CWMU;

(v) operator;

(vi) the CWMU Management Plan; or

(vii) any other matter related to the management and operation of the CWMU not originally included in the certificate of registration.

(b) Written notification of a requested change must be submitted to the appropriate regional division office where the CWMU is located.

(c) The division must be notified of all changes in landowner association membership, acreage, and operator

within 30 days of such changes occurring.

(d) The CWMU must provide the division the written release identified in R657-37-5(2)(c) from new agricultural lessees within the boundaries of the proposed CWMU that are not participating members of the landowner association within 30 days of any changes occurring.

(e) Changes in the CWMU described in R657-37-5.5(1)(a) require an amendment to the certificate of registration.

(2) Requests to amend buck and bull permit numbers, permit allocation, or season dates:

(a) may be initiated by the CWMU or the division;

(b) are due on August 1 of the year prior to when hunting is to occur, unless requested changes are in response to an ecological event or condition occurring after the August 1 deadline and beyond the control of the CWMU;

(c) shall be forwarded to the Regional Advisory Councils and Wildlife Board for consideration; and

(d) upon approval by the Wildlife Board, an amendment to the original certificate of registration shall be issued in writing.

(3) Requests to amend antlerless permit numbers or season dates:

(a) may be initiated by the CWMU or the division;

(b) must be submitted to the division by the last day of February;

(c) shall be forwarded to the Regional Advisory Councils and Wildlife Board for consideration; and

(d) upon approval by the Wildlife Board, an amendment to the original certificate of registration may be issued in writing.

(4)(a) If acreage totals in the CWMU decrease by more than 33% over the term of the certificate of registration, the certificate of registration shall:

(i) remain effective for the hunting season beginning in that calendar year; and

(ii) following completion of that hunting season, the certificate of registration shall terminate.

(b) A CWMU whose certificate of registration is terminated under this section may reapply consistent with R657-37-5.

(c) If a reduction in acreage occurs on a CWMU that does not trigger the 33% threshold identified in subsection 4(a) and the resulting acreage total is below the standard totals generally required by R657-37-3:

(i) the certificate of registration will remain effective for the current hunt year;

(ii) the CWMU will be reported to the CWMU Advisory Committee for a variance request using the process described in R657-37-5(4); and

(iii) the Wildlife Board shall make a determination regarding variance approval and amendment of the certificate of registration.

(5)(a) All other requests for amendments shall be reviewed by the division.

(b) If the division recommends approval of the amendment, the division will submit that recommendation to the director.

(c) Upon approval by the director, an amendment to the original certificate of registration shall be issued in writing.

R657-37-6. Renewal of a Certificate of Registration.

(1)(a) At the end of a certificate of registration term, the certificate of registration may be renewed, consistent with this section.

(b) A certificate of registration terminated pursuant to R657-37-5.5 or R657-37-14 is not eligible for renewal, but may reapply consistent with R657-37-5.

(2) An application for renewal of a certificate of registration must be completed and returned to the regional division office where the CWMU is established no later than August 1 of the year preceding the expiration of the certificate of registration term.

(3)(a) The renewal application must identify all changes from the previous certificate of registration and CWMU Management Plan.

(b) A CWMU renewal application that, due to its acreage totals or parcel configuration would otherwise require variance approval, may proceed without completing the variance process, provided:

(i) the CWMU legally possessed a CWMU certificate of registration during the previous year that allowed for corner-to-corner land parcels or noncontiguous land parcels;

(ii) the CWMU's renewal application does not add additional corner-to-corner or noncontiguous parcels from the previously approved CWMU certificate of registration; and

(iii) the CWMU renewal application at a minimum maintains the equivalent acreage totals and configuration from its previously approved certificate of registration.

(c) A CWMU renewal application that includes a request for modified season dates is not required to obtain an additional variance upon renewal if those dates are identical to what was previously approved in their current certificate of registration.

(4) The renewal application must be accompanied by:

(a) the CWMU Management Plan as described in Section R657-37-4(3); and

(b) all maps as described in Section R657-37-4(3) if the CWMU boundaries have changed; and

(c)(i) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code; or

(ii) a copy of a legal contract or agreement identifying:

(A) the private land;

(B) the duration of the contract or agreement; and

(C) the names and signatures of landowners conveying the hunting rights to the CWMU agent or landowner association operator;

(d) a signed waiver from each landowner or lessee holding agricultural interests within the boundaries of the proposed CWMU releasing all claims for any assistance pertaining to those lands that may otherwise be available from the division under R657-44 during the term of the certificate of registration;

(e) the name of the designated landowner association operator; and

(f) the nonrefundable handling fee.

(6) The division may reject any application that is incomplete or completed incorrectly.

(7) The division shall consider:

(a) the contents of the renewal application;

(b) the past performance by a CWMU in fulfilling management responsibilities identified in the CWMU Management Plan;

(c) hunter satisfaction ratings; and

(d) any violation by CWMU operator, CWMU president, or any landowner association member of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to participation in the CWMU program.

(8) After evaluating a complete renewal application, the division shall:

(a) recommend approving renewal of the certificate of registration and forward the permit recommendations to the Regional Advisory Councils and Wildlife Board; or

(b) recommend denying the renewal certificate of

registration and state the reasons for denial in writing to the applicant; and

(c) forward the application, reason for denial and recommendation to the Regional Advisory Councils and Wildlife Board.

(9) Upon receiving the division's recommendation as provided in Subsections (7) and (8), the Wildlife Board may consider:

(a) the contents of the renewal application;

(b) the past performance by a CWMU in fulfilling management responsibilities identified in the CWMU Management Plan;

(c) hunter satisfaction ratings;

(d) any violation by CWMU operator, CWMU president, or any landowner association member of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to the applicant's participation in the CWMU program;

(e) any probationary status or recommendation provided by the CWMU Advisory Committee if the landowner association has been referred to the CWMU Advisory Committee during the term of the certificate of registration; and

(f) the recommendations of the division and Regional Advisory Councils.

(10) A certificate of registration approved for renewal is authorized for three years and shall expire on January 31, providing the certificate of registration is not revoked, suspended, or terminated prior to the expiration date.

R657-37-7. Operation by Landowner Association.

(1)(a) A CWMU must be operated by a landowner association who is represented by a president or a landowner association operator.

(b) A landowner association president or landowner association operator may appoint CWMU agents to protect private property within the CWMU; however, the landowner association president, or landowner association operator must assume ultimate responsibility for the operation of the CWMU.

(2)(a) A landowner association president or landowner association operator may enter into reciprocal agreements with other landowner association presidents or landowner association operators to allow hunters who have obtained a CWMU permit to hunt within each other's CWMUs as provided in Subsections R657-37-4(3)(a)(xii).

(b) Reciprocal hunting agreements may be approved only to:

(i) raise funds to address joint habitat improvement projects;

(ii) address emergency situations limiting hunting opportunity on a CWMU;

(iii) raise funds to aid in essential management practices for the benefit of CWMU species, including obtaining age or species population data as recommended by regional division personnel and approved by the division's wildlife section chief; or

(iv) be used with unused vouchers as provided in R657-37-9(12)(a).

(c) If a person is authorized to hunt in one or more CWMUs as provided in Subsection (a), written permission from the landowner association member or landowner association operator and written authorization from the division must be in the person's possession while hunting.

(d) The division may identify an individual to administer and coordinate reciprocal agreements and all expenditure of funds generated therefrom.

(e) The division must provide written approval prior to any expenditure of funds generated from reciprocal agreement permits.

(f) The administrator of the reciprocal agreement program must provide an annual accounting of proceeds generated from reciprocal agreement permits and how those funds were spent or administered.

(3)(a) A landowner association member or landowner association operator must provide general public CWMU permittees a minimum of:

(i) five days to hunt with buck, bull or turkey permits; and

(ii) three days to hunt with antlerless permits.

(b) Sunday hunt days may not be included in minimum hunt days except by mutual agreement of the permittee and the operator.

(c) General public CWMU permittees shall be allowed to hunt the entire CWMU during their established season dates, unless areas are deemed closed to both public and private hunters and described in the CWMU Management Plan as closed.

(d) A person who has obtained a CWMU permit may hunt only in the CWMU for which the permit is issued, except as provided under Subsection (2).

(4)(a) Each landowner association member or landowner association operator must:

(i) clearly post all boundaries of the CWMU at all corners, fishing streams crossing property lines, road, gates, and rights-of-way entering the land with signs that are a minimum of 8 1/2 by 11 inches on a bright yellow background with black lettering, and that contain the language provided in Subsection (b); and

(ii) if a CWMU uses public land for the purpose of making a definable boundary for the CWMU then that boundary shall be posted every three hundred yards.

(b) Only persons with a valid CWMU permit for the CWMU may hunt moose, deer, elk, pronghorn or turkey within the boundaries of the CWMU.

(c) The general public may use accessible public land portions of the CWMU for all legal purposes, other than hunting big game or turkey for which the CWMU is authorized.

(5) A landowner association member or landowner association operator must provide a written copy of its guidelines used to regulate a permit holder's conduct as a guest on the CWMU to each permit holder.

(6)(a) A CWMU and the division shall cooperatively address the needs of landowners who are negatively impacted by big game animals or turkeys associated with the CWMU.

(b) The CWMU and the division shall cooperatively seek methods to prevent or mitigate agricultural depredation caused by big game animals or turkeys associated with the CWMU.

(7) A landowner association member may not harass or haze wildlife in an effort to retain animals on the CWMU or herd animals onto the CWMU unless:

(a) the division determines that such actions are necessary to mitigate agricultural damage on neighboring lands;

(b) the CWMU is fulfilling their obligations described in their CWMU Management Plan regarding agricultural damage to neighboring landowners; and

(c) the division provides prior written authorization approving the actions of the CMWU.

R657-37-8. Cooperative Wildlife Management Unit Agents.

(1) A landowner association member may appoint a CWMU agent to monitor access and protect the private property of the CWMU.

(2) Each CWMU agent must wear or have in possession a form of identification prescribed by the Wildlife Board which indicates the agent is a CWMU agent.

(3) A CWMU agent may refuse entry to or remove from a CWMU any person who:

(a) does not possess a valid CWMU permit;

(b) endangers or has endangered human safety;

(c) damages or has damaged property within a CWMU;

(d) fails or has failed to comply with reasonable rules of a landowner association; or

(e) does not have the legal right to be on lands within a CWMU.

(4) A CWMU agent may not refuse entry to the general public onto any public land within the boundaries of a CWMU that is otherwise accessible to the public for purposes other than hunting big game or turkey for which the CWMU is authorized.

(5) In performing the functions described in this section, a CWMU agent must comply with the relevant laws of this state.

R657-37-9. Permit Allocation.

(1) The division shall issue CWMU permits for hunting big game or turkey to permittees:

(a) qualifying through a drawing conducted for the general public as defined in Subsection R657-37-2(2)(c); or

(b) named by the landowner association member or landowner association operator.

(2) CWMU landowner association members and their spouses and dependent children cannot apply for CWMU permits specific to their CWMU that are offered in the public drawing.

(3) A landowner association member or landowner association operator shall be issued vouchers that may be used to purchase hunting permits from division offices.

(4)(a) The division and the landowner association operator must, in accordance with Subsection (4), determine:

(i) the total number of permits to be issued for the CWMU; and

(ii) the number of permits that may be offered by the landowner association to the general public as defined in Subsection R657-37-2(2)(c).

(b) In determining the total number of permits allocated under Subsection (4)(a), the division will consider:

(i) acreage and habitat conditions on the CWMU;

(ii) management objectives of the CWMU and surrounding wildlife management units;

(iii) classification and survey data;

(iv) depredation and nuisance conflicts; and

(v) other factors that may influence hunt quality and the division's ability to meet wildlife management objectives.

(c) A CWMU may only offer a management buck permit for a public hunter if that CWMU lies entirely within a wildlife management unit that also offers management buck hunts.

(5) The Wildlife Board shall increase the number of permits or hunting opportunities made available to the general public to reflect the proportion of public lands to private lands within the CWMU.

(6)(a) Big game permits may be allocated using an option from:

(i) table one for moose and pronghorn; or

(ii) table two for elk and deer.

(b)(i) Over the term of the certificate of registration, and at all times during the its term, at least 40% of the total permits for bull moose and at least 60% of the antlerless moose permits will be allocated to the public and distributed via the public drawing.

(ii) Notwithstanding subsection (b)(i) above and Tables 1 and 2, if the proportion of permits allocated to the public over consecutive certificate of registration terms substantially deviates from that identified in subsection (b)(i), the Wildlife Board may approve a modified permit distribution scheme that fairly allocates public and private permits.

(c) At least one buck or bull permit or at least 10% of the bucks or bulls permits, whichever is greater, must be made available to the general public through the big game drawing process.

(d) Permits shall not be issued for spike bull elk.

(e) Turkey permits shall be allocated in a ratio of fifty percent to the CWMU and fifty percent to the general public, with the public receiving the extra permit when there is an odd number of total permits.

TABLE 1

MOOSE AND PRONGHORN

Cooperative Wildlife Management Unit's Share

Option	Bucks/Bulls	Does/Antlerless
1	60%	40%

Public's Share

Option	Bucks/Bulls	Does/Antlerless
1	40%	60%

TABLE 2

ELK AND DEER

Cooperative Wildlife Management Unit's Share

Option	Bucks/Bulls	Antlerless
1	90%	0%
2	85%	25%
3	80%	40%
4	75%	50%

Public's Share

Option	Bucks/Bulls	Antlerless
1	10%	100%
2	15%	75%
3	20%	60%
4	25%	50%

(7)(a) The landowner association member or landowner association operator must meet antlerless harvest objectives established in the CWMU management plan under subsection R657-37-4(3)(a)(ii).

(b) Failure to meet antlerless harvest objectives based on a three-year average may result in discipline under section R657-37-14.

(8) A landowner association member or landowner association operator must provide access free of charge to any person who has received a CWMU permit through the general public big game or turkey drawings, except as provided in Section 23-23-11.

(9) If the division and the landowner association member disagree on the number of permits to be issued, the number of permits allocated, or the method of take, the Wildlife Board shall make the determination based on the biological needs of the big game or turkey populations, including available forage, depredation, and other mitigating factors.

(10) A CWMU permit entitles the holder to hunt the species and sex of big game or turkey specified on the permit and only in accordance with the certificate of registration and the rules and proclamations of the Wildlife Board.

(11) Vouchers for antlerless permits may be designated by a landowner association member to any eligible person as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game, and Rule R657-42.

(12)(a) If a landowner association has a CWMU voucher that is not redeemed during the previous year, a landowner association may donate that voucher to a 501(c)(3) tax exempt organization, provided the following conditions

are satisfied:

(i) The voucher donation is approved by the director prior to transfer;

(ii) No more than one voucher is donated per year by a landowner association;

(iii) The voucher is donated for a charitable cause, and the landowner association does not receive compensation or consideration of any kind other than tax benefit; and

(iv) The recipient of the voucher is identified prior to obtaining the director's approval for the donation.

(b) A CWMU voucher approved for donation under this section may be extended no more than one year.

(c) The division must be notified in writing and the donation completed before August 1st the year the CWMU voucher is to be redeemed.

(d) vouchers may be used in reciprocal hunting agreements described in accordance with R657-7-(2)(b).

(13)(a) A complete list of the current CWMUs, and number of big game or turkey permits available for public drawing shall be published in the respective proclamations of the Wildlife Board for taking big game or turkey.

(b) The division reserves the exclusive right to list approved CWMUs in the proclamations of the Wildlife Board for taking big game or turkey. The division may unilaterally decline to list a CWMU in the proclamation where the unit is under investigation for wildlife violations, a portion of the property comprising the CWMU is transferred to a new owner, or any other condition or circumstance that calls into question the CWMUs ability or willingness to allow a meaningful hunting opportunity to all the public permit holders that would otherwise draw out on the public permits.

R657-37-10. Permit Cost.

The fee for permits allocated to any CWMU is the same as the applicable:

(a) limited entry permit fee for elk and pronghorn;

(b) general season, limited entry or premium limited entry permit fee for deer or turkey; and

(c) once-in-a-lifetime permit fee for moose.

R657-37-11. Possession of Permits and License by Hunters - Restrictions.

(1) A person may not hunt in a CWMU without having in his possession:

(a) a valid CWMU permit; and

(b) the necessary hunting licenses, permits and tags.

(2) A CWMU permit:

(a) entitles the holder to hunt only on the CWMU specified on the permit pursuant to the rules of the Wildlife Board and does not entitle the holder to hunt on any other public or private land, except as provided under Subsection R657-37-7(2)(a); and

(b) constitutes written permission for trespass as required under Section 23-20-14.

(3) Prior to hunting on a CWMU each permittee must:

(a) contact the relevant landowner association member or landowner association operator and request the CWMU rules and requirements; and

(b) make arrangements with the landowner association member or landowner association operator for the hunt.

R657-37-12. Season Lengths.

(1) A landowner association member or landowner association operator may arrange for permittees to hunt on the CWMU during the following dates:

(a) an archery buck deer season may be established beginning with the opening of the general archery deer season through August 31 and during the sixty-one consecutive day buck deer season;

(b) an archery bull elk season may be established beginning with the opening of the general archery elk season through October 31 and during a bull elk season variance;

(c) an archery buck pronghorn season may be established beginning with the opening of the statewide limited entry archery buck pronghorn season through October 31;

(d) general season bull elk, buck pronghorn, and moose seasons may be established September 1 through October 31, unless a season variance is approved;

(e)(i) general buck deer seasons may be established for no longer than sixty-one consecutive days from September 1 through November 10;

(ii) a landowner association member or landowner association operator electing to establish buck deer hunting in November must:

(A) meet the CWMU management plan objectives;

(B) not exceed average hunter density exhibited on the surrounding deer wildlife management units;

(C) provide positive hunter satisfaction; and

(D) maintain a harvest success rate at least equal to the surrounding deer wildlife management units;

(E) designate the CWMU's sixty-one consecutive day season in the application, or if the sixty-one day consecutive season is not designated the season shall begin September 1;

(F) allow all public hunters the option to hunt in November;

(f) muzzleloader bull elk seasons may be established September 1 through October 31 annually, and during a bull elk season variance;

(g) antlerless elk seasons may be established August 1 through January 31;

(h) antlerless deer seasons may be established August 1 through December 31;

(i) doe pronghorn seasons may be established August 1 through October 31; and

(j) turkey seasons may be established the second Saturday in April through May 31.

(2)(a) The Wildlife Board may authorize bull elk hunting season variances only if the CWMU landowner association member or landowner association operator clearly demonstrates that November hunting is necessary on the CWMU.

(b) If a bull elk hunting season variance is authorized, the public hunters must be provided comparable hunting opportunity as private hunters.

(3) Notwithstanding the season length provisions in this section, any season described in Subsection (1) that begins on a Sunday will default to and commence the Saturday before.

R657-37-13. Rights-of-Way.

A landowner association member may not restrict established public access to public land enclosed by the CWMU.

R657-37-14. Violations.

(1) The Wildlife Board may refuse to issue, renew, or amend a certificate of registration to an applicant, or may revoke, restrict, place on probation, change permits or allocations or otherwise act upon a certificate of registration where the landowner association member has:

(a) violated any provision of this rule, the Wildlife Resources Code, the certificate of registration, or the CWMU Management Plan; or

(b) engaged in conduct that results in the conviction of, a plea of no contest to, or a plea held in abeyance to a crime of moral turpitude, or any other crime that when considered with the functions and responsibilities of a CWMU operator bears a reasonable relationship to the operator's or applicant's

ability to safely and responsibly operate a CWMU.

(2) The procedures and rules governing any adverse action taken by the division or the Wildlife Board against a certificate of registration or an application for certificate of registration are set forth in Rule R657-2.

R657-37-15. Cooperative Wildlife Management Unit Advisory Committee.

(1) A CWMU Advisory Committee shall be created consisting of eight members nominated by the director and approved by the Wildlife Board.

(2) The committee shall include:

(a) two sportsmen representatives;

(b) two CWMU representatives;

(c) one agricultural representative;

(d) one at-large public representative;

(e) one elected official; and

(f) one Regional Advisory Council chairperson or Regional Advisory Council member.

(3) The committee shall be chaired by the Wildlife Section Chief, who shall be a non-voting member.

(4) The committee shall:

(a) hear complaints dealing with fair and equitable treatment of hunters on CWMUs;

(b) review the operation of the CWMU program;

(c) review failure to meet antlerless objectives;

(d) hear complaints from adjacent landowners;

(e) review changes in acreage totals for CWMUs that are under standard minimum acreage or parcel configuration requirements and evaluate the appropriateness of their continued participation in the program; and

(f) make advisory recommendations to the director and Wildlife Board on the matters in Subsections (a), (b), (c), (d), and (e).

(5)(a) The committee may, after hearing evidence of complaints or violations, place a CWMU on probation.

(b) A CWMU placed upon probationary status must provide the CWMU Advisory Committee a plan of corrective action to address concerns regarding operation of the CWMU, and report annually to the Advisory Committee during the probationary period regarding their progress in addressing such concerns.

(c) The CWMU Advisory Committee shall report to the Wildlife Board any CWMU that remains on probation during a certificate of registration renewal process.

(6) The Wildlife Section Chief shall determine the agenda, and time and location of the meetings.

(7) The director shall set staggered terms of appointment of members such that there is rotating representation and that all committee members' terms shall expire after four years.

KEY: wildlife, cooperative wildlife management unit
July 22, 2019 23-23-3
Notice of Continuation April 12, 2018

R657. Natural Resources, Wildlife Resources.
R657-41. Conservation and Sportsman Permits.
R657-41-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18 and 23-14-19, this rule provides the standards and procedures for issuing:

(a) conservation permits to conservation organizations for auction to the highest bidder at fund-raising events ;

(b) sportsman permits;

(c) Special Antelope Island State Park Conservation Permits to a conservation organization for auction to the highest bidder at the annual wildlife exposition held pursuant to R657-55; and

(d) Special Antelope Island State Park Limited Entry Permits to successful applicants through a general drawing conducted by the division.

(2) The division and conservation organizations shall use all revenue derived from conservation permits under Subsections R657-41-9(4) and (5)(b) for the benefit of species for which conservation permits are issued, unless the division and conservation organization mutually agree in writing that there is a higher priority use for other species of protected wildlife.

R657-41-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Area Conservation Permit" means a permit issued for a specific unit or hunt area for a conservation permit species, and may include an extended season, or legal weapon choice, or both, beyond the season, except area turkey permits are valid during any season option and are valid in any open area during general season hunt.

(i) Area conservation permits issued for limited entry units are not valid on cooperative wildlife management units authorized for the same species of wildlife as the area conservation permit.

(ii) Notwithstanding Subsection (a), area conservation permits issued for turkey are not valid during the youth general season hunt unless the holder qualifies as a youth.

(b) "Conservation Organization" means a nonprofit chartered institution, foundation, or association founded and operated for the purpose of promoting the protection, preservation, and recreational hunting of one or more conservation permit species and has established tax exempt status under 26 U.S.C. Section 501(c)(3), as amended.

(c) "Conservation Permit" means any harvest permit authorized by the Wildlife Board and issued by the division for purposes identified in Section R657-41-1.

(d) "Conservation Permit Species" means the species for which conservation permits may be issued and includes deer, elk, pronghorn, moose, bison, mountain goat, Rocky Mountain bighorn sheep, desert bighorn sheep, wild turkey, cougar, and black bear.

(e) "Multi-Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-7 for three consecutive years for auction to the highest bidder at fund-raising events.

(f) "Retained Revenue" means 60% of the revenue raised by a conservation organization from auctioning conservation permits that the organization retains for eligible projects, including interest earned thereon less standard banking fees assessed on the account.

(g) "Special Antelope Island State Park Conservation Permit" means a permit authorized by the Wildlife Board to hunt bighorn sheep or mule deer on Antelope Island State Park which is issued pursuant to R657-41-12.

(h) "Special Antelope Island State Park Limited Entry Permit" means a permit authorized by the Wildlife Board to hunt bighorn sheep or mule deer on Antelope Island State Park which is issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

(i) "Sportsman Permit" means a permit which allows a permittee to hunt during the applicable season dates specified in Subsection (k), and which is authorized by the Wildlife Board and issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

(j) "Single Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-6 for one year for auction to the highest bidder at fund-raising events.

(k) "Statewide Conservation Permit" means a permit issued for a conservation permit species that allows a permittee to hunt:

(i) big game species on any open unit with archery equipment during the general archery season published in the big game guidebooks for the unit beginning before September 1, and with any weapon from September 1 through December 31, except pronghorn and moose from September 1 through November 15 and deer, elk from September 1 through January 15, and bison from August 1 through January 31;

(ii) two turkeys on any open unit from April 1 through May 31;

(iii) bear on any open unit during the season authorized by the Wildlife Board for that unit;

(iv) cougar on any open unit during the season authorized by the Wildlife Board for that unit and during the season dates authorized by the Wildlife Board on any harvest objective unit that has been closed by meeting its objective;

(v) Antelope Island is not an open unit for hunting any species of wildlife authorized by a conservation or sportsman permit, except for the Special Antelope Island State Park Conservation Permits and the Special Antelope Island State Park Limited Entry Permits; and

(vi) Rocky Mountain bighorn sheep on any open unit, excluding the Box Elder, Pilot Mountain sheep unit, which is closed to both the Sportsman permit holder and the Statewide conservation permit holder every year.

(l) "Permit voucher" or "voucher" means an authorization issued by the division that entitles the designated holder to purchase the hunting permit specified in the authorization.

R657-41-3. Determining the Number of Conservation and Sportsman Permits.

(1) The number of conservation permits authorized by the Wildlife Board shall be based on:

(a) the species population trend, size, distribution, and long-term health;

(b) the hunting and viewing opportunity for the general public, both short and long term; and

(c) the potential revenue that will support protection and enhancement of the species.

(2) One statewide conservation permit may be authorized for each conservation permit species.

(3) A limited number of area conservation permits may be authorized as follows:

(a) the potential number of multi-year and single year conservation permits available for Rocky Mountain bighorn sheep and desert bighorn sheep, assigned to a hunt area or combination of hunt areas, will be calculated based on the number permits issued the year prior to the permits being awarded using the following rule:

(i) 5-14 public permits = 1 conservation permit, 15-24 public permits = 2 conservation permits, 25-34 public permits

= 3 conservation permits, 35-44 permits = 4 conservation permits, 45-54 public permits = 5 conservation permits, 55-64 = 6 conservation permits, 65-74 public permits = 7 conservation permits and >75 public permits = 8 conservation permits.

(b) the potential number of multi-year and single year permits available for the remaining conservation permit species, for any unit or hunt area, will be calculated based on the number permits issued the year prior to the permits being awarded using the following rule:

(i) 11-30 public permits = 1 conservation permit, 31-50 public permits = 2 conservation permits, 51-70 public permits = 3 conservation permits, 71-90 permits = 4 conservation permits, 91-110 public permits = 5 conservation permits, 111-130 = 6 conservation permits, 131-150 public permits = 7 conservation permits and >150 public permits = 8 conservation permits.

(4) The number of conservation permits may be reduced if the number of public permits declines during the time period for which multi-year permits were awarded.

(5) The actual number of conservation and sportsman permits available for use will be determined by the Wildlife Board.

(6) Area conservation permits shall be approved by the Wildlife Board in a separate process from approving the number of public drawing permits.

(7) One sportsman permit shall be authorized for each statewide conservation permit authorized.

(8) All area conservation permits are eligible as multi-year permits, except the division may designate some area conservation permits as single year permits based on the applications received for single year permits.

(9) All statewide permits will be multi-year permits.

R657-41-4. Eligibility for Conservation Permits.

(1) Statewide and area conservation permits may be awarded to eligible conservation organizations for auction to the highest bidder at fund-raising events and through other authorized means of sale.

(2) To be eligible for multi-year conservation permits, a conservation organization must have generated in conservation permit sales during the previous three-year period at least one percent of the total revenue generated by all conservation organizations in conservation permit sales during the same period. Conservation organizations eligible for multi-year permits may not apply for single year permits, and conservation organizations ineligible for multi-year permits may only apply for single year permits.

(3) Conservation organizations applying for single year permits may not:

(a) bid for or obtain conservation permits if any employee, officer, or board of directors member of the conservation organization is an employee, officer, or board of directors member of any other conservation organization that is submitting a bid for single year conservation permits; or

(b) enter into any pre-bidding discussions, understandings or agreements with any other conservation organization submitting a bid for conservation permits regarding:

(i) which permits will be sought by a bidder;

(ii) what amounts will be bid for any permits; or

(iii) trading, exchanging, or transferring any permits after permits are awarded.

R657-41-5. Applying for Conservation Permits.

(1)(a) Applications to participate in the multi-year conservation permit program will be accepted on a three-year application cycle uniformly applicable to all conservation organizations.

(b) A conservation organization wishing to apply for multi-year conservation permits must submit a complete application to the division by August 15 of third year of the application cycle.

(c) Conservation organizations wishing to apply for one year conservation permits must do so by August 15 annually.

(d) Only one application per conservation organization may be submitted.

(e) Multiple chapters of the same conservation organization may not apply individually.

(f) Conservation organizations may apply for single year conservation permits or multi-year conservation permits. They may not apply for both types of conservation permits.

(2) Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a copy of the conservation organization's mission statement;

(c) verification of the conservation organization's tax - exempt status under 26 U.S.C. Section 501(c)(3), as amended; and

(d) the name of the president or other individual responsible for the administrative operations of the conservation organization;

(3) If applying for single year conservation permits, a conservation organization must also include in its application:

(a) the proposed bid amount for each permit requested. The proposed bid amount is the revenue the organization anticipates will be raised from auctioning a permit;

(b) certification that there are no conflicts of interest or collusion in submitting bids, as prohibited in R657-41-4(3);

(c) acknowledgement that the conservation organization recognizes that falsely certifying the absence of collusion may result in cancellation of permits, administrative action under R657-41-13, disqualification from bidding for five years or more, or the filing of criminal charges; and

(d) evidence that the application and bid has been approved by the board of directors or other necessary authority from the bidding conservation organization; and

(e) a certification from the applicant that they have not consulted with any other participating conservation organization regarding the conservation permits they intend to acquire.

(4) An application that is incomplete or completed incorrectly may be rejected.

(5) The application of a conservation organization for conservation permits may be denied by the division for:

(a) failing to fully and accurately report on the preceding year's conservation permits;

(b) violating any provision of this rule, Title 23 of the Utah Code, Title R657 of the Utah Administrative Code, a division guidebook, or an order of the Wildlife Board; or

(c) violating any other law that bears a reasonable relationship to the applicant's ability to responsibly and lawfully handle conservation permits pursuant to this rule.

(6) Application denials may be appealed to the division director prior to the permit selection process described in R657-41-7.

R657-41-6. Awarding Single Year Conservation Permits.

(1) The division shall recommend the conservation organization to receive each single year conservation permit based on:

(a)(i) the bid amount pledged to the species; and

(ii) the bid amount pledged to the species, adjusted, when applicable, by:

(A) the performance of the organization over the previous two years in meeting proposed bids;

(B) 90% of the bid amount; and

(C) the organizations maintaining a minimum two-year average performance of 70% to be eligible for consideration of permits. Performance of the organization is the proportion of the total revenue generated from permit sales, divided by 90% of the bid amount for all permits, calculated annually and averaged for the last two years.

(b) If two or more conservation organizations are tied using the criteria in Subsection (a), the following factors may be used to award the single year conservation permit:

(i) closeness of the organization's purpose to the species of the permit; and

(ii) geographic closeness of the organization to the location of the permit.

(2)(a) Between the time the division recommends that a conservation permit be awarded to a conservation organization and the time the Wildlife Board approves that recommendation, a conservation organization may withdraw the application for any given permit and assign it to or exchange it with another conservation organization eligible to receive the permit without penalty, provided the bid amount upon which the permit application was evaluated is not changed.

(b) If a conservation organization withdraws its bid for a conservation permit after being selected by the division to receive it, and the bid is awarded to another organization at a lower amount, the difference between the two bids will be subtracted from the organization making the higher bid for purposes of evaluating organization performance.

(3) The Wildlife Board shall make the final assignment of conservation permits.

(4) The Wildlife Board may authorize a conservation permit to a conservation organization other than the one recommended by the division, after considering the:

(a) division recommendation;

(b) benefit to the species;

(c) historical contribution of the organization to the conservation of wildlife in Utah;

(d) previous performance of the conservation organization; and

(e) overall viability and integrity of the conservation permit program.

(5) The total of all bids for permits awarded to any one organization shall not exceed $20,000 the first year an organization receives permits.

(6) The number of permits awarded to any one organization shall not increase by more than 100% from the previous year.

R657-41-7. Awarding Multi-Year Conservation Permits.

(1)(a) Distribution of multi-year conservation permits will be based on a sequential selection process where each eligible conservation organization is assigned a position or positions in the selection order among the other participating organizations and awarded credits with which to purchase multi-year permits at an assigned value.

(b) Conservation organizations may not consult or coordinate with other conservation organizations regarding which conservation permits they intend to acquire prior to the permit selection process.

(2) Multi-year permits will be awarded to eligible conservation organizations for no more than three years.

(3) The division will determine the number of permits available as multi-year permits after subtracting the proposed number of single year permits.

(a) Season types for multi-year area conservation permits for elk on any given hunt unit will be designated and assigned in the following order:

(i) first permit -- multi-season;

(ii) second permit -- any-weapon;

(iii) third permit -- any-weapon;

(iv) fourth permit -- archery;

(v) fifth permit -- muzzleloader;

(vi) sixth permit -- multi-season;

(vii) seventh permit -- any-weapon; and

(viii) eighth permit -- any-weapon.

(b) Season types for multi-year area conservation permits for deer on any given hunt unit will be designated and assigned in the following order:

(i) first permit -- hunter's choice of season;

(ii) second permit -- hunter's choice of season;

(iii) third permit -- muzzleloader;

(iv) fourth permit -- archery;

(v) fifth permit -- any-weapon;

(vi) sixth permit -- any-weapon;

(vii) seventh permit -- muzzleloader; and

(viii) eighth permit -- archery.

(c) Notwithstanding the availability of multiple seasons, an any-weapon permit opportunity offered in Subsections (3)(a) and (b) is restricted to a single season, which the recipient of the permit must designate prior to receiving the permit.

(4) The division will assign a credit amount for each multi-year permit based on the average return for the permit during the previous three-year period. If a history is not available, the value will be estimated.

(5) The division will calculate the market total for the permit draft by summing all credit amounts from available conservation permits.

(6)(a) The division will calculate a market share for each eligible conservation organization applying for multi-year permits.

(b) Market share will be calculated and determined based on:

(i) the conservation organization's previous three years performance;

(ii) all conservation permits (single and multi-year) issued to a conservation organization;

(iii) the percent of conservation permit revenue raised by a conservation organization during the three-year period relative to all conservation permit revenue raised during the same period by all conservation organizations applying for multi-year permits.

(7) The division will determine the credits available to spend by each group in the selection process based on their market share multiplied by the total annual value of all multi-year permits.

(8) The division will establish a selection order for the participating conservation organizations based on the relative value of each groups market share as follows:

(a) groups will be ordered based on their percent of market share;

(b) each selection position will cost a group 10% of the total market share except the last selection by a group will cost whatever percent a group has remaining;

(c) no group can have more than three positions in the selection order; and

(d) the selection order will be established as follows:

(i) the group with the highest market share will be assigned the first position and 10% will be subtracted from their total market share;

(ii) the group with the highest remaining market share will be assigned the second position and 10% will be subtracted from their market share; and

(iii) this procedure will continue until all groups have three positions or their market share is exhausted.

(9) At least one week prior to the multi-year permit selection meeting, the division will provide each conservation organization applying for multi-year permits the following

items:

(a) a list of multi-year permits available with assigned value;

(b) documentation of the calculation of market share;

(c) credits available to each conservation group to use in the selection process;

(d) the selection order; and

(e) date, time and location of the selection meeting.

(10) Between establishing the selection order and the selection meeting, groups may trade or assign selection positions, but once the selection meeting begins selection order cannot be changed.

(11) At the selection meeting, conservation organizations will select permits from the available pool according to their respective positions in the selection order. For each permit selected, the value of that permit will be deducted from the conservation organization's available credits. The selection order will repeat itself until all available credits are used or all available permits are selected.

(12) Conservation organizations may continue to select a single permit each time their turn comes up in the selection order until all available credits are used or all available permits are selected.

(13) A conservation organization may not exceed its available credits, except a group may select their last permit for up to 10% of the permit credit amount above their remaining credits.

(14) Upon completion of the selection process, but prior to the Wildlife Board meeting where the final assignment of permits is made, conservation organizations may trade or assign permits to other conservation organizations eligible to receive multi-year permits. The group receiving a permit retains the permit for the purposes of marketing and determination of market share for the entire multi-year period.

(15) Variances for an extended season or legal weapon choice may be obtained only on area conservation permits and must be presented to the Wildlife Board prior to the final assignment of the permit to the conservation organization.

(16) Conservation organizations may not trade or transfer multi-year permits to other organizations once assigned by the Wildlife Board.

(17) Conservation organizations failing to comply with the reporting requirements in any given year during the multi-year period may lose the multi-year conservation permits for the balance of the multi-year award period.

(18) If a conservation organization is unable to complete the terms of auctioning or otherwise selling assigned permits, the permits will be returned to the regular public drawing process for the duration of the multi-year allocation period.

R657-41-8. Distributing Conservation Permits.

(1) The division and conservation organization receiving permits shall enter into a contract.

(2)(a) Conservation organizations receiving the opportunity to distribute permits must ensure the permit opportunities are marketed, auctioned, and distributed by lawful means.

(b) Conservation permit vouchers may not be purchased or redeemed by officers, agents, directors or employees of a conservation permit organization unless:

(i) the voucher was sold at an in-person banquet or fundraiser hosted by the conservation organization;

(ii) the sale was administered by an auctioneer; and

(iii) the sales process was administered in a manner so as to secure fair market value for the voucher.

(3)(a) The conservation organization must:

(i) obtain the following information at the time of sale:

(A) full name of the successful bidder;

(B) date the permit opportunity is auctioned; and

(C) winning bid amount for that permit opportunity;

(ii) submit the information required in Subsection (3)(a)(i) to the division within 10 days of the event where the permit opportunity is auctioned to the highest bidder; and

(iii) identify the individual who is authorized to redeem the conservation permit voucher and submit it to the division prior to the individual attempting to redeeming the voucher.

(b) The division will not issue a conservation permit unless required information about the winning bidder and authorized recipient of the voucher is first received by the division.

(c)(i) an absentee bidder may only use an agent or representative to bid on a conservation permit opportunity on their behalf if authorized by the conservation organization.

(ii) A winning bid offered by an agent or representative on behalf of an absentee bidder legally obligates the absentee bidder to satisfy the bid obligation submitted by the representative.

(iii) For the purposes of this rule, an absentee bidder is considered the successful bidder when the winning bid is offered by their agent or representative.

(4) If the successful bidder or a person designated by the successful bidder to receive a conservation permit voucher fails to pay the conservation organization the winning bid amount that secured the permit opportunity, the conservation organization may remarket the permit opportunity using any legal means and designate another person to receive the permit opportunity.

(5)(a) If, for any reason, the successful bidder elects not to personally use a conservation permit opportunity, they may assign that opportunity to another person, provided:

(i) the conservation organization is notified of the assignment;

(ii) the original winning bid amount for the permit opportunity is received in full by the conservation organization and not decreased;

(iii) the conservation organization handles and otherwise uses the entire winning bid amount consistent with the requirements in Section R657-41-9; and

(iv) the successful bidder executes an affidavit verifying they are not profiting from the assignment.

(A) For purposes of Subsection (iv), "profiting" does not include a reasonable fee for guiding services provided in conjunction with the assigned permit opportunity.

(b) If a person assigned a permit opportunity by the successful bidder or a person possessing a permit voucher is unable to use the permit opportunity for any reason, including obtaining another Utah permit for the same species, the conservation organization may remarket the permit opportunity using any legal means and designate another person to receive the opportunity, provided:

(i) the conservation organization selects the new recipient of the permit opportunity;

(ii) the amount of money received by the division for the permit opportunity is not decreased;

(iii) the conservation organization relinquishes to the division and otherwise uses all proceeds generated from the re-designated permit opportunity consistent with the requirements in Section R657-41-9;

(iv) the conservation organization and the holder of the permit opportunity execute an affidavit verifying neither is profiting from transferring the right to the permit; and

(v) the permit has not been issued by the division to the first designated person.

(6)(a) Except as otherwise provided under Subsections (4) and (5), neither the conservation organization, successful bidder, successful bidder's assignee, nor the holder of a conservation permit voucher may offer for sale, sell, or transfer the rights to that designation to any other person.

(7) A person cannot obtain more than one conservation permit for a single conservation permit species per year, except :

(a) two elk permits may be obtained, provided one or both are antlerless permits; and

(b) turkey.

(c) A person may obtain both a desert bighorn ram permit and rocky mountain bighorn ram conservation permit in a single year.

(8) The person designated on a conservation permit voucher must possess or obtain a current Utah hunting or combination license to redeem the voucher for the corresponding conservation permit.

R657-41-9. Conservation Permit Funds and Reporting.

(1) All permits must be auctioned or distributed by August 15, annually.

(2) Within 30 days of the last event, but no later than August 15 annually, the conservation organization must submit to the division:

(a) a final report on the distribution of permits;

(b) the total funds raised on each permit; and

(c) the funds due to the division.

(3)(a) Conservation permits shall not be issued to a person possessing a conservation permit voucher unless the person redeeming the voucher:

(i) possesses a valid Utah hunting or combination license;

(ii) remits to the division the applicable permit fee ; and

(iii) is otherwise legally eligible to possess the particular hunting permit.

(b) If the conservation organization is paying the permit fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization as provided in Subsection (5)(a).

(4)(a) Conservation organizations shall remit to the division by August 15 of each year 30% of the total revenue generated by conservation permit sales in that year.

(b) The permit revenue payable to the division under Subsection (4)(a), is the property of the division and may not be used by conservation organizations for projects or any other purpose.

(c) The permit revenue must be placed in a federally insured account promptly upon receipt and remain in the account until remitted to the division on or before August 15 of each year.

(d) The permit revenue payable to the division under this subsection shall not be used by the conservation organization as collateral or commingled in the same account with the organization's operation and administration funds, so that the separate identity of the permit revenue is not lost.

(e) Failure to remit 30% of the total permit revenue to the division by the August 15 deadline may result in criminal prosecution under Title 76, Chapter 6, Part 4 of the Utah Code, and may further disqualify the conservation organization from obtaining any future conservation permits.

(5) A conservation organization may retain 70% of the permit revenue generated from auctioning conservation permits, as follows:

(a) 10% of the permit revenue may be withheld and used by the conservation organization for administrative expenses.

(b) 60% of the permit revenue and accrued interest, excluding standard banking fees assessed on the account where the permit revenue is deposited, may be retained and used by the conservation organization only for eligible projects, as provided in Subsections (i) through (ix).

(i) eligible projects include habitat improvement, habitat acquisition, transplants, targeted education efforts and other projects providing a substantial benefit to species of wildlife for which conservation permits are issued, unless the division and conservation organization mutually agree in writing that there is a higher priority use for other species of protected wildlife.

(ii) retained revenue shall not be committed to or expended on any eligible project without first obtaining the division director's written concurrence.

(iii) retained revenue shall not be used on any project that does not provide a substantial and direct benefit to conservation permit species or other protected wildlife located in Utah.

(iv) cash donations to the Wildlife Habitat Account created under Section 23-19-43, Division Species Enhancement Funds, or the Conservation Permit Fund shall be considered an eligible project and do not require the division director's approval, provided the donation is made with instructions that it be used for species of wildlife for which conservation permits are issued.

(v) funds committed to approved, division projects will be transferred to the division within 60 days of being invoiced by the division.

(A) if the division-approved project to which funds are committed is completed under projected budget or is canceled, funds committed to the project that are not used will be kept by the division and credited back to the conservation organization but will be made available for the group to use on other approved projects during the current or subsequent year.

(vi) retained revenue shall not be used on any project that is inconsistent with division policy, including feeding programs, depredation management, or predator control.

(vii) retained revenue under this subsection must be placed in a federally insured account. All interest revenue earned thereon must be accounted for and used consistent with the requirements of this subsection.

(viii) retained revenue shall not be used by the conservation organization as collateral or commingled in the same account with the organization's operation and administration funds, so that the separate identity of the retained revenue is not lost.

(ix) retained revenue must be completely expended on approved eligible projects or transferred to the division by August 15, two years following the year in which the relevant conservation permits are awarded to the conservation organization by the Wildlife Board. Failure to expend or transfer to the division retained revenue by the August 15 deadline will disqualify the conservation organization from obtaining any future conservation permits until the unspent retained revenue is expended on an approved eligible project or transferred to the division.

(x) all records and receipts for projects under this subsection must be retained by the conservation organization for a period not less than five years, and shall be produced to the division for inspection upon request.

(6)(a) Conservation organizations accepting permits shall be subject to annual audits on project expenditures and conservation permit accounts.

(b) The division shall perform annual audits on project expenditures and conservation permit accounts.

R657-41-10. Obtaining Sportsman Permits.

(1) One sportsman permit is offered to residents through a drawing for each of the following species:

(a) desert bighorn (ram);

(b) bison (hunter's choice);

(c) buck deer;

(d) bull elk;

(e) Rocky Mountain bighorn (ram);

(f) mountain goat (hunter's choice);

(g) bull moose;
(h) buck pronghorn;
(i) black bear;
(j) cougar; and
(k) wild turkey.

(2) The following information on sportsman permits is provided in the guidebooks of the Wildlife Board for taking protected wildlife:
(a) hunt dates;
(b) open units or hunt areas;
(c) application procedures;
(d) fees; and
(e) deadlines.

(3) A person must possess or obtain a current Utah hunting or combination license to apply for or obtain a sportsman permit.

R657-41-11. Using a Conservation or Sportsman Permit.

(1)(a) A conservation or sportsman permit allows the recipient to take only one individual of the species for which the permit is issued, except a statewide turkey conservation or sportsman permit allows the holder to take two turkeys.

(b) The species that may be taken shall be printed on the permit.

(c) The species may be taken in the area and during the season specified on the permit.

(d) The species may be taken only with the weapon specified on the permit.

(2) The recipient of a conservation or sportsman permit is subject to all the provisions of Title 23, Wildlife Resources Code, and the rules and guidebooks of the Wildlife Board for taking and pursuing wildlife.

(3) Bonus points shall not be awarded or utilized:
(a) when applying for conservation or sportsman permits; or
(b) in obtaining conservation or sportsman permits.

(4) Any person who obtains a conservation or sportsman permit is subject to applicable waiting periods for purposes of obtaining a permit for the same species through a division drawing, as provided in Rules R657-62.

R657-41-12. Special Antelope Island State Park Hunting Permits.

(1)(a) The Wildlife Board may authorize a hunt for bighorn sheep and buck mule deer on Antelope Island State Park, with one or more permits made available for each species and designated as Special Antelope Island State Park Conservation Permits and an equal number of permits for each species made available as Special Antelope Island State Park Limited Entry Permits.

(b) The division and the Division of Parks and Recreation, through their respective policy boards, will enter into a cooperative agreement for purposes of establishing:
(i) the number of permits issued annually for bighorn sheep and buck mule deer hunts on Antelope Island;
(ii) season dates for each hunt;
(iii) procedures and regulations applicable to hunting on Antelope Island;
(iv) protocols for issuing permits and conducting hunts for antlerless deer on Antelope Island when populations require management; and
(v) procedures and conditions for transferring Special Antelope Island State Park Conservation Permit revenue to the Division of Parks and Recreation.

(c) The cooperative agreement governing bighorn sheep and mule deer hunting on Antelope Island and any subsequent amendment thereto shall be presented to the Wildlife Board and the Parks Board for approval prior to holding a drawing or issuing hunting permits.

(2)(a) Special Antelope Island State Park Limited Entry Permits will be issued by the division through its annual bucks, bulls, and once-in-a-lifetime drawing.

(i) The mule deer Special Antelope Island State Park Limited Entry Permit is a premium limited entry buck deer permit and subject to the regulations governing such permits, as provided in this rule, R657-5, and R657-62.

(ii) The bighorn sheep Special Antelope Island State Park Limited Entry Permit is a once-in-a-lifetime Rocky Mountain bighorn sheep permit and subject to the regulations governing such permits, as provided in this rule, R657-5, and R657-62.

(b) To apply for a Special Antelope Island State Park Limited Entry Permit, the applicant must:
(i) pay the prescribed application handling fee;
(ii) possess a current Utah hunting license or combination license;
(iii) not be subject to a waiting period under R657-62 for the species of wildlife applied for; and
(iv) otherwise be eligible to hunt the species of wildlife designated on the application;

(c) A person that obtains a Special Antelope Island State Park Limited Entry Permit:
(i) must pay the applicable permit fee;
(ii) may take only one animal of the species and gender designated on the permit;
(iii) may hunt only with the weapon and during the season prescribed on the permit;
(iv) may hunt the specified species within the areas of Antelope Island designated open by the Wildlife Board and the rules and regulations of the Division of Parks and Recreation; and
(v) is subject to the:
(A) provisions of Title 23, Wildlife Resources Code, and the rules and guidebooks of the Wildlife Board for taking and pursuing wildlife; and
(B) statutes, rules, and regulations of the Division of Parks and Recreation for hunting on Antelope Island.

(d) Bonus points are awarded and utilized in applying for and obtaining a Special Antelope Island State Park Limited Entry Permit.

(e) A person who has obtained a Special Antelope Island State Park Limited Entry Permit is subject to all waiting periods applicable to the particular species, as provided in R657-62.

(f) A person cannot obtain a Special Antelope Island State Park Limited Entry Permit for a bighorn sheep or mule deer and any other permit for a male animal of the same species in the same year.

(3) Special Antelope Island State Park Conservation Permits will be provided to the conservation group awarded the wildlife expo permit series, as provided in R657-55, for auction to the highest bidder at the wildlife exposition.

(a) The division and conservation organization receiving authority to auction Special Antelope Island State Park Conservation Permits shall enter into a contract.

(b) The conservation organization receiving authority to auction the opportunity for Special Antelope Island State Park Conservation Permits must insure the permits are marketed and distributed by lawful means.

(4)(a) When auctioning the Special Antelope Island State Park Conservation Permits, the conservation organization must:
(i) obtain the following information:
(A) full name of the successful bidder;
(B) date of the event where the permit opportunity is auctioned; and
(C) winning bid amount for that permit opportunity; and
(ii) submit the information required in Subsection

(4)(a)(i) to the division within 10 days of the event where the permit opportunity is auctioned to the highest bidder; and

(iii) identify the individual who is authorized to redeem the conservation permit voucher and submit it to the division prior to the individual attempting to redeeming the voucher.

(b) The division will not issue a Special Antelope Island State Park Conservation Permit unless information on the winning bidder and authorized recipient of the voucher is first received by the division.

(c)(i) an absentee bidder may only use an agent or representative to bid on a conservation permit opportunity on their behalf if authorized by the conservation organization.

(ii) A winning bid offered by an agent or representative on behalf of an absentee bidder legally obligates the absentee bidder to satisfy the bid obligation submitted by the representative.

(iii) For the purposes of this rule, an absentee bidder is considered the successful bidder when the winning bid is offered by their agent or representative.

(5) If the successful bidder or the person designated by a successful bidder to receive a Special Antelope Island State Park Conservation Permit fails to pay the conservation organization the winning bid amount, the conservation organization may remarket the permit opportunity using any legal means and designate another person to receive the permit opportunity.

(6)(a) If, for any reason, the successful bidder elects not to personally use a Special Antelope Island State Park Permit opportunity, they may assign that opportunity to another person, provided:

(i) the conservation organization is notified of the assignment;

(ii) the original winning bid amount for the permit opportunity is received in full by the conservation organization and not decreased;

(iii) the conservation organization handles and otherwise uses the entire winning bid amount consistent with the requirements in Subsection (9); and

(iv) the successful bidder executes an affidavit verifying they are not profiting from the assignment.

(A) For purposes of Subsection (iv), "profiting" does not include a reasonable fee for guiding services provided in conjunction with the assigned permit opportunity.

(b) If a person assigned a Special Antelope Island State Park Conservation Permit opportunity by the successful bidder or a person possessing the permit voucher is unable to use the permit opportunity for any reason, including obtaining another Utah permit for the same species, the conservation organization may remarket the permit opportunity using any legal means and designate another person to receive the opportunity, provided:

(i) the conservation organization selects the new recipient of the permit opportunity;

(ii) the amount of money received by the division for the permit opportunity is not decreased;

(iii) the conservation organization relinquishes to the division all proceeds generated from the re-designated permit, as provided in Subsection (9);

(iv) the conservation organization and the holder of the permit opportunity execute an affidavit verifying neither is profiting from transferring the right to the permit; and

(v) the permit has not been issued by the division to the first designated person.

(7) Within 30 days of the exposition, but no later than May 1 annually, the conservation organization must submit to the division:

(a) a final report on the distribution of the Special Antelope Island State Park Conservation Permits;

(b) the total funds raised on each permit; and

(c) the funds due to the division.

(8)(a) Permits shall not be issued until the applicable permit fees are paid to the division.

(b) If the conservation organization is paying the permit fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization as provided in Subsection (9)(b).

(9)(a)(i) Conservation organizations shall remit to the division 90% of the total revenue generated by the Special Antelope Island State Park Conservation Permit sales in that year.

(ii) Failure to remit 90% of the total permit revenue to the division by the August 15 deadline may result in criminal prosecution under Title 76, Chapter 6, Part 4 of the Utah Code.

(b) A conservation organization may retain 10% of the revenue generated by the permits for administrative expenses.

(c) Special Antelope Island State Park Conservation Permits will be issued under this section and will not be limited by the requirements of R657-41-3 through R657-41-8.

(d) Upon receipt of the permit revenue from the conservation organization, the division will transfer the revenue to the Division of Parks and Recreation, as provided in the cooperative agreement under Subsection (1)(b) between the two divisions.

(10)(a) Except as otherwise provided under Subsections (5) and (6), neither the conservation organization, successful bidder, successful bidder's assignee, nor the holder of a Special Antelope Island State Park Conservation Permit voucher may offer for sale, sell, or transfer the rights to that designation to any other person.

(b) A person cannot obtain a Special Antelope Island State Park Conservation Permit for a bighorn sheep or mule deer and any other permit for a male animal of the same species in the same year.

(c) The person designated to receive a Special Antelope Island State Park Conservation Permit must possess or obtain a current Utah hunting or combination license before being issued the permit.

R657-41-13. Failure to Comply.

(1) The division or the Wildlife Board may suspend or revoke a conservation organization's participation in the Conservation Permit Program if a principal or agent of a participating conservation organization:

(a) violated any provision of this rule or a provision of the Utah Criminal Code cited herein; or

(b) engaged in conduct that results in the conviction of, a plea of no contest to, or a plea held in abeyance to a crime of moral turpitude, or any other crime that when considered with the functions and responsibilities of a participating conservation organization bears a reasonable relationship to their participation in the program.

(2) The procedures and rules governing any adverse action taken by the division or the Wildlife Board against a certificate of registration or an application for certificate of registration are set forth in Rule R657-2.

KEY: wildlife, wildlife permits, sportsman, conservation permits

July 22, 2019 23-14-18

Notice of Continuation October 5, 2015 23-14-19

R657. Natural Resources, Wildlife Resources.
R657-44. Big Game Depredation.
R657-44-1. Purpose and Authority.

Under authority of Section 23-16-2, 23-16-3, 23-16-3.1, 23-16-3.2 and 23-16-4, this rule provides:

(1) the procedures, standards, requirements, and limits for assessing big game depredation; and

(2) mitigation procedures for big game depredation.

R657-44-2. Definitions.

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-16-1.1.

(2) In addition:

(a) "Alternate drawing list" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "Cleared and planted land" means private land or privately leased state or federal land used to produce a cultivated crop for commercial gain and the cultivated crop is routinely irrigated or routinely mechanically or manually harvested, or is crop residue that has forage value for livestock.

(c) "Commercial gain" means intent to profit from cultivated crops through an enterprise in support of the crop owner's livelihood.

(d) "Damage incident period" means the period of time between July 1 and June 30 of the following year that the division identifies in a depredation mitigation plan to take action to prevent and mitigate further big game depredation and during which compensation for damage may be calculated.

(e) "Depredation mitigation plan" means a document prepared by the division pursuant to Section 23-16-3(2)(b) and R657-44-3(4) outlining the actions it will take to prevent and mitigate big game damage to livestock forage, cultivated crops, irrigation equipment, and fences on private land.

(f) "Immediate family member" means the 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, grandchild, grandfather, and grandmother.

(g) "Irrigated" means the controlled application of water for agricultural purposes through man-made systems to supply water not satisfied by rainfall.

(h) "Landowner" means any person, partnership, or corporation who owns property in Utah and whose name appears on a deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property.

(i) "Lessee" means any person, partnership, or corporation whose name appears as the lessee on a written lease, for at least a one-year period, for eligible property used for farming or ranching purposes, and who is in actual physical control of the eligible property.

(j) "Livestock Forage" means any forage, excluding cultivated crops and crop residues, meant for consumption by livestock, not routinely irrigated or routinely mechanically or manually harvested.

(k) "Mitigation permit" means a nontransferable hunting permit issued directly to a landowner or lessee, an immediate family member of the landowner or lessee, or an employee of the landowner or lessee, authorizing the named individual to take specified big game animals for personal use within a designated area.

(l) "Mitigation permit voucher" means a document issued to a landowner or lessee, allowing the landowner or lessee to designate who may obtain a big game mitigation permit.

(m) "Nuisance" describes a situation where big game animals are found to have moved off formally approved management units onto adjacent units or other areas not approved for that species.

(n) "Once-in-a-lifetime species" for the purposes of this section, includes bull moose and bison, bighorn sheep, and mountain goat regardless of sex.

(o) "Private land" means land in private fee ownership and in agricultural use as provided in Section 59-2-502 and eligible for agricultural use valuation as provided in Section 59-2-503 and 59-2-504. Private land does not include tribal trust lands.

R657-44-3. Damage to Cultivated Crops, Fences, or Irrigation Equipment by Big Game Animals.

(1) If big game animals are damaging cultivated crops on cleared and planted land, or fences or irrigation equipment on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action by notifying a division representative in the appropriate regional office pursuant to Section 23-16-3(1).

(2) Notification may be made:

(a) orally to expedite a field investigation; or

(b) in writing to a division representative in the appropriate division regional office.

(3)(a) The regional supervisor or division representative shall contact the landowner or lessee within 72 hours after receiving notification to determine the nature of the damage and take appropriate action for the extent of the damage experienced or expected during the damage incident period.

(b) The division shall consider the big game population management objectives as established in the wildlife unit management plan approved by the Wildlife Board.

(c) Division action shall include:

(i) removing the big game animals causing depredation; or

(ii) implementing a depredation mitigation plan pursuant to Sections 23-16-3(2)(b) through 23-16-3(2)(f) and approved in writing by the landowner or lessee.

(4)(a) The division mitigation plan may incorporate any of the following measures:

(i) sending a division representative onto the premises to control or remove the big game animals, including:

(A) herding;

(B) capture and relocation;

(C) temporary or permanent fencing; or

(D) removal, as authorized by the division director or the division director's designee;

(ii) recommending to the Wildlife Board an antlerless big game hunt in the next big game season framework;

(iii) scheduling a depredation hunter pool hunt in accordance with Sections R657-44-7, R657-44-8, or R657-44-9;

(iv) issuing mitigation permits to the landowner or lessee for the harvest of big game animals causing depredation during a general or special season hunt authorized by the Wildlife Board, of which:

(A) the hunting area for big game animals may include a buffer zone established by the division that surrounds, or is adjacent to, the lands where depredation is occurring;

(B) the landowner or lessee may designate an immediate family member or employee to receive mitigation permits;

(C) a person may receive no more than five antlerless deer permits, five doe pronghorn permits, and two antlerless elk permits per mitigation plan;

(D) each qualified recipient of a mitigation permit will receive from the division a Mitigation Permit Hunting License that satisfies the hunting license requirements in R657-44-11(c) to obtain the mitigation permit.

(E) the Mitigation Permit Hunting License does not

authorize the holder to hunt small game; nor does it qualify the holder to apply for or obtain a cougar, bear, turkey, or other big game permit.

(v) issuing big game mitigation permit vouchers for use on the landowner's or lessee's private land during a general or special hunt authorized by the Wildlife Board of which:

(A) mitigation permit vouchers for antlerless deer may authorize the take of one or two deer as determined by the division;

(B) mitigation permit vouchers for pronghorn may authorize the take of one or two doe pronghorn as determined by the division;

(C) the division may not issue mitigation permit vouchers for moose, bison, bighorn sheep, or mountain goat; and

(D) the hunting area for big game animals may include a buffer zone established by the division that surrounds, or is adjacent to, the landowner's or lessee's private lands where depredation is occurring.

(b) The mitigation plan may describe how the division will assess and compensate for damage pursuant to Section 23-16-4.

(c) The landowner or lessee and the division may agree upon a combination of mitigation measures to be used pursuant to Subsections (4)(a)(i) through (4)(a)(v), including a damage payment or a description of how the division will assess and compensate the landowner or lessee under Section 23-16-4 for damage to cultivated crops, fences, or irrigation equipment.

(d) The agreement pursuant to Subsection (4)(c) must be made before a claim for damage is filed and the mitigation measures are taken.

(5) Vouchers may be issued in accordance with Subsection (4)(a)(v) to:

(a) the landowner or lessee; or

(b) a landowner association that:

(i) applies in writing to the division;

(ii) provides a map of the association lands;

(iii) provides signatures of the landowners in the association; and

(iv) designates an association representative to act as liaison with the division.

(6) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(7) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, the Wildlife Resources Code, or are otherwise ineligible to receive a permit.

(8)(a) The options provided in Subsections (4)(a)(i) through (4)(a)(v) are for antlerless animals only.

(b) Deer and pronghorn hunts may be August 1 through December 31, and elk hunts may be August 1 through January 31.

(9)(a) The division director may approve mitigation permits or mitigation permit vouchers issued for antlered animals.

(b) A mitigation permit may be issued to the landowner or lessee or a qualifying individual designated by the landowner or lessee to take big game for personal use, provided the division and the landowner or lessee desires the animals to be permanently removed.

(c) A mitigation permit voucher may be issued to the landowner or lessee, provided:

(i)(A) the division determines that the big game animals in the geographic area significantly contribute to the wildlife management units;

(B) the landowner or lessee agrees to perpetuate the animals on their land; and

(C) the damage, or expected damage, to the landowner's or lessee's cleared and planted land equals or exceeds the expected value of the mitigation permit voucher on that private land within the wildlife unit; or

(ii)(A) the big game damage occurs on the landowner's or lessee's cleared and planted land;

(B) the division and the affected landowner or lessee desire the animals to be permanently removed; and

(C) the damage, or expected damage, to the cleared and planted land equals or exceeds the expected value of the mitigation permit voucher on that private land within the wildlife unit.

(d) The hunting area for a mitigation permit or permit voucher issued under this subsection includes the landowner's or lessee's cleared and planted land where the depredation occurs and may include a buffer zone established by the division that surrounds, or is adjacent to, that land.

(10)(a) If the landowner or lessee and the division are unable to agree on the assessed damage, they shall designate a third party pursuant to Subsection 23-16-4(3)(d).

(b) Additional compensation may be paid above the value of any mitigation permits or vouchers granted to the landowner or lessee if the damage exceeds the value of the mitigation permits or vouchers.

(11)(a) The landowner or lessee may revoke approval of the mitigation plan agreed to pursuant to Subsection (4)(c).

(b) If the landowner or lessee revokes the mitigation plan, the landowner or lessee must request that the division take action pursuant to Section 23-16-3(1)(a).

(c) Any subsequent request for action shall start a new 72-hour time limit as specified in Section 23-16-3(2)(a).

(12) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

(13) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Section 23-16-3(5).

R657-44-4. Landowner or Lessee Authorized to Kill Big Game Animals.

(1) The landowner or lessee is authorized to kill big game animals damaging cultivated crops on cleared and planted land pursuant to Section 23-16-3.1.

(2) The division director may prohibit the killing of big game animals under Subsection (1) if, within 72 hours after a landowner or lessee has requested that the division take action to remove depredating animals, the division determines the criteria in Section 23-16-3.1(2)(a) are satisfied and the landowner or lessee is offered a depredation mitigation plan.

(3) A landowner or lessee who is offered a depredation mitigation plan may:

(a) accept the plan in writing; or

(b) refuse to accept the plan and appeal it, in writing, to the division director and mitigation review panel as provided in Sections 23-16-3.1(2)(b) and 23-16-3.2(3).

(4)(a) A depredation mitigation plan accepted by the landowner or lessee shall remain effective during the entire damage incident period, unless otherwise revoked by the landowner or lessee pursuant to Section 23-16-3(4) and R657-44-3(11).

(b) A depredation mitigation plan approved or modified by the mitigation review panel pursuant to Section 23-16-3.2(3)(b) shall remain effective during the entire damage incident period unless earlier modified by the mitigation review panel upon petition and showing by the landowner or lessee that a substantial change in the nature and extent of the big game damage or the method of calculating damages necessitates further review and modification to the plan.

(i) A petition to amend an existing depredation

mitigation plan approved or modified by the mitigation review panel shall be directed to the director of the division.

(c) Nothing in this section shall be construed to prevent the division and the landowner or lessee from mutually agreeing to alter or amend an existing depredation mitigation plan in order to better address big game damage.

(i) If the parties cannot reach agreement on amending the plan, the landowner or lessee may petition the mitigation review panel for relief as provided in Subsection (4)(b).

(5) The division director's order under Subsection (2) prohibiting the killing of big game animals shall remain in full force and effect during the same time period that the original or amended depredation mitigation plan associated with the big game damage incident remains effective.

(6) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

R657-44-5. Compensation for Damage to Crops, Fences, or Irrigation Equipment on Private Land.

(1) The division may provide compensation to landowners or lessees for damage to cultivated crops on cleared and planted land, or fences or irrigation equipment on private land caused by big game animals pursuant to Sections 23-13-3 and 23-16-4.

(2) For purposes of compensation, all depredation incidents end on June 30 annually, but may be reinstated July 1.

R657-44-6. Damage to Livestock Forage on Private Land.

(1)(a) If big game animals are damaging livestock forage on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action to alleviate the depredation problem pursuant to Section 23-16-3, and as provided in Subsections R657-44-3(1) through R657-44-3(4)(a)(v), and R657-44-3(5) and R657-44-3(8)(a).

(b) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(c) Damage to livestock forage is not eligible for monetary compensation from the division.

(2)(a) Antlerless deer and doe pronghorn hunts may occur August 1 through December 31, and antlerless elk hunts may occur August 1 through January 31.

(b) Antlerless permits shall not exceed ten percent of the animals on the private land, with a maximum of twenty permits per landowner or lessee, except where the estimated population for the management unit is significantly over objective.

(c) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, the Wildlife Resources Code, or are otherwise ineligible to receive a permit.

(3) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Subsection 23-16-3(5).

(4) Permits and vouchers for antlered animals using livestock forage on private land are issued only through the provisions provided in Rule R657-43.

R657-44-7. Depredation and Nuisance Hunts for Buck Deer, Bull Elk or Buck Pronghorn or Once-in-a-Lifetime Species.

(1)(a) Buck deer, bull elk, buck pronghorn or once-in-a-lifetime species depredation and nuisance hunts that are not published in the guidebook of the Wildlife Board for taking big game may be held.

(b) Buck deer, bull elk, buck pronghorn or once-in-a-lifetime species depredation and nuisance hunts may be held when the buck deer, bull elk, buck pronghorn or once-in-a-lifetime species are:

(i) causing damage to cultivated crops on cleared and planted land, or fences or irrigation equipment on private land;

(ii) a significant public safety hazard; or

(iii) determined to be nuisance.

(2) The depredation or nuisance hunts may occur on short notice, involve small areas, and be limited to only a few hunters.

(3) Pre-season depredation hunters shall be selected using:

(a) hunters possessing an unfilled limited entry buck deer, bull elk, buck pronghorn or once-in-a-lifetime species permit for that limited entry or once-in-a-lifetime unit;

(b) hunters from the alternate drawing list for that limited entry or once-in-a-lifetime unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-9, provided the animals being hunted are determined by the appropriate regional division representative, to not come from a limited entry or once-in-a-lifetime unit.

(4) Post-season depredation or nuisance animal hunters shall be selected using:

(a) hunters from the alternate drawing list for that limited entry or once-in-a-lifetime unit;

(b) hunters from the alternate drawing list from the nearest adjacent limited entry or once-in-a-lifetime unit; or

(c) general permittees for that unit through the depredation hunter pool pursuant to Section R657-44-9, provided the animals being hunted are determined by the appropriate regional division representative, to not come from a limited entry or once-in-a-lifetime unit.

(5) A person may participate in the depredation hunter pool, for depredation or nuisance hunts pursuant to Subsections (3)(c) and (4)(c), as provided in Section R657-44-9.

(6)(a) Hunters who are selected for a limited entry buck deer, bull elk, buck pronghorn or once-in-a-lifetime species depredation or nuisance hunt must possess an unfilled, valid, limited entry buck deer, bull elk, buck pronghorn or once-in-a-lifetime species permit for the species to be hunted, or must purchase the appropriate permit before participating in the depredation or nuisance hunt.

(b) Hunters who are selected for a general buck deer or bull elk depredation hunt must possess an unfilled, valid, general buck deer or bull elk permit, respectively.

(7) The buck deer, bull elk, buck pronghorn or once-in-a-lifetime species harvested during a depredation or nuisance hunt must be checked with the division within 72 hours of the harvest.

(8) If a hunter is selected from the alternate drawing list for a depredation or nuisance hunt in a limited entry or once-in-a-lifetime unit and harvests a trophy animal or a once-in-a-lifetime species, that person shall lose their bonus points and incur the appropriate waiting period as provided in Rule R657-5.

(9)(a) Hunters with depredation or nuisance hunt permits for buck deer, bull elk, buck pronghorn or once-in-a-lifetime species may not possess any other permit for those species, except as provided in the guidebook of the Wildlife Board for taking big game and Rule R657-5.

(b) A person may not take more than one buck deer, bull elk, buck pronghorn or once-in-a-lifetime species in one calendar year.

R657-44-8. Depredation and Nuisance Hunts for Antlerless Deer, Elk, Moose or Doe Pronghorn.

(1) When deer, elk, pronghorn or moose are causing damage to cultivated crops on cleared and planted land, or livestock forage, fences or irrigation equipment on private land, or are determined to be nuisance, antlerless or doe hunts not listed in the guidebook of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Depredation or nuisance animal hunters shall be selected using:

(a) hunters possessing an antlerless deer, elk, moose or doe pronghorn permit for that unit;

(b) hunters from the alternate drawing list for that unit; or

(c) the depredation hunter pool pursuant to Section R657-44-9.

(3) The division may contact hunters to participate in a depredation or nuisance hunt prior to the general or limited entry hunt for a given species of big game. Hunters who do not possess an antlerless deer, elk, moose or doe pronghorn permit shall purchase an appropriate permit.

(4) Hunters with depredation or nuisance hunt permits for antlerless deer, elk, or moose may not possess any other permit for those species, except as provided in the guidebook of the Wildlife Board for taking big game and Rule R657-5.

R657-44-9. Depredation Hunter Pool.

(1) When deer, elk, pronghorn, or once-in-a-lifetime species are causing damage or are determined to be nuisance, hunts not listed in the guidebooks of the Wildlife Board for taking big game may be held. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

(2) Hunters shall be selected pursuant to Subsections R657-44-7(3), R657-44-7(4), and R657-44-8(2).

(3) A hunter pool application does not affect eligibility to apply for any other big game permit. However, hunters who participate in any deer, elk, pronghorn or once-in-a-lifetime species depredation or nuisance hunt may not possess an additional permit for that species during the same year, except as provided in Rule R657-5 and the guidebooks of the Wildlife Board for taking big game.

(4) A person who has obtained a once-in-a-lifetime species depredation or nuisance hunt permit and has successfully harvested an animal may not obtain any other once-in-a-lifetime permit or hunt during any other once-in-a-lifetime hunt for that species as provided in R657-5, except for

(5) The division shall develop a process by which hunters can apply to the depredation hunter pool and post that process on the division website.

(6) Hunters who have not obtained the appropriate deer, elk, pronghorn or once-in-a-lifetime species permit shall purchase an appropriate permit.

R657-44-10. Appeal Procedures.

(1) Upon the petition of an aggrieved party to a final division action relative to big game depredation and this rule, a qualified hearing examiner shall take evidence and make recommendations to the Wildlife Board, who shall resolve the grievance in accordance with Rule R657-2.

R657-44-11. Hunting or Combination License Required.

(1) A person must possess or obtain a Utah hunting or combination license to receive a big game mitigation permit or depredation permit pursuant to this rule.

(a) a hunting or combination license must be possessed or purchased by the person redeeming a mitigation permit voucher for the corresponding permit.

(b) under circumstances where the division issues a depredation permit, the designated recipient must possess or purchase a Utah hunting or combination license to receive the permit.

KEY: wildlife, big game, depredation

July 22, 2019	**23-16-2**
Notice of Continuation May 18, 2017	**23-16-3**
	23-16-3.5

R657. Natural Resources, Wildlife Resources.
R657-62. Drawing Application Procedures.
R657-62-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for drawing applications and procedures.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the respective guidebooks of the Wildlife Board.

R657-62-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Application" means a form required by the Division which must be completed by a person and submitted to the Division in order to apply for a hunting permit.

(b) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on an executed contract for sale of eligible property.

(c) "Limited entry hunt" means any hunt listed in the hunt tables published by the Wildlife Board and is identified as a premium limited entry hunt or limited entry hunt. "Limited entry hunt" does not include cougar pursuit or bear pursuit.

(d) "Limited entry permit" means any permit obtained for a limited entry hunt,

including conservation permits, expo permits and sportsman permits.

(e)(i) "Valid application" means an application:

(A) for a permit to take a species for which the applicant is eligible to possess;

(B) for a permit to take a species regardless of estimated permit numbers;

(C) for a certificate of registration; and

(D) containing sufficient information, as determined by the division, to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (i) may be considered valid if the application is timely corrected through the application correction process.

(f) "Waiting period" means a specified period of time that a person who has obtained a permit must wait before applying for the same permit type.

(g) "Once-in-a-lifetime hunt" means any hunt listed in the hunt tables published by the Wildlife Board and is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(h) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

R657-62-3. Scope of Rule.

(1) This rule sets forth the procedures and requirements for completing and filing applications to receive the following hunting permits and/or certificates of registrations:

(a) Dedicated Hunter certificate of registrations;
(b) limited-entry deer;
(c) limited-entry elk;
(d) limited-entry pronghorn;
(e) once-in-a-lifetime;
(f) public cooperative wildlife management unit;
(g) general season deer and youth elk;
(h) limited entry bear;
(i) bear pursuit;
(j) antlerless big game;
(k) sandhill crane;
(l) sharp-tail and greater sage grouse;
(m) swan
(n) cougar;
(o) sportsman; and
(p) turkey.

R657-62-4. Residency Restrictions.

(1) Only a resident may apply for or obtain a resident permit or resident certificate of registration and only a nonresident may apply for or obtain a nonresident permit or nonresident certificate of registration.

(2)(a) To apply for a resident permit or certificate of registration, a person must be a resident at the time of purchase.

(b) The posting date of the drawing shall be considered the purchase date of a permit or certificate of registration issued through a drawing.

R657-62-5. Hunting on Private Lands.

(1) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. The division does not guarantee access and cannot restore lost opportunity, bonus points, or permit fees when access is denied. Hunters should contact private landowners for permission to access their land prior to applying for a permit. The Division does not have the names of landowners where hunts occur.

R657-62-6. Applications.

(1)(a) Applications are available at the division's internet address, and must be completed and submitted online by the date prescribed in the respective guidebook of the Wildlife Board.

(b) The permit fees and handling fees must be paid with a valid debit or credit card.

(c) Any license, permit or certificate of registration issued to a person is invalid where full payment is not remitted to and received by the division.

(d) A person who applies for or obtains a permit or certificate of registration must notify the division of any change in mailing address, residency, telephone number, email address, and physical description.

R657-62-7. Group Applications.

(1) When applying as a group all applicants in the group with valid applications and who are eligible to possess the permit or certificate of registration applied for shall receive a permit or certificate of registration where the group is successful in the drawing.

(2) Group members must apply for the same hunt choices.

(3) When applying as a group, if the available permit or certificate of registration quota is not large enough to accommodate the group size, the group application will not be considered.

R657-62-8. Bonus Points.

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for limited-entry permits; or

(ii) each valid application when applying for bonus points.

(b) Bonus points are awarded by species for;

(i) limited-entry deer including cooperative wildlife

management unit buck deer and management buck deer;
(ii) limited-entry elk including cooperative wildlife management unit bull elk and management bull elk;
(iii) limited-entry pronghorn including cooperative wildlife management unit buck pronghorn;
(iv) once-in-a-lifetime species including cooperative wildlife management units;
(v) limited entry bear;
(vi) restricted bear pursuit;
(vii) antlerless moose;
(viii) ewe Rocky Mountain bighorn sheep;
(xi) ewe desert bighorn sheep;
(x) cougar; and
(xi) turkey.
(3)(a) A person may not apply in the drawing for both a permit and a bonus point for the same species.
(b) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.
(c) Group applications will not be accepted when applying for bonus points.
(d) A person may apply for bonus points only during the applicable drawing application for each species.
(4)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with the greatest number of bonus points.
(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.
(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.
(d) The procedure in Subsection (c) will continue until all reserved permits are issued or no applications for that species remain.
(e) Any reserved permits remaining and any applicants who are not selected for reserved permits will be returned to the applicable drawing.
(5)(a) Each applicant receives a random drawing number for:
(i) each species applied for; and
(ii) each bonus point for that species.
(6) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species including any permit obtained after the drawing.
(7) Bonus points are not forfeited if:
(a) a person is successful in obtaining a conservation permit, expo permit, sportsman permit, or harvest objective bear permit;
(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or
(c) a person obtains a poaching-reported reward permit.
(8) Bonus points are not transferable.
(9) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.
(10)(a) Bonus points are tracked using social security numbers or division-issued customer identification numbers.
(b) The division shall retain electronic copies of applications from 1996 to the current drawings for the purpose of researching bonus point records.
(c) Any requests for researching an applicant's bonus point records must be submitted within the time frames provided in Subsection (b).
(d) Any bonus points on the division's records shall not be researched beyond the time frames provided in Subsection (b).
(e) The division may void or otherwise eliminate any bonus point obtained by fraud, deceit, misrepresentation, or in violation of law.

R657-62-9. Preference Points.
(1) Preference points are used in the applicable drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.
(2)(a) A preference point is awarded for:
(i) each valid, unsuccessful application applying for a general buck deer, antlerless deer, antlerless elk, doe pronghorn, Sandhill Crane, Sharp-tailed grouse, Greater sage grouse or Swan permit; or
(ii) each valid application when applying only for a preference point in the applicable drawings.
(b) Preference points are awarded by species for:
(i) general buck deer;
(ii) antlerless deer;
(iii) antlerless elk;
(iv) doe pronghorn;
(v) Sandhill Crane;
(vi) Sharp-tailed Grouse;
(vii) Greater sage grouse; and
(viii) Swan.
(3)(a) A person may not apply in the drawing for both a preference point and a permit for the species listed in (2)(b).
(b) A person may not apply for a preference point if that person is ineligible to apply for a permit.
(c) Preference points shall not be used when obtaining remaining permits.
(4) Preference points for the applicable species are forfeited if a person obtains a general buck deer, antlerless deer, antlerless elk, doe pronghorn, Sandhill Crane, Sharp-tailed grouse, Greater sage grouse or Swan permit through the drawing.
(5) Preference points are not transferable.
(6) Preference points are averaged and rounded down when two or more applicants apply together on a group application.
(7)(a) Preference points are tracked using social security numbers or division-issued customer identification numbers.
(b) The division shall retain copies of electronic applications from 2000 to the current applicable drawings for the purpose of researching preference point records.
(c) Any requests for researching an applicant's preference point records must be submitted within the time frames provided in Subsection (b).
(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).
(e) The division may eliminate any preference point obtained by fraud, deceit, misrepresentation, or in violation of law.

R657-62-10. Dedicated Hunter Preference Points.
(1) Preference points are used in the dedicated hunter certificate of registration drawing to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.
(2) A preference point is awarded for:
(a) each valid unsuccessful application;
(b) each valid application when applying only for a preference point in the dedicated hunter drawing.
(3)(a) A person may not apply in the drawing for both a preference point and a certificate of registration.
(b) A person may not apply for a preference point if that person is ineligible to apply for a certificate of registration.
(4) Preference points are forfeited if a person obtains a certificate of registration through the drawing.
(5)(a) Preference points are not transferable.
(b) Preference points shall only be applied to the

Dedicated Hunter drawing.

(6) Preference points are averaged and rounded down to the nearest whole point when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain copies of electronic applications from 2011 to the current applicable drawing for the purpose of researching preference point records.

(c) Any requests for researching an applicant's preference point records must be requested within the time frames provided in Subsection (b).

(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any preference points earned that are obtained by fraud, deceit or misrepresentation.

R657-62-11. Corrections, Withdrawals and Resubmitting Applications.

(1)(a) If an error is found on the application, the applicant may be contacted for correction.

(b) The division reserves the right to correct or reject applications.

(2)(a) An applicant may withdraw their application from the permit or certificate of registration drawing by the date published in the respective guidebook of the Wildlife Board.

(b) An applicant may resubmit their application, after withdrawing a previous application, for the permit or certificate of registration drawing by the date published in the respective guidebook of the Wildlife Board.

(c) Handling fees, hunting or combination license fees and donations will not be refunded. Resubmitted applications will incur a handling fee.

(3) To withdraw an entire group application, all applicants must withdraw their individual applications.

R657-62-12. Drawing Results.

Drawing results will be made available by the date prescribed in the respective guidebook of the Wildlife Board.

R657-62-13. License, Permit, Certificate of Registration and Handling Fees.

(1) Unsuccessful applicants will not be charged for a permit or certificate of registration.

(2) The handling fees and hunting or combination license fees are nonrefundable.

(3) All license, permit, certificate of registration and handling fees must be paid with a valid debit or credit card.

R657-62-14. Permits Remaining After the Drawing.

(1) Any permits remaining after the drawing are available on the date published in the respective guidebook of the Wildlife Board on a first-come, first-served basis from division offices, participating license agents and through the division's internet site.

R657-62-15. Waiting Periods for Permits Obtained After the Drawing.

(1) Waiting periods do not apply to the purchase of remaining permits sold over the counter except as provided in Section 2.

(2) Waiting periods are incurred as a result of purchasing remaining permits after the drawing. If a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

R657-62-16. Dedicated Hunter Certificates of Registration.

(1)(a) Applicants for a dedicated hunter certificate of registration must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-38.

(b) Each prospective participant must complete Dedicated Hunter program orientation course annually before submitting an application.

(2) Group applications are accepted. Up to four applicants may apply as a group.

R657-62-17. Lifetime License Permits.

(1) Lifetime License permits shall be issued pursuant to rule R657-17.

R657-62-18. Big Game.

(1) Permit Applications

(a) Limited entry, Cooperative Wildlife Management Unit, Once-in-a-Lifetime, Management Bull Elk, Management Buck Deer, General Buck Deer, and Youth General Any Bull Elk permit applications.

(i) A person must possess or obtain a valid hunting or combination license to apply for or obtain a big game permit.

(ii) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in rule R657-5.

(iii) A person may obtain only one permit per species of big game, including limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) A resident may apply in the big game drawing for the following permits:

(i) only one of the following:

(A) buck deer - limited entry and cooperative wildlife management unit;

(B) bull elk - limited entry and cooperative wildlife management unit; or

(C) buck pronghorn - limited entry and cooperative wildlife management unit; and

(ii) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits.

(c) A nonresident may apply in the big game drawing for the following permits:

(i) all of the following:

(A) buck deer -limited entry;

(B) bull elk - limited entry;

(C) buck pronghorn - limited entry; and

(D) all once-in-a-lifetime species.

(ii) Nonresidents may not apply for cooperative management units through the big game drawing.

(d) A resident or nonresident may apply in the big game drawing by unit for:

(i) a statewide general archery buck deer permit; or

(ii) for general any weapon buck deer; or

(iii) for general muzzleloader buck deer; or

(iv) a dedicated hunter certificate of registration.

(2) Youth

(a) For purposes of this section "youth" means any person 17 years of age or younger on July 31.

(b) Youth applicants who apply for a general buck deer permit

(i) will automatically be considered in the youth drawing based upon their birth date.

(ii) 20% of general buck deer permits in each unit are reserved for youth hunters.

(iii) Up to four youth may apply together for youth general deer permits.

(iv) Preference points shall be used when applying.

(v) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

(c) Youth applicants who apply for a management buck deer permit

(i) will automatically be considered in the youth drawing based upon their birth date.

(ii) 30% of management buck deer permits in each unit are reserved for youth hunters.

(iii) Bonus points shall be used when applying

(iv) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the management buck deer drawing.

(3) Senior

(a) For purposes of this section "senior" means any person 65 years of age or older on the opening day of the management buck deer archery season published in the guidebook of the Wildlife Board for taking big game.

(b) Senior applicants who apply for a management buck deer permit

(i) will automatically be considered in the senior drawing based upon their birth date.

(ii) 30% of management buck deer permits in each unit are reserved for senior hunters.

(iii) Bonus points shall be used when applying.

(c) Any reserved permits remaining and any senior applicants who were not selected for reserved permits shall be returned to the management buck deer drawing.

(4) Drawing Order

(a) Permits for the big game drawing shall be drawn in the following order:

(i) limited entry, cooperative wildlife management unit and management buck deer;

(ii) limited entry, cooperative wildlife management unit and management bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn;

(iv) once-in-a-lifetime;

(v) general buck deer -- lifetime license;

(vi) general buck deer -- dedicated hunter;

(vii) general buck deer - youth;

(viii) general buck deer; and

(ix) youth general any bull elk.

(b) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(i) limited entry, Cooperative Wildlife Management unit or management buck deer;

(ii) limited entry, Cooperative Wildlife Management unit or management bull elk; or

(iii) a limited entry or Cooperative Wildlife Management unit buck pronghorn.

(c) If any permits listed in Subsection (a)(i) through (a)(iii) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(5) Groups

(a) Limited Entry

(i) Up to four people may apply together for limited entry deer, elk or pronghorn; or resident cooperative wildlife management unit permits.

(b) Group applications are not accepted for management buck deer or bull elk permits.

(c) Group applications are not accepted for Once-in-a-lifetime permits.

(d) General season

(i) Up to four people may apply together for general deer permits

(ii) Up to two youth may apply together for youth general any bull elk permits.

(iii) Up to four youth may apply together for youth general deer permits.

(6) Waiting Periods

(a) Deer waiting period.

(i) Any person who draws or obtains a limited entry, premium limited entry, management, or cooperative wildlife management unit buck deer permit through the big game drawing process may not apply for or receive any of these permits again for a period of two seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits;

(B) cooperative wildlife management unit, limited entry, premium limited entry, or landowner buck deer permits obtained through the landowner; or

(C) buck deer wildlife expo permits, as provided in R657-55-6.

(b) Elk waiting period.

(i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit bull elk permit through the big game drawing process may not apply for or receive any of these permits for a period of five seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits;

(B) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner; or

(C) bull elk wildlife expo permits, as provided in R657-55-6.

(c) Pronghorn waiting period.

(i) Any person who draws or obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing may not apply for or receive any of these permits thereafter for a period of two seasons.

(ii) A waiting period does not apply to:

(A) conservation, sportsman, poaching-reported reward permits; or

(B) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner; or

(C) buck pronghorn wildlife expo permits, as provided in R657-55-6.

(d) Once-in-a-lifetime species waiting period.

(i) Any person who draws or obtains a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep or mountain goat may not apply for or receive an once-in-a-lifetime permit for the same species in the big game drawing or sportsman permit drawing.

(ii) Except as provided in Subsection (iii), once-in-a-lifetime restrictions do not apply to obtaining wildlife expo permits for once-in-a-lifetime species in the wildlife expo drawing, as provided in R657-55.

(iii) Any person who obtains a wildlife expo permit for a once-in-a-lifetime species is subject to the once-in-a-lifetime restrictions applicable to obtaining a subsequent permit for the same species through a division application and drawing process, as provided in R657-62 and the guide books of the Wildlife Board for taking big game.

(iv) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

(e) Cooperative Wildlife Management Unit and

landowner permits.

(i) Waiting periods and once-in-a-lifetime restrictions do not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (ii).

(ii) Waiting periods are incurred and applied for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

R657-62-19. Black Bear.

(1) Permit and Pursuit Applications.

(a) For the purposes of this section, "restricted bear pursuit permit" means a limited entry permit issued in a division drawing that authorizes an individual to pursue bear using trained dogs, consistent with the restrictions found in Utah Admin. Code R657-33.

(b) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain a limited entry bear permit or restricted bear pursuit permit.

(c) A person may not apply for or obtain more than one bear permit and restricted bear pursuit permit distributed pursuant to this rule within the same calendar year.

(d) A person may simultaneously possess both a limited entry bear permit and a restricted pursuit permit.

(e) Limited entry bear permits and restricted pursuit permits are valid only for the hunt unit and for the specified season designated on the permit.

(f)(i) Applicants may select up to three hunt unit choices when applying for limited entry bear or restricted bear pursuit permits. Hunt unit choices must be listed in order of preference.

(ii) Applicants must specify in the application a specific season for their limited entry or restricted bear pursuit permit.

(g) Any person intending to use bait during their bear hunt must obtain a certificate of registration as provided in Sections R657-33-13 and 14.

(h) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Sections 23-19-22.5, 23-19-11 and 23-20-20.

(2) Group applications are not accepted.

(3) Waiting periods.

(a) Any person who obtains a limited entry bear permit through the division drawing, may not apply for a permit thereafter for a period of two years.

(b) Any person who obtains a limited entry restricted bear pursuit permit through the division drawing, may not apply for a permit thereafter for a period of two years.

(c) Waiting periods do not apply to bear wildlife expo permits, as provided in R657-55-6.

(4) A person must complete a mandatory orientation course prior to applying for any bear permit offered through a division drawing or obtaining bear permits as described in R657-33-3(5).

R657-62-20. Antlerless Species.

(1) Permit Applications.

(a) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain an antlerless permit.

(b) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in rule R657-5.

(c) A person may apply in the drawing for and draw the following permits, except as provided in Subsection (d):

(i) antlerless deer;

(ii) antlerless elk;

(iii) doe pronghorn;

(iv) antlerless moose, if available;

(v) ewe Rocky Mountain bighorn sheep, if available; and

(vi) ewe desert bighorn sheep, if available.

(d)(i) Any person who has obtained a buck pronghorn permit, bull moose permit, ram Rocky Mountain bighorn sheep permit, or a ram desert bighorn sheep permit may not apply in the same year for a doe pronghorn permit, antlerless moose permit, ewe Rocky Mountain bighorn sheep permit, or a ewe desert bighorn sheep permit, respectively, except for permits remaining after the drawing as provided in R657-62-15.

(ii) A resident may apply for an antlerless moose, ewe Rocky Mountain bighorn sheep, or ewe desert bighorn sheep in the antlerless drawing, but may not apply for more than one of those permits in a given year.

(iii) A nonresident may apply for all antlerless species in a given year.

(e) Applicants may select up to five hunt choices when applying for antlerless deer, antlerless elk and antlerless pronghorn.

(f) Applicants may select up to two hunt choices when applying for antlerless moose.

(g) Applicants may select up to two hunt choices when applying for ewe bighorn sheep permits.

(h) Hunt unit choices must be listed in order of preference.

(i) A person may not submit more than one application in the antlerless drawing per species.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 17 years of age or younger on July 31.

(b) Twenty percent of the antlerless deer, elk and doe pronghorn permits are reserved for youth hunters.

(c) Youth applicants who apply for an antlerless deer, elk, or doe pronghorn permit as provided in this Subsection, will automatically be considered in the youth drawing based upon their birth date.

(3) Drawing Order

(a) Permits are drawn in the order listed in the guidebook of the Wildlife Board for taking big game.

(b) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the antlerless drawing.

(c) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(4) Group Applications

(a) Up to four hunters can apply together for antlerless deer, antlerless elk and doe pronghorn

(b) Group applications are not accepted for antlerless moose or ewe bighorn sheep permits.

(c) Youth hunters who wish to participate in the youth drawing may apply as a group, consistent with the following:

(i) all applicants must qualify as a youth;

(ii) a minimum of two youth must apply to be considered as a group application; and

(iii) no more than four youth may apply in a single group application;

(5) Waiting Periods

(a) Antlerless moose waiting period.

(i) Any person who draws or obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process, may not apply for or receive an antlerless moose permit thereafter for a period of five seasons.

(ii) A waiting period does not apply to:

(A) cooperative wildlife management unit antlerless moose permits obtained through the landowner; or

(B) antlerless moose wildlife expo permits, as provided in R657-55-6.

(b) Ewe bighorn sheep waiting period.

(i) Any person who draws or obtains a ewe bighorn sheep permit through the antlerless drawing process may not apply for or receive a permit for the same species of ewe bighorn sheep for a period of five seasons.

(ii) A waiting period does not apply to ewe bighorn sheep wildlife expo permits, as provided in R657-55-6.

R657-62-21. Sandhill Crane, Sharp-Tailed and Greater Sage Grouse.

(1) Permit applications.

(a) A person may obtain only one Sandhill Crane permit each year.

(b) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain Sandhill Crane, Sharp-Tailed and Greater Sage Grouse permit.

(c) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(d) Applicants may select up to four hunt choices. Hunt unit choices must be listed in order of preference.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 17 years of age or younger on July 31for the purpose of obtaining Sandhill Crane, Sharp-tailed grouse and Greater Sage grouse permits.

(b) Fifteen percent of the Sandhill Crane, Sharp-tailed grouse and Greater sage grouse permits are reserved for youth hunters.

(c) Youth applicants who apply for a Sandhill Crane, Sharp-tailed grouse or Greater sage grouse permit as provided in this Subsection, will automatically be considered in the youth drawing based upon their birth date.

(3) Group Applications

(a) Up to four people may apply together.

(b) Up to four youth may apply together in a Group Application.

(4) Waiting Periods do not apply.

R657-62-22. Swan.

(1) Permit applications.

(a) A person may obtain only one swan permit each year.

(i) A person may not apply more than once annually.

(b) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain a Swan permit.

(c) The division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.

(d) A person must complete a one-time orientation course before applying for a swan permit, except as provided under Subsection R657-9-6 (3) (b).

(i) Remaining swan permits available for sale shall be issued only to persons having previously completed the orientation course.

(e) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 17 years of age or younger on July 31st of the year in which the youth hunting day is held, as provided in the guidebook of the Wildlife Board for taking waterfowl, Wilson's snipe and coot.

(b) Fifteen percent of the Swan permits are reserved for youth hunters.

(c) Youth who apply for a swan permit will automatically be considered in the youth permit drawing based on their birth date.

(3) Group applications.

(a) Up to four people may apply together in a Group Application.

(b) Up to four youth may apply together in a Group Application.

(4) Waiting period does not apply.

R657-62-23. Cougar.

(1) Permit Applications

(a) A person must possess or obtain a valid hunting or combination license to apply for or obtain a cougar limited entry permit.

(b) A person may not apply for or obtain more than one cougar permit for the same year.

(c) Limited entry cougar permits are valid only for the limited entry management unit and for the specified season provided in the hunt tables of the guidebook of the Wildlife Board for taking cougar.

(d) Applicants may select up to three management unit choices when applying for limited entry cougar permits. Management unit choices must be listed in order of preference.

(e) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation shall be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(f) Any limited entry cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(g) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-22.5, 23-19-11 and 23-20-20.

(2) Group applications are not accepted.

(3) Waiting periods.

(a) Any person who draws or purchases a limited entry cougar permit valid for the current season may not apply for a permit thereafter for a period of three seasons.

(b) Waiting periods are not incurred as a result of:

(i) purchasing cougar harvest objective permits; or

(ii) obtaining a cougar wildlife expo permit, as provided in R657-55-6.

R657-62-24. Sportsman.

(1) Permit applications.

(a) One sportsman permit is offered to residents for each of the following species:

(i) desert bighorn (ram);

(ii) bison (hunter's choice);

(iii) buck deer;

(iv) bull elk;

(v) Rocky Mountain bighorn (ram);

(vi) mountain goat (hunter's choice);

(vii) bull moose;

(viii) buck pronghorn;

(ix) black bear;

(x) cougar; and

(xi) wild turkey.

(b) Bonus points shall not be awarded or utilized when applying for or obtaining sportsman permits.

(2) Group applications are not accepted.

(3) Waiting Periods

(a) Any person who applies for or obtains a Sportsman Permit is subject to all waiting periods and exceptions as applicable to the species pursuant to rule R657-41.

(b) Once-in-lifetime waiting periods

(i) If you have obtained a once-in-a-lifetime permit

through the sportsman drawing you are ineligible to apply for that once-in-a-lifetime species through the big game drawing.

(ii) If you have obtained a once-in-a-lifetime permit through the big game drawing you are ineligible to apply for that once-in-a-lifetime species through the sportsman drawing.

(c) Limited Entry waiting periods

(i) Waiting periods do not apply to Sportsman deer, elk, pronghorn, bear or cougar.

(ii) Waiting period will not be incurred for receipt of a Sportsman deer, elk, pronghorn, bear or cougar.

R657-62-25. Turkey.

(1) Permit applications.

(a) A person must possess a valid hunting or combination license in order to apply for or obtain a wild turkey permit.

(b) Permit possession limitations are identified in R657-54. A person may obtain only one spring season and up to three fall season wild turkey permits, subject to the exceptions identified in R657-54.

(c) Applicants may select up to five hunt choices when applying for limited entry turkey permits. Hunt unit choices must be listed in order of preference.

(d) A turkey permit allows a person, using any legal weapon as provided in Section R657-54-7, to take one wild turkey within the area, sex and season specified on the permit.

(2) Group applications.

(a) Up to four people may apply together in a Group Application.

(b) Up to four youth may apply together in a Group Application.

(3) Waiting period does not apply.

(4) Youth permits

(a) Up to 15 percent of the limited entry permits and fall general season permits are available to youth hunters.

(b) For purposes of this section "youth" means any person who is 17 years of age or younger on July 31.

(c) Youth who apply for a turkey permit will automatically be considered in the youth permit drawing based on their birth date.

(d) Bonus points shall be used when applying for youth turkey permits.

(e) Youth who are successful in obtaining a limited entry turkey permit but unsuccessful in harvesting a bird during the limited entry hunt season, may use the limited entry turkey permit to participate in the youth 3-day turkey hunt and the spring general season turkey hunt provided no more than one bird is harvested.

KEY: wildlife, permits
July 22, 2019 23-14-18
Notice of Continuation April 9, 2019 23-14-19

R765. Regents (Board of), Administration.
R765-604. New Century Scholarship.
R765-604-1. Purpose.

To provide policy and procedures for the administration of the New Century Scholarship which was established to encourage students to accelerate their education by earning an associate's degree in high school from an institution within the Utah System of Higher Education.

R765-604-2. References.

2.1. 53B-8-105, Utah Code Annotated 1953

2.2. Regents' Policy and Procedures R609, Regents' Scholarship

R765-604-3. Definitions.

3.1. "Applicant" means a student who is in their last term in high school and on track to complete the high school graduation requirements of a public school established by the Utah State Board of Education and the student's school district or charter school or a private high school in the state that is accredited by a regional accrediting body approved by the Utah State Board of Regents, or a home-school student.

3.2 "Associate's Degree" means an Associate of Arts, Associate of Science, or Associate of Applied Science degree received from, or verified by, a regionally accredited institution within the Utah System of Higher Education. If the institution does not offer the above listed degrees, equivalent academic requirements will suffice under subsection 3.5.2. of this rule.

3.3. "Awards" means New Century Scholarship funds.

3.4. "Board" means the Utah State Board of Regents.

3.5. "Completes the requirements for an associate's degree" means that an applicant completes either of the following:

3.5.1. all the required courses for an associate's degree from an institution within the Utah System of Higher Education that offers associate's degrees; and applies for the associate's degree from the institution; or

3.5.2. all the required courses for an equivalency to the associate's degree from a higher education institution within the Utah System of Higher Education that offers baccalaureate degrees but does not offer associate's degrees.

3.6. "High school" means a public high school established by the Utah State Board of Education or a private high school within the boundaries of the State of Utah. If a private high school, it shall be accredited by a regional accrediting body approved by the Board.

3.7. "High school graduation date" means the day on which the recipient's class graduates from high school. For home-schooled students refer to subsection 4.2.1 of this rule.

3.8. "Home-schooled" refers to a student who has not graduated from a Utah high school and received a high school grade point average (GPA).

3.9. "Math and science curriculum" means the rigorous math and science curriculum developed and approved by the Board which, if completed, qualifies a high school student for an award. Curriculum requirements can be found at the Web site of the Utah System of Higher Education.

3.10. "New Century Scholarship" means a renewable scholarship to be awarded to applicants who complete the eligibility requirements of Section 4 of this rule.

3.11. "Reasonable progress" means enrolling and completing at least fifteen credit hours during fall and spring semesters and earning a 3.3 grade point average or higher each semester. If applicable, applicants attending summer must enroll full-time according to their institution and or program policy regarding full-time status.

3.12. "Recipient" means an applicant who receives an award under the requirements set forth in this rule.

3.13. "Renewal Documents" means a college transcript demonstrating that the recipient has met the required semester grade point average and a detailed schedule providing proof of enrollment in fifteen credit hours for the semester which the recipient is seeking award payment.

3.14. "Scholarship Review Committee" means the committee to review New Century Scholarship applications and make final decisions regarding awards.

3.15. "The Utah System of Higher Education" means the institutions that comprise Utah's public higher education institutions including the University of Utah, Utah State University, Weber State University, Southern Utah University, Utah Valley University, Dixie State University, Salt Lake Community College, and Snow College.

R765-604-4. Recipient Requirements.

4.1. General Academic Requirements: Unless an exception applies, to qualify as a recipient a student shall:

4.1.1. complete the requirements for an associate's degree or the math and science curriculum at a regionally accredited institution within the Utah System of Higher Education

4.1.1.1. with at least a 3.0 grade point average

4.1.1.2. by applicant's high school graduation date; and

4.1.2. complete the high school graduation requirements of a Utah high school with at least a 3.5 cumulative grade point average.

4.2. Utah Home-schooled Applicants: For Utah home-schooled applicants the following requirement applies:

4.2.1. If a home-schooled applicant would have completed high school in 2011 or after, the high school graduation date (under subsection 4.1.1.2.) is June 15 of the year the applicant would have completed high school.

4.2.2. ACT Composite Score Requirement: A composite ACT score of 26 or higher is required in place of the high school grade point average requirement (under subsection 4.1.2).

4.3. Mandatory Fall Term Enrollment: A recipient shall enroll in and successfully complete fifteen credit hours at an eligible institution by Fall semester immediately following the student's high school graduation date or receive an approved deferral or leave of absence from the Board under subsection 8.7 of this rule.

4.4. Citizenship Requirement: A recipient shall be a citizen of the United States or a noncitizen who is eligible to receive federal student aid.

4.5. No Criminal Record Requirement: A recipient shall not have a criminal record, with the exception of a misdemeanor traffic citation.

4.6. Regents' Scholarship: A recipient shall not receive both an award and the Regents' Scholarship established in Utah Code Section 53B-8-108.

R765-604-5. Application Procedures.

5.1. Application Contact: Qualifying students shall apply for the award through the Board.

5.2. General procedure: An application for an award shall contain the following:

5.2.1. Application Form: the official application will become available on the New Century Web site each November prior to the February 1 deadline; and

5.2.2. College Transcript: an official college transcript showing college courses, Advanced Placement and transfer work an applicant has completed to meet the requirements for the associate's degree and verification of the date the award was earned; and

5.2.3. High School Transcript: an official high school transcript with high school graduation dated posted (if applicable).

5.2.4. ACT Score: a copy of the student's verified ACT score (if applicable).

5.3. Registrar Verification: If an applicant is enrolled at an institution which does not offer an associate's degree or an institution that will not award the associate's degree until the academic on-campus residency requirement has been met, the registrar must verify that the applicant has completed the equivalent academic requirements under 4.1.1.

5.4. Application Deadline: Applicants shall meet the following deadlines to qualify for an award:

5.4.1. Application Submission: Applicants must submit a scholarship application to the Scholarship Review Committee no later than February 1 of the year of their high school graduation date or the year they would have graduated from high school.

5.4.2. Support Documentation Submission: All necessary support documentation shall be submitted on or before September 1 following the applicant's high school graduation date. In some cases exceptions may be made as Advanced Placement and transfer work verification may be delayed at an institutional level and no fault of the applicant. Scholarship awards may be denied if all documentation is not complete and submitted by the specified deadlines. If any documentation demonstrates that the applicant did not satisfactorily fulfill all coursework and GPA requirements or if any information, including the attestation of criminal record and citizenship status, proves to be falsified, awards may be denied.

5.4.3. Priority Deadline: A priority deadline may be established each year. Applicants who meet the priority deadline may be given first priority of consideration for awards.

5.5. Incomplete Documentation: Applications or other submissions that have missing information or missing documents are considered incomplete, will not be considered, and may result in failure to meet a deadline.

R765-604-6. Awards.

6.1. Value of the Award: The award is up to the amount provided by the law and determined each Spring by the Board based on legislative funding and number of applicants. The total value may change in accordance with subsection 6.2. The award shall be disbursed semester-by-semester over the shortest of the following time periods:

6.1.1. Four semesters of full-time enrollment in fifteen credit hours.

6.1.2. Sixty credit hours.

6.1.3. Until the student meets the requirements for a baccalaureate degree.

6.2. The Board May Decrease Award: If the appropriation from the Utah Legislature for the scholarship is insufficient to cover the costs associated with the scholarship, the Board may reduce or limit the award.

6.3. Eligible Institutions: An award may be used at either

6.3.1. Public Institution: a four-year institution within the Utah System of Higher Education that offers baccalaureate programs; or

6.3.2. Private Nonprofit Institution: a private not-for-profit higher education four-year institution in the state of Utah accredited by the Northwest Association of Schools and Colleges that offers baccalaureate programs.

6.4. Enrollment at Multiple Institutions: The award may be used at more than one of the eligible institutions within the same semester for the academic year 2010-11. Starting in 2011 when the award goes to a flat rate the award may only be used at the institution from which the student is earning a baccalaureate degree.

6.5. Student Transfer: The award may be transferred to a different eligible institution upon request of the recipient.

6.6. Financial Aid and other Scholarships: With the exception of the Regents' Scholarship (as detailed in subsection 4.6 of this policy) tuition waivers, financial aid, or other scholarships will not affect a recipient's total award amount.

R765-604-7. Disbursement of Award.

7.1. Disbursement Schedule of Award: The award shall be disbursed semester-by-semester over the shortest of the following time periods:

7.1.1. Four semesters of enrollment in fifteen credit hours;

7.1.2. Sixty credit hours; or

7.1.3. Until the recipient meets the requirements for a baccalaureate degree.

7.2. Enrollment Documentation: The recipient shall submit to the Scholarship Review Committee a copy of a class schedule verifying that the recipient is enrolled in fifteen credit hours or more at an eligible institution. Documentation must include the student's name, the semester the recipient will attend, institution that they are attending and the number of credits for which the recipient is enrolled.

7.3. Award Payable to Institution: The award will be made payable to the institution. The institution shall pay over to the recipient any excess award funds not required for tuition payments. Award funds should be used for higher education expenses including tuition, fees, books, supplies, and equipment required for instruction.

7.4. Dropped Hours After Award: If a recipient drops credit hours after having received the award which results in enrollment below fifteen credit hours the scholarship will be revoked (see 8.1) unless the student needs fewer than fifteen credit hours for completion of a degree.

R765-604-8. Continuing Eligibility.

8.1. Reasonable Progress Toward Degree Completion: The Board may cancel a recipient's scholarship if the student fails to:

8.1.1. Maintain 3.3 GPA: to maintain a 3.3 GPA or higher for each semester for which the student has received awards.; or

8.1.2. Reasonable Progress: to make reasonable progress (fifteen credit hours) toward the completion of a baccalaureate degree and submit the documentation by the deadline as described in subsection 8.2. A recipient must apply and receive an approved deferral or leave of absence under subsection 8.7 if he or she will not enroll in fifteen credit hours continuously for fall and spring semesters.

8.2. Duty of Student to Report Reasonable Progress: Each semester, the recipient must submit to the Board a copy of his or her grades for verification of grade point average and has completed a minimum of fifteen credit hours each semester. Recipients will not be paid for the coming semester until the requested documentation has been received. If the recipient at any time fails to maintain a 3.3 grade point average or higher following probation or fails to enroll and complete fifteen credit hours, the scholarship may be revoked. These documents must be submitted by the following dates:

8.2.1. Proof of enrollment for Fall Semester and proof of completion of the previous semester must be submitted by September 30.

8.2.2. Proof of enrollment for Spring Semester and proof of completion of the previous semester must be submitted by February 15.

8.2.3. Proof of enrollment for Summer Semester and proof of completion of the previous semester must be submitted by June 30.

8.2.4. Proof of enrollment if you are attending Brigham

Young University during Winter Semester and proof of completion of the previous semester must be submitted by February 15.

8.2.5. Proof of enrollment if you are attending Brigham Young University during Spring Term and proof of completion of the previous semester must be submitted by May 30.

8.2.6. Proof of enrollment if you are attending Brigham Young University during Summer Term and proof of completion of the previous semester or term must be submitted by July 30.

8.3. Probation: If a recipient earns less than a 3.3 GPA in any single semester, the recipient must earn a 3.3 GPA or better the following semester to maintain eligibility for the scholarship. If the recipient again at any time earns less than a 3.3 GPA the scholarship will be revoked.

8.4. Final Semester: A recipient will not be required to enroll in fifteen credit hours if the recipient can complete the degree program with fewer credits.

8.5. No Awards After Five Years: The Board will not make an award to a recipient for an academic term that begins more than five years after the recipient's high school graduation date.

8.6. No Guarantee of Degree Completion: An award does not guarantee that the recipient will complete his or her baccalaureate program within the recipient's scholarship eligibility period.

8.7. Deferral or Leave of Absence.

8.7.1. A recipient shall apply to the Board for a deferral of award or a leave of absence if they do not continuously enroll in fifteen credit hours.

8.7.2. A deferral or leave of absence will not extend the time limits of the scholarship under subsection 8.5.

8.7.3. Deferrals or leaves of absence may be granted, at the discretion of the Board, for military service, humanitarian/religious service, documented medical reasons, and other exigent reasons.

R765-604-9. Appeals.

9.1. Scholarship Determinations: Submission of a scholarship application does not guarantee a scholarship award. Individual scholarship applications will be reviewed, and award decisions made, at the discretion of a Scholarship Review Committee. Awards are based on available funding, applicant pool, and applicants' completion of scholarship criteria. Each applicant will receive a letter informing the applicant of the decision on his/her application.

9.2. Appeals: Applicants and recipients have the right to appeal an adverse decision.

9.2.1. Appeals shall be postmarked within 30 days of date of notification by submitting a completed Appeal Application found on the program Web site.

9.2.2. An appeal filed before the applicant/recipient receives official notification from the Scholarship Review Committee regarding their application, will not be considered.

9.2.3. The appeal shall provide evidence that an adverse decision was made in error, such as that in fact, the applicant/recipient met all scholarship requirements and submitted all requested documentation by the deadline.

9.2.4. Appeals are not accepted for late document submission.

9.2.5. A submission of an appeal does not guarantee a reversal of the original decision.

9.2.6. It is the applicant/recipient's responsibility to file the appeal, including all supplementary documentation. All documents shall be mailed to the New Century Scholarship address.

9.2.7. Appeals will be reviewed and decided by an appeals committee appointed by the commissioner of higher education.

KEY: higher education, secondary education, scholarships
July 8, 2013 53B-8-105
Notice of Continuation July 17, 2019

R850. School and Institutional Trust Lands, Administration.
R850-21. Oil, Gas and Hydrocarbon Resources.
R850-21-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Utah Code Title 53C et seq. which authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of oil, gas and hydrocarbon leases and which govern the management of trust-owned lands and oil, gas and hydrocarbon resources.

R850-21-150. Planning.

Pursuant to Subsection 53C-2-201(1)(a), this category of activity carries no planning obligations by the agency beyond existing rule-based analysis and approval processes. Oil, gas and hydrocarbon development activities are regulated by UDOGM pursuant to Utah Administrative Code Rule R649.

R850-21-175. Definitions.

Except as specifically defined below, the definitions set forth at R850-1-200 shall be applicable. The following words and terms, when used in Section R850-21, shall have the following meanings:

1. Anniversary Date: the same day and month in succeeding years as the effective date of the lease.

2. Assignment(s): a transfer of all or a portion of the lessee's record title or operating rights in a lease.

(a) Mass Assignment: an assignment that affects two or more leases and identifies the leases affected thereby on an attached exhibit to the assignment.

(b) Non-leasehold Assignment: an assignment that transfers an interest in a lease that is not record title or operating rights, for example, but not limited to, overriding royalty, net profits, or other production payments.

3. Certification of Net Revenue Interest: a written declaration of oath to the agency that must accompany assignments of record title or operating rights in leases issued beginning April 1, 2005, certifying that the total net revenue interest (NRI) in the lease has not been reduced to less than 80 percent of 100 percent NRI.

4. Designated Operator: the person or entity that has been granted authority through a Designation of Operator form to conduct operations on the lease or a portion thereof.

5. Diligent Operations: the continuation of drilling or re-working operations in the secondary term of the lease which are prosecuted in a timely and good and workmanlike manner to establish production or restore production of leased substances. Diligent Operations may include cessations of operations which do not exceed ninety (90) days in duration or a cumulative period in excess of one hundred eighty (180) days in a lease year without prior agency approval.

6. Effective Date: the date as defined in the lease.

7. Gas Well: a well capable of producing volumes exceeding 100,000 cubic feet of gas to each barrel of oil from the same producing horizon where both oil and gas are produced; or, a well producing gas only from a formation or producing horizon.

8. Lease Year: the twelve-month period commencing at 12:01 a.m. on the month and day of the effective date of the lease and ending at midnight on the last day of the twelfth month.

9. Minimum Royalty: the minimum amount of money payable to the agency which accrues beginning in the first year of the secondary term of the lease or after first production is obtained. The amount due is calculated on the difference, if any, between the amount of the minimum royalty specified in the lease and the actual royalty paid from production in the lease year.

10. Operating Rights Interest: the interest or contractual obligation created out of a lease that authorizes the operating rights interest owner to enter upon the leased land to conduct drilling, production and other related operations. Operating rights interest may be stratigraphically limited.

11. Other Business Arrangement (OBA): an agreement entered into between the agency and a person or entity consistent with Section 53C-2-401-(1)(d)(ii)and approved by the Board of Trustees. By way of example, but not of limitation, OBAs may be for joint ventures, farmout agreements, exploration agreements, or other agreements for the disposition of hydrocarbon deposits on trust lands.

12. Paying Quantities: unless otherwise defined in the lease, production that allows the lessee to realize a profit after deducting taxes, the agency's royalty, and the cost of the operations.

13. Record Title Interest: the primary ownership of a lease that includes the obligation to pay rentals, the rights to assign or relinquish a lease, and the ultimate responsibility to the agency for obligations under the lease. Record title interest to a lease may not be stratigraphically limited.

14. Rental: a sum of money as prescribed in the lease payable annually in advance to the agency on or before midnight on the last day of the lease year.

15. Shut-in Gas Well: a gas well that is physically capable of producing gas in paying quantities that cannot be marketed at a reasonable price due to lack of market or transportation facilities, the status of which has been confirmed through the filing of a completion report or other documentation with UDOGM.

16. Shut-in Gas Well Payment: beginning at the commencement of the secondary term of the lease, the amount of money accruing and payable to the agency, in addition to other obligations defined in the lease, when gas is not being sold or marketed from the lease for a shut-in gas well.

17. Spud: the first boring of a hole in the drilling of a well and continuation of operations until surface casing is set.

18. UDOGM: the Division of Oil, Gas, and Mining of the Department of Natural Resources of the State of Utah.

R850-21-200. Classification of Oil, Gas and Hydrocarbons.

Oil, gas and hydrocarbon leases may cover oil; natural gas, including gas producible from coal formations or associated with coal-bearing formations; natural gas liquids; other hydrocarbons (whether the same is found in solid, semi-solid, liquid, vaporous, or any other form); sulfur; helium; and other gases not individually described. The oil, gas and hydrocarbon category shall not include coal, oil shale, asphaltic-bituminous sands or gilsonite.

R850-21-300. Lease Application Process.

1. The agency may issue leases competitively, non-competitively or enter into OBAs with qualified applicants as set forth in R850-3-200 for the development of oil, gas and hydrocarbon resources.

2. Competitive Leasing.

The director may designate lands for bidding by electronic means as a vehicle for competitive leasing. Electronic bidding may be in addition to, or in place of, the bidding processes set out at Section 53C-2-407 at the discretion of the director. A list of available land and a link to the bidding form and procedure will be provided at the agency website.

(a) Competitive Bid Offering: when the agency designates lands for competitive bidding, it shall award leases on the basis of the highest bonus bid per acre made by a

responsible, qualified bidder.

(b) Minimum Bonus Bid Amount: the minimum acceptable bonus bid for competitive bid offering for leases shall not be less than $1.00 per acre or fractional acre thereof, as set by the director.

(c) Notice of Offering: notices of the offering of lands for competitive bid shall:

(i) run for a period of not less than fifteen (15) consecutive days after the notice is posted in the agency's office or online;

(ii) provide the legal description of the land;

(iii) state the last day on which bids may be received.

(d) Identical Bids: in the case of identical successful bids, the agency may award the lease by public drawing or oral auction between the identical bidders, held at the agency's offices.

(e) Awarding of Leases: the winning bid shall be disclosed in the agency's office at 10 a.m. on the first business day following the last day on which bids may be received.

3. Non-Competitive Leasing.

(i) the director may designate lands for non-competitive leasing if the lands have been offered in a competitive offering and have received no bids. Designated lands may be offered for a period of three (3) months from the date the competitive sale closed for which no bids were received. The procedure for non-competitive leasing will be posted on the agency website.

(ii) where two or more applications for the same lease contain identical successful bids, the agency may award the lease by public drawing or oral auction between the identical bidders held at the agency's office.

4. Other Business Arrangement.

(i) the agency may, with board approval, enter into joint ventures, farmout agreements, exploration agreements, or other agreements for the development of oil, gas and hydrocarbon resources if the agency deems it is in the best interest of the trust to do so.

(ii) The application for an OBA must be written and directed to the Assistant Director for Oil and Gas for review on a case-by-case basis.

R850-21-400. Availability of Lands for Lease Issuance.

1. A lease shall not be issued for lands comprising less than a quarter-quarter section or surveyed lot, unless the land the agency owns is less than the whole of a quarter-quarter section or surveyed lot, in which case the lease will be issued only on the entire area owned by the agency.

2. Leases shall be limited to no more than 2560 acres or four sections and must all be located within the same township and range, unless a waiver is approved by the director.

R850-21-500. Lease Provisions.

The following provisions, terms and conditions shall apply to all leases granted by the agency:

1. Rentals and Credits.

(a) The rental rate shall not be for less than $1 per acre, or fractional acre thereof, per year, at the time the lease is offered.

(b) The minimum annual rental on any lease, regardless of the amount of acreage, shall in no case be less than $500.00.

(c) Rental payments must be received on or before the end of the lease year notwithstanding R850-5-200(3), unless otherwise stated in the lease.

(d) Any overpayment may, at the option of the agency, be credited toward the lease account.

(e) The agency may accept lease payments made by any party provided, however, that the acceptance of such payment(s) shall not be deemed to be recognition by the agency of any interest of the payee in the lease. Ultimate responsibility for such payments remains with the record title interest owner.

(f) Rental credits, if any, shall be governed by the terms of the lease which provide for such credits.

2. Continuance of a Lease After Expiration of the Primary Term.

Unless otherwise provided in the lease, a lease shall be continued after the primary term has expired so long as:

(a) the leased substance is being produced in paying quantities from the leased trust lands or from other lands pooled, communitized or unitized therewith, and lessee pays the annual minimum royalty set out in the lease; or

(b) the agency determines that the lessee or designated operator is engaged in diligent operations which are determined by the director to be reasonably calculated to restore production of the leased substance from the leased trust lands or from other lands pooled, communitized or unitized therewith, and lessee pays the annual minimum royalty set out in the lease; or

(c) subject to the requirements of R850-21-500(4), if the leased trust lands, or lands pooled therewith, contain a shut in gas well capable of producing paying quantities and lessee makes all payments required by the lease.

3. Pooling, Communitization or Unitization of Leases.

(a) Upon prior written authorization of the director, lessee may commit the leased trust lands or portions of such lands to units, or cooperative or other plans of development under such conditions as the director may prescribe.

(b) The director may, with the consent of the lessee, modify any term of a lease for lands that are committed to a unit, or cooperative or other plan of development.

(c) Production allocated to the leased trust lands under the terms of a unit, or cooperative or other plan of development shall be considered produced from the leased lands whether or not the point of production is located on the leased trust lands.

(d) Lease payments for leases included in any unit, cooperative or other plans of development shall be at the rate specified in the lease, subject to change at the discretion of the director or as may be prescribed in the terms of the lease.

(e) For active leases in a validated federal or state unit as of the effective date of these Rules that are either contracted out of such unit or upon unit termination which occurs before January 1, 2021, the agency will:

(i) grant a one-time, two (2) year extension from the date the lease was eliminated from the unit either by contraction or unit termination and so long thereafter as the leased substances are produced in paying quantities, or

(ii) continue the lease to the end of its primary term, whichever is longer.

4. Shut-in Gas Wells Producing Gas in Paying Quantities.

(a) To qualify as a shut-in gas well capable of producing in paying quantities:

(i) if the well is a new well, the operator must have filed with UDOGM a completion form or other documentation verifying that the well is capable of production in paying quantities, and if the well is an existing well, the operator must have obtained an approval of shut-in status from UDOGM; and

(ii) the lessee shall have complied with the lease terms providing the basis upon which the minimum royalty is to be paid for a shut-in gas well.

(b) The director may, at any time, require written justification from the lessee that the well qualifies as a shut-in gas well.

(c) A shut-in gas well will not extend a lease more than

five (5) years beyond the original primary term of the lease unless otherwise extended at the discretion of the director.

5. Oil/Condensate/Gas/Natural Gas Liquids Reporting and Records Retention.

(a) Notwithstanding the terms of the lease, gas and natural gas liquid report payments are required to be received by the agency on or before the last day of the second month succeeding the month of production.

(b) The extension of payment and reporting time for gas and NGLs does not alter the payment and reporting time for oil and condensate royalty which must be received by the agency on or before the last day of the calendar month succeeding the month of production.

(c) Records of production, sales, transportation, and all other documents pertaining to the calculation of royalties shall be maintained for seven (7) years after the records are generated unless the director notifies the record holder that an audit has been initiated or an investigation begun involving such records. When so notified, records shall be maintained until the director releases the record holder of the obligation to maintain such records.

6. Other Lease Provisions.

(a) Any lease may be terminated by the agency in whole or in part upon lessee's failure to comply with any lease term, covenant or any applicable law or agency rule. Subject to the terms of any lease issued hereunder, any final agency action is appealable pursuant to R850-8-1000, in accordance with the provisions of the rules of the agency.

(b) When the agency approves the amendment of an existing lease by substituting a new lease form for the existing form, the amended lease will retain the effective date of the original lease.

(c) The agency may require, in addition to the lease provisions required by these rules, any other reasonable provisions to be included in the lease as it deems necessary but which do not substantially impair the lessee's rights under the lease.

R850-21-600. Transfer by Assignment or Operation of Law.

1. Record Title or Operating Rights Transfer by Assignment. Any lease may be assigned as to all or part of the acreage, to any person, firm, association, or corporation qualified to hold a lease provided, however that:

(a) record title or operating rights assignments must be approved by the director. No record title or operating rights assignment is effective until approval is given.

(b) Any attempted or purported assignment of record title or operating rights made without approval by the director is void.

2. Non-leasehold assignments. Non-leasehold assignments of overriding royalty interests must be filed with the agency for record keeping purposes only. Other non-leasehold interest assignments may be filed with the agency for record keeping purposes only.

3. Requirements for Assignments.

(a) An assignment of either a record title or operating rights interest in a lease must:

(i) be expressed in a good and sufficient written legal instrument;

(ii) be properly executed, acknowledged and clearly set forth:

(A) the serial number of the lease;
(B) the land involved;
(C) the name and address of the assignee;
(D) the name of the assignor;
(E) the interest transferred;
(F) interest retained, if any; and
(G) a certification of net revenue interest, if applicable.

(b) Lessees who are assigning a record title or operating rights interest shall:

(i) prepare and fully execute the assignments, complete with acknowledgments;

(ii) require that all assignees execute the acceptance of assignment; and

(iii) submit the prescribed assignment fee.

(c) If approval of any assignment of record title or operating rights is withheld by the director, the assignee shall be notified of such decision and its basis. Any decision to withhold approval may be appealed pursuant to R850-8 or any similar rule in place at the time of such decision.

(d) An assignment shall be effective following approval by the director. The assignor or surety, if any, shall continue to be responsible for performance of any and all obligations as if the assignment had not been executed until approval by the director. After approval by the director, the assignee is bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding; provided, however, that the approved record title interest owner(s) shall retain ultimate responsibility to the agency for all lease obligations.

(e) An assignment of an undivided 100% record title interest in less than the total acreage covered by the lease shall cause a segregation of the assigned and retained portions. Segregated leases shall continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of the lease. The agency may re-issue a lease with a new lease number covering the assigned lands. The agency may, in lieu of re-issuing a lease, note the assignment in its records with all lands covered by the original lease maintained with the original lease number and with each separate tract or interest resulting from an assignment with an additional identifying designation to the original number.

(f) Any assignment of record title or operating rights affecting leases issued beginning April 1, 2005, which would create a cumulative royalty and other non-working interest burdens in excess of twenty percent (20%) thereby reducing the net revenue interest in the lease to less than eighty percent (80%) net revenue interest shall not be approved by the agency. The agency reserves the right to void any assignment in which the certification of net revenue interest is found to be false and the assignment results in an aggregate burden in excess of 20% including the agency's retained royalty.

(g) Mass assignments are allowed, provided the requirements set forth in R850-21-600(3) are met.

(h) To the extent a legal foreclosure upon interests in leases occurs under the terms of a mortgage, deed of trust or other agreement, assignments must be prepared as set forth in this section and filed with and approved by the agency.

(i) The agency by approving an assignment does not adjudicate the validity of any assignment as it may affect third parties. Agency approval does not estop the agency from challenging any assignment which is later adjudicated by a court of competent jurisdiction to be invalid or ineffectual.

4. Transfer by Operation of Law.

(a) Death: if an applicant or lessee dies, his/her rights shall be transferred to the heirs or devisees of the estate, as appropriate, upon filing of:

(i) a certified copy of the death certificate, together with other appropriate documentation to verify change of ownership as required under Section 75-1-101 et seq., such as a court order determining intestate heirs or letters testamentary and a deed by the personal representative of the estate;

(ii) a list containing the serial number of each lease interest affected;

(iii) a statement that the transferee(s) is a qualified interest owner;

(iv) a required filing fee for each separate lease in which an interest is transferred; and

(v) a bond rider or replacement bond for any bond(s) previously furnished by the decedent.

(b) Corporate Merger: if a corporate merger affects any interest in a lease, no assignment of any affected lease is required. A notification of the merger, together with a certified copy of the certificate of merger issued by the Utah Department of Commerce, shall be furnished to the agency, together with a list by serial number of all lease interests affected. The required filing fee must be paid for each separate lease in which an interest is affected. A bond rider or replacement bond conditioned to cover the obligations of all affected corporations will be required as a prerequisite to recognition of the merger.

(c) Corporate Name Change: if a change of name of a corporate lessee affects any interest in a lease, the notice of name change shall be submitted in writing with a certificate from the Utah Department of Commerce evidencing its recognition of the name change accompanied by a list of lease serial numbers affected by the name change. The required filing fee must be paid for each separate lease in which an interest is affected. A bond rider or replacement bond, conditioned to cover the obligations of all affected corporations, is required as a prerequisite to recognition of the name change.

R850-21-700. Plan of Operations and Reclamation.

1. Prior to conducting any operations that may disturb the surface of lands contained in a lease, the lessee or designated operator shall submit for approval simultaneously to the agency and to UDOGM, a plan of operations and must receive the approval of the plan by both agencies. Said plan shall include, at a minimum, all proposed access and infrastructure locations and proposed site reclamation. Prior to approval, the agency may require the lessee or designated operator to adopt a special rehabilitation program for the particular property in question. The agency will review any request for drilling operations and will grant approval provided that the contemplated location and operations are not in violation of any rules or order of the agency. Agency approval of the plan of operations for oil, gas or hydrocarbon resources is required prior to approval by UDOGM, unless otherwise waived in writing to UDOGM by the agency.

2. Prior to approval of the plan of operations, the agency shall require the lessee or designated operator to:

(a) provide when requested, a cultural, paleontological or biological survey on lands under an oil, gas and hydrocarbon lease, including providing the agency a copy of any survey(s) required by other governmental agencies; and

(b) when requested, provide for reasonable mitigation of impacts to other trust resources occasioned by surface or sub-surface operations on the lease; and

(c) negotiate with the agency a surface use agreement, right-of-way agreement, or other agreement for trust lands other than the leased lands where the use of said lands is necessary for the development of the lease.

3. During drilling operations, lessee or designated operator shall keep a log of geologic data accumulated or acquired by the lessee or designated operator about the land described in the lease and will deposit any geological data related to exploration drill holes with the agency upon request.

4. Oil and gas drilling, or other operations which disturb the surface of the leased lands shall require surface rehabilitation of the disturbed area as prescribed and as required by the rules and regulations administered by the agency and UDOGM.

All pits, excavations, roads and pads shall be shaped to facilitate drainage and control erosion by following the best management practices. In no case shall the pits or excavations be allowed to become a hazard to persons or livestock. All material removed from the disturbed area shall be stockpiled and be used to fill the pits and for leveling and reclamation of roads and pads, unless consent of the agency to do otherwise is obtained. At the termination of the lease, the land will as nearly as practicable approximate its original configuration. All drill holes must be plugged in accordance with rules promulgated by UDOGM. All mud pits shall be filled and materials and debris removed from the site.

All topsoil in the affected area shall be removed, stockpiled, and stabilized on the leased trust lands until the completion of operations. Upon reclamation, the stockpiled topsoil will be redistributed on the affected area and the land revegetated as prescribed by the agency.

5. All lessees or designated operators shall be responsible for compliance with all laws, notification requirements, and operating rules promulgated by UDOGM with regard to oil, gas and hydrocarbon exploration, or drilling on lands within the state of Utah under The Oil and Gas Conservation Act (Section 40-6-1 et seq.). Lessees or designated operators shall fully comply with all the rules or requirements of other agencies having jurisdiction and provide timely notifications of operations plans, well completion reports, or other information as may be requested or required by the agency.

R850-21-800. Bonding.

1. Bond Obligations.

(a) Prior to commencement of any operations which will disturb the surface of the land covered by a lease, the lessee or designated operator shall post with UDOGM a bond in a form and in the amount set forth in R649-3-1 et seq or any successor rule.

(b) A separate bond shall be posted with the agency by the lessee or the designated operator to assure compliance with remaining terms and conditions of the lease not covered by the bond to be filed with UDOGM, including, but not limited to payment of royalties.

(c) These bonds shall be in effect even if the lessee or designated operator has conveyed all or part of the leasehold interest to an assignee(s) or subsequent operator(s), until the bonds are released by UDOGM and the agency either because the lessee or designated operator has fully satisfied bonding obligations set forth in this section or the bond is replaced with a new bond posted by an assignee or designated operator.

(d) Bonds held by the agency shall be in the form and subject to the requirements set forth herein:

(i) Surety Bonds.

Surety bonds shall be issued by a qualified surety company, approved by the agency and registered in the state of Utah. Surety company must maintain an A credit rating. Lessee or designated operator has thirty (30) days to cure a devalued rating, or lessee or designated operator will not be allowed to continue to work on the leased trust lands until a new surety bond has been filed and accepted by the agency;

(ii) Personal Bonds.

Personal bonds shall be accompanied by:

(A) a cash deposit to the School and Institutional Trust Lands Administration. The agency will not be responsible for any investment returns on cash deposits; or

(B) a cashier's check or certified check made payable to the School and Institutional Trust Lands Administration; or

(C) negotiable certificates of deposit. The certificates shall be issued by a federally insured bank authorized to do

business in Utah. The certificates shall be made payable or assigned only to the agency both in writing and upon the records of the bank issuing the certificate. The certificates shall be placed in the possession of the agency or held by a federally insured bank authorized to do business in Utah. If assigned, the agency shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates; or

(D) an irrevocable letter of credit. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah and will be irrevocable during their terms. Letters of credit shall be placed in the possession of and payable upon demand only to the agency. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least thirty (30) days before their expiration date with other acceptable bond types or letters of credit; or

(E) any other type of surety approved by the agency.

2. Bond Amounts.

The bond amount required for an oil, gas and hydrocarbon exploration project to be held by the agency for those lease obligations not covered by the bond held by UDOGM shall be:

(a) a statewide blanket bond in the minimum amount of $15,000 covering exploration and production operations on all agency leases held by lessee; or

(b) a project bond covering an individual, single-well exploration project involving one or more leases. The amount of the project bond will be determined by the agency at the time lessee gives notice of proposed operations. This bond shall not be less than $5,000.

3. Bond Default.

(a) Where, upon default, the surety makes a payment to the agency of an obligation incurred under the terms of a lease, the face of the bond and surety's liability shall be reduced by the amount of such payment.

(b) After default, where the obligation in default equals or is less than the face amount of the bond(s), the lessee or designated operator shall either post a new bond, restore the existing bond to the amount previously held, or post an adjusted amount as determined by the agency. Alternatively, the lessee or designated operator shall make full payment to the agency for all obligations incurred that are in excess of the face amount of the bond and shall post a new bond in the amount previously held or such other amount as determined by the agency. Operations shall be discontinued until the restoration of a bond or posting of a new bond occurs. Failure to comply with these requirements may subject all leases covered by such bond(s) to be cancelled by the agency.

(c) The agency will not give consent to termination of the period of liability of any bond unless an acceptable replacement bond has been filed or until all terms and conditions of the lease have been met.

(d) Any lessee or designated operator forfeiting a bond will be denied approval of any future oil, gas or hydrocarbon exploration on agency lands except by compensating the agency for previous defaults and posting the full bond amount for reclamation or lease performance on subsequent operations as determined by the agency.

4. Bonds may be increased at any time in reasonable amounts as the agency may order, providing the agency first gives lessee thirty (30) days written notice stating the amount of the increase and the reason for the increase.

5. The agency may waive the filing of a bond for any period during which a bond that meets the requirements of this section is on file with another agency.

R850-21-1000. Multiple Mineral Development (MMD) Area Designation.

1. The agency may designate any land under its authority as a multiple mineral development area. In designated multiple mineral development areas the agency may require, in addition to all other terms and conditions of the lease, that the lessee furnish a bond or evidence of financial responsibility as specified by the agency, to assure that the agency and other lessees shall be indemnified and held harmless from and against unreasonable and all unnecessary damage to mineral deposits or improvements caused by the conduct of the lessee on trust lands. Lessee shall give written notice to all oil, gas and hydrocarbon and other mineral lessees holding a lease for any mineral commodity within the multiple mineral development area. Thereafter, in order to preserve the value of mineral resources the agency may impose any reasonable requirements upon any oil, gas and hydrocarbon or other mineral lessee who intends to conduct any mineral activity within the multiple mineral development area. The lessee is required to submit to the agency in advance written notice of any activities to occur within the multiple mineral development area and any other information that the agency may request. All activities within the multiple mineral development area are to be deferred until the agency has specified the terms and conditions under which the mineral activity is to occur and has granted specific permission to conduct the activity. The agency may hold public meetings regarding mineral development within the multiple mineral development area.

2. The agency may grant a lease extension under a multiple mineral development area designation, providing that the lessee or designated operator requests an extension to the agency prior to the lease expiration date, and that the lessee or designated operator would have otherwise been able to request a lease extension as provided in Section 53C-2-405(4).

KEY: oil gas and hydrocarbons, administrative procedures, lease provisions, operations
June 1, 2019 53C-1-302(1)(a)(ii)
Notice of Continuation April 1, 2015 53C-2 et seq.

R909. Transportation, Motor Carrier.
R909-3. Standards for Utah School Buses.
R909-3-1. Authority and Purpose.

This rule is enacted under authority of Utah Code Sections 41-6a-1304 and 41-6a-1309 for the purpose of governing the design and operation of school buses and governing the placement of advertisements on school buses.

R909-3-2. Adoption of Standards for Utah School Buses and Operations Standards 2019 Edition.

(1) In cooperation with the Utah State Board of Education and the Department of Public Safety, the Standards for Utah School Buses and Operations as contained in the 2019 Published Edition, is incorporated by reference.

The Standards for Utah School Buses and Operations are published by the Utah State Board of Education and can be found at https://schools.utah.gov/File/2f934a74-4cbf-4473-ba60-8912a07ae640

(2) These requirements apply to the design and operation of all school buses in this state when:

(a) owned and operated by any Local Education Agency (LEA) as defined in Utah Code Section 53E-3-401;

(b) privately owned and operated under contract with a LEA; or

(c) privately owned for use by a private school.

R909-3-3. Advertisement on School Buses.

(1) In addition to the restrictions listed in Utah Code Section 41-6a-1309, advertisements placed on a bus may not:

(a) cover, obscure or interfere with the operation of any required lighting, reflective tape, emergency exits, or any other safety equipment;

(b) be placed within six inches of any required markings, lighting, or other required safety equipment;

(c) resemble a traffic control device; or

(d) be illuminated or constructed of reflective material.

KEY: school buses, safety
July 8, 2019 41-6a-1304
Notice of Continuation December 27, 2018

R914. Transportation, Operations, Aeronautics.
R914-4. Challenging Corrective Action Orders.
R914-4-1. Purpose and Authority.

(1) The purpose of this administrative rule is to provide a procedure by which an owner of an aircraft may challenge the Department's calculation of the average wholesale value of the aircraft and other actions.

(2) Utah Code Subsection 72-10-110(2)(d)(ii) requires the Department to make this rule. The Department has general rulemaking authority granted by Subsection 72-1-201(1)(h).

R914-4-2. Definitions.

As used in this rule:

(1) "Department" means the Utah Department of Transportation;

(2) "Director" means the Director of Utah Department of Transportation, Division of Aeronautics;

(3) "Division" means the Utah Department of Transportation Division of Aeronautics.

(4) "Presiding Officer" means the Director of Operations for the Department or a person designated by the Director of Operations to conduct an appeal proceeding and issue a decision on a review.

(5) "Review" means an appeal of agency action to challenge a corrective action order issued by the Division.

R914-4-3. Initiating an Appeal.

(1) Persons wanting to file an appeal with the Division must either email their Request for Agency Action to the Division at: aircraftregistration@utah.gov, or deliver it by postal or personal delivery to: Utah Department of Transportation; Division of Aeronautics135 North 2400 West; Salt Lake City, Utah 84116.

(2) Appeals may be delivered or sent by electronic mail; and must be received by the Division before 5:00 P.M. of the 30th day after the date of the Letter of Notification for Aircraft Registration.

(3) Appeals must be filed using the form ADF-38 provided by the Division.

(4) The Division will adjudicate all appeals as expeditiously as reasonably possible.

R914-4-4. Appeal Proceedings.

(1) All appeal proceedings will be informal.

(2) All appeal proceedings will be conducted by the presiding officer.

(3) The presiding officer may hold a hearing if the presiding officer determines a hearing is necessary or if the person making the appeal asks for a hearing with the appeal; however, a hearing is not required.

(4) If the presiding officer determines to hold a hearing, it will be conducted according to the requirements of Utah Code Section 63G-4-203.

(5) After an appeal is filed, the presiding officer will determine whether the appeal is timely filed and complies fully with the requirements of this rule R914-4.

(6) If the presiding officer determines that the appeal is not timely filed or that the appeal does not fully comply with this rule, the presiding officer will dismiss the appeal without holding a hearing.

(7) If the presiding officer determines that the appeal is timely filed and complies fully with this rule, the presiding officer will:

(a) Dismiss the appeal without holding a hearing if the presiding officer determines that the appeal alleges facts that, if true, do not provide an adequate basis for the appeal;

(b) uphold the appeal without holding a hearing if the presiding officer determines that the undisputed facts of the appeal indicate that the appeal should be upheld; or

(c) hold a hearing on the appeal if there is a genuine issue of material fact or law that needs to be resolved in order to determine whether the appeal should be upheld.

(8)(a) If a hearing is held on an appeal, the presiding officer may:

(i) subpoena witnesses and compel their attendance at the presiding hearing;

(ii) subpoena documents for production at the presiding hearing;

(iii) obtain additional factual information; and

(iv) obtain testimony from experts, the person filing the review, representatives of the Department or other state agencies or, others to assist the presiding officer to decide on the review.

(b) The Rules of Evidence do not apply to an appeal hearing.

(c) A presiding officer will:

(i) record each hearing held on an appeal under this rule;

(ii) regardless of whether a hearing on an appeal is held under this rule, preserve all records and other evidence relied upon in reaching the presiding officer's written decision until the decision, and any appeal of the decision, becomes final; and

(d) A presiding officer's holding a hearing, considering an appeal, or issuing a written decision under this section does not affect a person's right to later question or challenge the presiding officer's jurisdiction to hold the hearing, consider the review, or issue the decision.

(9)(a) The deliberations of a presiding officer may be held in private.

(b) If the presiding officer is a public body, as defined in Section 52-4-103, the presiding officer will comply with Section 52-4-205 in closing a meeting for its deliberations.

(10)(a) A presiding officer must, within a reasonable time, issue a written decision regarding any appeal, unless the appeal is settled by mutual agreement.

(b) The decision will:

(i) state the reasons for the action taken; and

(ii) inform the appellant of the right to judicial or administrative appeal as provided in this rule;

(c) A person who issues a decision under Subsection R914-4-4(6) will mail, email, or otherwise immediately furnish a copy of the decision to the appellant.

(11) A decision described in this rule is effective until stayed or reversed on review.

(12) If the presiding officer does not issue the written decision regarding a protest within 30 calendar days after the day on which the protest was filed with the protest officer, or within a longer period as may be agreed upon by the parties, the protester may proceed as if an adverse decision had been received.

(13) A determination under this rule by the presiding officer regarding an issue of fact may not be overturned on a request for reconsideration unless the presiding officer's decision is arbitrary and capricious or clearly erroneous.

(14) An individual is not precluded from acting and may not be disqualified or required to be recused from acting, as a presiding officer because the individual also acted in another capacity during the valuation process.

R914-4-5. Request for Reconsideration.

(1) Within 20 days after the date a presiding officer issues a decision regarding any appeal, an appealing party may file a written request for reconsideration with the Division.

(2) A written request for consideration must state the specific reasons reconsideration is being requested.

(3) Filing a request for reconsideration is not a prerequisite for seeking judicial appeal of a presiding officer's order.

(4) The request for reconsideration must be filed with the Division following the same procedure set forth in subsection R914-4-3 on Initiating an Appeal.

(5)(a) The Director, or a person designated for that purpose, will issue a written order granting denying the request for reconsideration.

(b) If the Director or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration will be considered to be denied.

(c) If the Director, or a person designated for that purpose, issues a written order denying the request; or if 20 days passes after the filing of the request without an order granting or denying the request being issued, the appellant's administrative remedies will be considered exhausted.

R914-4-6. Judicial Review.

Appellants must seek judicial review in accordance with the requirements of Utah Code Title 63G, Chapter 4, Part 4.

KEY: aeronautics, corrective action orders, reviews
July 23, 2019 72-10-110(2)(d)(ii)
72-1-201(1)(h)

R930. Transportation, Preconstruction.
R930-7. Utility Accommodation.
R930-7-1. Purpose.

(1) The purpose of this rule is to:

(a) maximize public safety;

(b) provide for efficient highway operations and maintenance of roadways:

(c) maximize aesthetic quality;

(d) minimize future conflicts between the highway system and utility companies serving the public; and

(e) ensure that use and occupancy by utility companies do not impair or increase the cost of future highway construction, expansion, or maintenance or interfere with any right of way reserved for these purposes.

(2) This rule prescribes conditions under which utility facilities may be accommodated within the right of way and sets forth the state's regulations covering the placement and relocation of utility facilities in conflict with the construction and maintenance of highways. This rule applies to any and every facility, utility, or other structure located in the right of way not owned by the Department or the State of Utah.

(3) This rule should be interpreted to achieve maximum lawful public use of the right of way for transportation purposes and to ensure that utility installations and operations affecting state right of way are accomplished in accordance with state and federal laws and regulations. It is in the public interest for utility facilities to be accommodated within rights of way when the accommodation does not adversely affect public safety, the integrity of highway features, or occupy space within the right of way that conflicts with current or future transportation purposes or uses. The permitted use and occupancy of right of way for non-highway purposes, such as utilities, is subordinate to the primary and highest interest for transportation and safety of the traveling public. Utility facilities may be required to relocate outside of the right of way to accommodate UDOT's projects.

(4) This rule is provided to facilitate the establishment of consistent expectations and effective working relationships between UDOT and utility companies through continuous communication, coordination, and cooperation.

(5) Through the Code of Federal Regulations (23 CFR Section 645.215(a)), the U.S. Department of Transportation requires each state to submit a statement to the Federal Highway Administration (FHWA) on the authority of utility companies to use and occupy the right of way of state highways, the state highway agency's power to regulate the use, and the policies the state employs or proposes to employ for accommodating utilities within the right of way of Federal-aid highways under its jurisdiction. This rule demonstrates compliance to FHWA.

R930-7-2. Authority and Source Documents.

This rule is enacted under the authority of Utah Code Section 72-6-116(2), wherein UDOT is authorized and assigned responsibility to regulate and make rules for the installation, construction, maintenance, repair, renewal, system upgrade, and relocation of utility facilities within state owned and administered highway rights of way, including ordering their relocation as may become necessary.

(1) Utah Code provides for the accommodation of utility facilities within the right of way and provides UDOT authority to promulgate rules and regulations for administering those provisions. Accordingly, this rule has been developed pursuant to the following state and federal laws, codes, regulations, policies:

(a) Utah Code Section 54-3-29;

(b) American Association of State Highway and Transportation Officials (AASHTO) publications, A Guide for Accommodating Utilities within Highway Right of Way and A Policy on the Accommodation of Utilities within Freeway Right of Way (2005); and

(c) AASHTO publications, Roadside Design Guide, 2011, and A Policy on Geometric -Design of Highways and Streets, 2011.

(2) This rule incorporates by reference 23 CFR Section 645, Subpart B, (November 22, 2000).

(3) UDOT has secured authority from FHWA to issue permits for the use or occupancy of the right of way by utility facilities on Federal-aid highways. The use of Federal-aid highway right of way by utilities shall be in accordance with 23 CFR Section 645.215.

R930-7-3. Definitions.

(1) "Abandoned facility" is a utility facility that is not in use, no longer actively providing a service and is physically disconnected from the operating facility that is still in use and still actively providing a service. Abandoned facilities remain the property of the utility company.

(2) "Access control" is the regulation of public access to and from properties abutting the highway facilities. The two basic types of access control are:

(a) "No access (NA)" means access to through-traffic lanes is not allowed except at interchanges. Crossings at-grade and direct driveway connections are prohibited.

(b) "Limited access (LA)" means access to selected public roads may be provided. There may be some crossings at-grade and some private driveway connections.

(3) "Administrative citation" is a letter from UDOT to a utility company citing one or more non-compliance items and proper redress requirements such as action on the appropriate bond, revocation of permit, and revocation of a license agreement.

(4) "AASHTO" is the American Association of State Highway and Transportation Officials.

(5) "Backfill" means the replacement of soil removed during construction. It may also denote material placed over or around structures and utilities.

(6) "Bedding" means the composition and shaping of soil or other suitable material to support a pipe, conduit, casing, or utility tunnel.

(7) "Boring" means the operation by which carriers or casings are pushed or jacked under highways without disturbing the highway structure or prism. Bores are carved progressively ahead of the leading edge of the advancing pipe as soil is mucked back through the pipe.

(8) "Buffer Zone" means the area composed of material such as sand, flowable fill, concrete, etc. surrounding a Utility facility where no compaction or encroachment is allowed.

(9) "Carrier" means a pipe directly enclosing a transmitted fluid (liquid, gas, or slurry).

(10) "Casing" is a larger pipe, conduit, or duct enclosing a carrier.

(11) "Clear Zone" means the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and a clear run-out area. The desired width is dependent upon traffic volumes, speeds, and roadside geometry.

(12) "Coating" is material applied to or wrapped around a pipe.

(13) "Conduit" is an enclosed tubular casing for the protection of wires and cables.

(14) "Depth of bury (cover)" means the depth from ground, sidewalk, or roadway surface to top of pipe, conduit, casing, cable, utility tunnel, or similar facility.

(15) "Deviation" means a granted permission to depart from the standards and requirements of this rule.

(16) "Emergency work" is utility company work

required to prevent loss of life or significant damage to property.

(17) "Encasement" is a structural element surrounding a carrier or casing.

(18) "Encroachment" means entry within the highway right of way.

(19) "Encroachment permit" is a document that specifies the requirements and conditions for performing authorized work within the highway right of way.

(20) "Environmentally protected areas" are areas that include, but are not limited to, wetlands, flood plains, stream channels, rivers, threatened or endangered species, archaeological sites, and historic sites.

(21) "Expressway" is a divided arterial highway for through traffic with partial control of access and generally with grade separations at major intersections.

(22) "Federal-aid highways" are highways eligible to receive Federal-aid.

(23) "FHWA" is the Federal Highway Administration.

(24) "Flexible carrier pipe" is a plastic, fiberglass, or metallic pipe having a large diameter to wall thickness ratio and which can be deformed without undue stress.

(25) "Flowable fill" is low strength flowable concrete as defined in UDOT Standard Specification 03575.

(26) "Freeway" is an expressway with full control of access.

(27) "Frontage road" is a local street or road auxiliary to and located on the side of an arterial highway for service to abutting property and adjacent areas and for control of access.

(28) "Grade" is the rate or percent of change in slope, either ascending or descending, measured along the centerline of a roadway or access.

(29) "Grounded" means electrically connected to earth or to some extended conducting body that serves instead of the earth, whether the connection is intentional or accidental.

(30) "Grout" is a cement mortar or slurry of fine sand or clay.

(31) "Highway, street, or road" are general terms denoting a public way for the transportation of people, materials, and goods, but primarily for vehicular travel, including the entire area within the right of way.

(32) "Horizontal directional drilling" (HDD), also known as directional boring and directional drilling, is a method of installing underground pipes and conduits from the surface along a prescribed bore path. The process is used for installing telecommunications and power cable conduits, water lines, sewer lines, gas lines, oil lines, product pipelines, and casings used for environmental remediation. It is used for crossing waterways, roadways, congested areas, environmentally protected areas, and any area where other methods are not feasible.

(33) "Interstate highway system" (Interstate) is the Dwight D. Eisenhower National System of Interstate and Defense Highways as defined in the Federal-aid Highway Act of 1956 and any supplemental acts or amendments.

(34) "Manhole" or "utility access hole" is an opening in an underground system that workers or others may enter for the purpose of making installations, removals, inspections, repairs, connections, and tests.

(35) "Median" is the portion of a divided highway separating the traveled ways for traffic in opposite directions.

(36) "MUTCD (Utah MUTCD)" means the current version of Utah Manual on Uniform Traffic Control Devices referenced in R920-1.

(37) "Pavement structure" is the combination of sub-base, base course, and surface course placed on a sub-grade to support the traffic load.

(38) "Permit" means encroachment permit.

(39) "Pipe" is a tubular product made as a production item for the transmission of liquid or gaseous substances. Cylinders formed from plate material in the fabrication of auxiliary equipment are not pipe as defined here.

(40) "Pipeline" is a continuous carrier used primarily for the transportation of liquids, gases, or solids from one point to another using either gravity or pressure flow.

(41) "Plowing" means the direct burial of utility lines by means of a mechanism that breaks the ground, places the utility line, and closes the break in the ground in a single operation.

(42) "Practicable" means reasonably capable of being accomplished or feasible as determined by UDOT.

(43) "Relocate" means the adjustment of utility facilities when found by UDOT to be necessary for construction or maintenance of a highway. It includes removing and reinstalling the facility, including necessary temporary facilities, acquiring the necessary right of way on the new location, moving, rearranging or changing the type of existing facilities and taking any necessary safety and protective measures. It also means constructing a replacement facility that is both functionally equivalent to the existing facility and necessary for continuous operation of the utility service, the project economy, or sequence of highway construction.

(44) "Right of way" is a general term denoting land, property, or interest therein, usually in a strip acquired for or devoted to transportation purposes.

(45) "Roadside" is a general term denoting the area between the outer edge of the roadway shoulder and the right of way limits.

(46) "Roadway" is the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

(47) "Small Wireless Facility" means as defined in Utah Code Section 54-21-101.

(48) "Slope" is the relative steepness of the terrain expressed as a ratio or percentage. Slopes may be categorized as positive or negative and as parallel or cross slopes in relation to the direction of traffic.

(49) "State Highways" are those highways designated as State Highways in Title 72, Chapter 4, Designation of State Highways.

(50) "Structure" means any device used to convey vehicles, pedestrians, animals, waterways or other materials over highways, streams, canyons, or other obstacles. It also includes buildings, signs, and UDOT facilities with foundations.

(51) Statewide Utility License Agreement" or "SULA" is a document by which UDOT licenses the use and occupancy, with conditions, of highway rights of way for utility facilities.

(52) "Subsurface Utility Engineering (SUE)" is the management of certain risks associated with utility mapping at appropriate quality levels, utility coordination, utility relocation, communication of utility data, utility relocation cost estimates, implementation of utility accommodation policies, and utility design. SUE tools include traditional records, site surveys, and new technologies such as surface geophysical methods and non-destructive vacuum excavation, to provide quality levels of information. The SUE process for collecting and depicting information on existing subsurface utility facilities is described in ASCE Standard 38-02, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data.

(53) "Trenched" means installed in a narrow open excavation.

(54) "Trenchless (Untrenched)" means installed without breaking the ground or pavement surface by a construction method such as directional drilling, boring, tunneling, jacking, or auguring.

(55) "UDOT" is the Utah Department of Transportation and where referenced to be contacted, submitted to, approved by, accepted by or otherwise engaged, means an authorized representative.

(56) "Utility" or "utility facility" mean the same as the terms are defined in Utah Code Section 72-6-116.

(57) "Utility appurtenances" include but are not limited to pedestals, manholes, vents, drains, rigid markers, meter pits, sprinkler pits, valve pits, and regulator pits.

(58) "Utility company" means as defined in Utah Code Section 72-6-116a.

(59) "Vent" is an appurtenance designed to discharge gaseous contaminants from a casing.

R930-7-4. Scope.

(1) This rule supersedes portions of Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights of Way including Section 5 and portions relating to utility accommodation or that refer to utilities in the right of way or percent of reimbursement, which are part of R930-6 at the time of enactment of this rule.

(2) Regulations, laws, or orders of public authority or industry code prescribing a higher degree of protection or construction than provided by this rule shall govern.

R930-7-5. Application.

(1) This rule, R930-7, applies to all utilities, utility facilities and other structures or things located, accommodated, adjusted or relocated within, on, along, across, over, through, or under the highway right of way. This rule applies to underground, surface, or overhead facilities, either singularly or in combination, including bridge attachments. This rule does not apply to utility facilities that are required for UDOT highway purposes.

(2) This rule applies to all highway projects including local government projects.

R930-7-6. General Installation Requirements.

(1) General.

(a) Utility companies desiring to use the right of way under the jurisdiction of UDOT for the installation or maintenance of any utility facility must be licensed to do so by entering into a Statewide Utility License Agreement (SULA) with UDOT. This License Agreement sets forth the procedures and conditions for the issuance of encroachment permits for all installations statewide. Utility encroachment permits are not issued without an executed SULA. UDOT may impose additional restrictions or requirements for SULAs or utility encroachment permits.

(b) Utility companies desiring to use the right of way to install Small Wireless Facilities shall also enter into a Non-Exclusive Installation and Occupancy Agreement with UDOT prior to the issuance of a permit.

(c) A permitted facility shall, if necessary, be modified by the utility company to improve safety or facilitate alteration or maintenance of the right of way as determined by UDOT.

(2) License Agreements or Statewide Utility License Agreements.

(a) Agreements are executed by UDOT and utility companies to set forth the terms and conditions for the accommodation and maintenance of utility facilities within the right of way. A License Agreement is required for but does not guarantee the approval of encroachment permits.

(b) Facilities that are not defined as a utility under Utah Code Section 54-3-29(1)(g) or facilities that only serve a business or individual are required to enter into a license agreement with UDOT for crossings only and may not be installed longitudinally or attached to bridges. The business or individual with these types of facilities are still required to comply with the requirements of this Rule.

(c) As part of executing a License Agreement with UDOT, owners of facilities located in the right of way are required to post a continuous bond in the amount of $100,000.00, naming UDOT as the insured, to guarantee satisfactory performance. The Statewide Railroad and Utilities Director may approve a lesser amount.

(d) Political Subdivisions are exempt from the bond requirements described in this section if the political subdivision:

(i) is a member of the Utah Local Governments Trust;

(ii) is self-insured or carries liability insurance with minimum coverage of $1,000,000 per occurrence and as more specifically described in its License Agreement. This option requires prior UDOT approval.

(e) For small canal companies that cannot obtain the required bond, UDOT may allow the canal to carry liability insurance with minimum coverage of $1,000,000 per occurrence and as more specifically described in its License Agreement. This option requires prior UDOT approval.

(f) Upon discovery of utility caused damage to the highway or to the right of way, UDOT may opt to exercise its bonding rights in recovering costs incurred to restore the highway or right of way. The utility company is liable for all restoration costs incurred because of damages caused by its utility, and its liability is not limited to the amount of the bond.

(g) License agreements may be terminated at any time by either party upon 30 days advance written notice to the other. Permits previously issued and approved under a terminated agreement are not affected and remain in effect on the same terms and conditions set forth in the agreement and permits. The obligation to maintain the $100,000 bond continues until the utility company's facilities are removed from UDOT's right of way.

(3) Emergency Work.

(a) In all emergency work situations, the utility company or its representative shall contact UDOT immediately and on the first business day shall contact UDOT to complete a formal permit. Failure to contact UDOT for an emergency work situation and obtain an encroachment permit within the stated time is a violation of the terms and conditions of the utility company's license agreement. At the discretion of the utility company, emergency work may be performed by a bonded contractor, public agency, or a utility company. None of the provisions of this rule are waived for emergency work except for the requirement of a prior permit.

(4) One Call Requirements.

(a) Underground facilities are not permitted within the right of way unless the utility company subscribes to Blue Stakes of Utah and other appropriate "call-before-you-dig" systems, or otherwise provides utility plans as detailed in Section R930-7-11(6)(a) of this rule.

(5) Preservation of New Pavement.

(a) Cuts or open excavations on newly constructed, paved, or overlaid highways are not allowed for two years. If an emergency cut or excavation occurs, the responsible utility company shall comply with any special conditions imposed by UDOT regarding restoration of the roadway.

(6) Encroachment Permits.

(a) Encroachment Permits on State Highways.

Utility companies shall obtain an encroachment permit from UDOT for the installation and maintenance of utility facilities on the right of way pursuant to Utah Administrative Code Rule r930-6-4. Encroachment permits are approved or disapproved by UDOT. Applications for encroachment permits are submitted to the Region Permits Officers by the utility company or its contractor. No utility company or

utility company contractor shall begin any utility work on the right of way until an approved encroachment permit is issued by UDOT and the utility company is authorized to proceed in writing. Prior to the issuance of encroachment permits, fees are assessed to cover related costs incurred by UDOT including costs for planning, coordination, and utility plan review.

If the utility company expects work to significantly impact travel lane capacity, UDOT recommends the utility company contact the appropriate Region Permit Office to discuss concepts in advance of submitting an encroachment permit application.

Utility companies shall electronically submit a detailed plan of work depicting the proposed installation. The plans shall be sized as required by UDOT and include utility company identification, work location, utility type and size, type of construction, depth of bury, vertical and horizontal location of facilities relative to the centerline of road, location of all appurtenances, trench details, right of way limits, and traffic control plans. Traffic control plans shall conform to the Utah MUTCD as outlined in rule R930-7-7(1)(d), are mandatory for each instance of utility construction or maintenance and shall be attached to each permit application.

Utility companies may authorize their contractors to obtain permits on their behalf. All terms and conditions set forth in the License Agreement apply. The utility company's construction forces or the utility contractor shall always carry a copy of the approved permit while working on the right of way.

(b) Bonding and Liability Insurance Requirements.

(i) Individual (one-time use) Encroachment Permit Bonding Requirements. As authorized by Sub-section 72-7-102(3)(b)(i) this rule requires encroachment permit applicants to post a Performance and Warranty Bond, using UDOT's approved bond form, for a period of three years from the date of beginning of utility construction work or two years from the end of utility construction work, whichever provides the longer period of coverage. A separate Performance and Warranty Bond is required for each individual encroachment permit. Political subdivisions of the state are not required to post a bond unless the political subdivision fails to meet the terms and conditions of previous permits issued as determined by UDOT. The amount of the bond is determined by the UDOT Region Permits Officer based on the scope of work being performed but will not be less than $10,000.

(ii) Statewide (multiple use) Encroachment Permit Bonding Option. In lieu of posting multiple individual one-time use bonds, encroachment permit applicants who routinely acquire encroachment permits may elect to post a statewide performance and warranty bond, using UDOT's approved bond form. A statewide bond satisfies bonding requirements for permitted utility construction work in all UDOT Regions. The bond amount is determined by UDOT but will not be less than $100,000. This statewide encroachment permit bond is in addition to the continuous bond for the License Agreement.

(iii) Inspection Bond. UDOT may require an additional inspection bond to ensure payment for UDOT field review and inspection costs before an encroachment permit is granted.

(iv) Proceeds Against the Bond. UDOT may proceed against the bond to recover all expenses incurred if payment is not received from the permit applicant within 45 calendar days of receiving an invoice. Upon discovery of utility caused damage to the highway or to the right of way, UDOT may opt to exercise its bonding rights in recovering costs incurred to restore the highway or right of way due to utility caused damages. Failure by the utility company to maintain a valid bond in the amounts required shall be cause for denying issuance of future permits and for the removal of the utility from the right of way.

(v) Liability Insurance Requirements. Permit applicants are also required to provide a certificate of liability insurance in the minimum amounts of $1,000,000 per occurrence and $3,000,000 in aggregate. Failure to meet this requirement will result in application denial. Liability insurance coverage is required throughout the life of the permit and cancellation will result in permit revocation.

(vi) Information about bond forms and liability insurance requirements are available on UDOT's website at: http://www.udot.utah.gov/go/encroachmentpermit

(c) Assignment of Permits. Permits shall not be assigned without the prior written consent of UDOT. All assignees shall be required to execute a License Agreement.

(d) Indemnification. Permit holders performing utility work on the right of way shall always indemnify, defend and hold harmless UDOT, its employees, and the State of Utah from responsibility for any damage or liability arising from their construction, maintenance, repair, or any other related operation during the work or as a result of the work. Permit holders shall also be responsible for the completion, restoration, and maintenance of any excavation for a period of three years unless UDOT requires a longer period of indemnification due to specific or unique circumstances.

(e) Cancellation of Permits and Termination of License Agreement. The following situations will cause the cancellation of permits, termination of the License Agreement, or both:

(i) A utility company's failure to maintain a valid bond in the amount required;

(ii) A utility company's failure to comply with the terms and conditions of the License Agreement;

(iii) A utility company's failure to comply with the requirements of the encroachment permit; and

(iv) A utility company's failure to pay any sum of money for costs incurred by UDOT in association with plan review application, installation or construction review, permit fees, inspection, as-built plan submittals, reconstruction, repair, or maintenance of the utility facilities, or any other costs associated with the Department's approved fee schedule.

When the permit is canceled, UDOT also may remove the facilities and restore the highway and right of way at the sole expense of the utility company. Prior to any cancellation, UDOT shall notify the utility company in writing, setting forth the violations, and will provide the utility company a reasonable time to correct the violations to the satisfaction of UDOT. UDOT may also not issue any further permits to utility companies that do not comply with this rule, permit requirements, or the SULA.

R930-7-7. General Design Requirements.

(1) General.

(a) Joint use of state right of way may impact both the highway and the utility. Each utility company requesting the use of right of way for the accommodation of its facilities is responsible for the proper planning, engineering, design, construction, and maintenance of its facilities installed within the right of way. The utility company shall coordinate with UDOT and develop its projects to meet design standards and to optimize safety, cost effectiveness, and efficiency of operations for both the utility company and the state. Utility companies are directed to the following AASHTO publications for assistance:

(i) Roadside Design Guide;

(ii) A Policy on Geometric Design of Highways and Streets;

(iii) A Guide for Accommodating Utilities within Highway Right of Way; and

(iv) A Policy on the Accommodation of Utilities within Freeway Right of Way.

(b) All elements of the utility facilities including materials used, installation methods, and locations shall be subject to review and approval by UDOT.

(c) Plans, Drawings and Specifications. The utility company shall provide UDOT with comprehensive plans, drawings and specifications as may be required for all proposed utility facilities within the right of way. Utility plan submittals shall contain physical features of the utility site including, but not limited to the following:

(i) highway route number;

(ii) highway mile post locations;

(iii) map with route and site location;

(iv) existing features such as manholes, structures, drainage facilities, other utilities, access controlled and right of way lines, center line of highway relative to the utility facility location, and relevant vertical information;

(v) plan and drawing scales; and

(vi) legend including definition of symbols used.

The plans, drawings, and specifications shall also contain administrative information, identification and type of materials to be used, relevant information on adjacent land classification and ownership, related permits and approvals if required, and identification of the responsible Engineer of Record.

(d) Traffic Control Plans. The utility company shall provide traffic control plans (TCP) that conform to the current Utah MUTCD and UDOT Traffic Control Standards and Specification.

(e) The utility company is responsible to ensure compliance with industry codes and standards, the conditions and special provisions specified in the permit, and applicable laws, rules and regulations of the State of Utah and the Code of Federal Regulations.

(f) All utility facility installations located in, on, along, across, over, through, or under the surface of the right of way, including attachments to highway structures, are the responsibility of the utility company and, as a minimum, shall meet the following utility industry and governmental requirements.

(i) Electric power and telecommunications facilities shall conform to the current applicable National Electric Safety Code.

(ii) Water, sewage and other effluent lines shall conform to the requirements of the American Public Works Association or the American Water Works Association.

(iii) Pressure pipelines shall conform to the current applicable sections of the standard code of pressure piping of the American National Standards Institute, 49 CFR 192, 193 and 195, and applicable industry codes.

(iv) Liquid petroleum pipelines shall conform to the current applicable recommended practice of the American Petroleum Institute for pipeline crossings under railroads and highways.

(v) Any pipelines carrying hazardous materials shall conform to the rules and regulations of the U.S. Department of Transportation governing the transmission of the materials.

(vi) Telecommunications with longitudinal installations within Interstate, Freeway and other Access Controlled Highway right of way shall conform to Utah Administrative Rule R907-64.

(2) Subsurface Utility Engineering.

(a) The use of Subsurface Utility Engineering (SUE) shall be required as an integral part of the design for new utility facility installations on the right of way when determined by UDOT to be warranted.

R930-7-8. Definitive Design Requirements.

(1) Location Requirements.

(a) Longitudinal Installations. The type of utility construction, vertical clearances, lateral location of poles and down guys, and related ground mounted utility facilities along roadways are factors of major importance in preserving a safe traffic environment, the appearance of the highway, and the efficiency and economy of highway construction and maintenance. Longitudinal utility facilities shall be located on a uniform alignment and as close to the right of way line as practicable. The joint use of pole lines is acceptable and encouraged; however, all installations shall be located so that all servicing may be performed with minimal traffic interference. The following additional requirements apply to longitudinal installations.

(i) Utility facilities shall be located to minimize the need for future utility relocations due to highway improvements, avoid risks to the highway, and not adversely impact environmentally protected areas.

(ii) The location of utility installations along urban streets with closely abutting structures such as buildings and signs generally requires special considerations. These considerations shall be resolved in a manner consistent with the prevailing limitations and as approved by UDOT.

(iii) The location of utility facilities and associated appurtenances shall be in accordance with the Americans with Disabilities Act.

(iv) The horizontal location of utility facilities and appurtenances within the right of way shall conform to the current edition of the AASHTO Roadside Design Guide.

(v) Adequate warning devices, barricades, and protective devices must be used to prevent traffic hazards. Where circumstances necessitate the excavation closer to the edge of pavement than established above, concrete barriers or other UDOT approved devices shall be installed for protection of traffic in accordance with UDOT Traffic Control Standards and UDOT's Supplemental Drawings.

(vi) There are greater restrictions on the accommodation of utility facilities within interstate, freeway, and other access-controlled highway right of way. See rule R930-7-10 for details.

(b) Overhead Installations.

(i) Minimal vertical clearances for installed overhead lines are 18 feet for crossings and longitudinal installations, and 23 feet for intersections. In addition, the vertical clearance for overhead lines above the highway and the vertical and lateral clearance from bridges and above ground UDOT facilities shall meet or exceed the current edition of the National Electrical Safety Code. Where overhead lines cross UDOT above ground facilities, including but not limited to signs, traffic signal heads, poles, and mast arms, vertical and lateral clearance shall meet OSHA working clearances for electrical lines in effect at the time of the installation which will accommodate maintenance work by UDOT personnel without having to discharge or shield the lines.

(ii) Utility companies planning to attach cable to other utility company poles shall obtain approval from the owner of the poles prior to a permit being issued by UDOT.

(iii) The utility facility shall conform to the current edition of the AASHTO Roadside Design Guide. Where there are existing curbed sections, utility facilities shall be located as far as practicable behind the face of curbs and, where feasible, behind sidewalks at locations that will not interfere with adjacent property use. In all cases there shall be a minimum of two feet clearance behind the face of the curb. All cases shall be resolved in a manner consistent with prevailing limitations and conditions.

(iv) Before locating a utility facility at other than the right of way line, consideration shall be given to designs

using self-supporting, armless single pole construction, with vertical alignment of wires or cables, or other techniques permitted by government or industry codes that provide a safe traffic environment. Deviations from required clearances may be made where poles and guys can be shielded by existing traffic barriers or placed in areas that are inaccessible to vehicular traffic.

(v) Where irregular shaped portions of the right of way extend beyond or do not reach the normal right of way limits, variances in the location of utility facilities may be allowed to maintain a reasonably uniform alignment and thereby reduce the need for guys and anchors between poles and roadway.

(c) Subsurface Installations.

(i) Underground utility may be placed longitudinally outside of the pavement by plowing or open trench method. Underground utility shall be located on a uniform alignment and as near as practicable to the right of way line to provide a safe environment for traffic operations, preserve the integrity of the highway, and preserve space for future highway improvements or other utility facility installations. The allowable distance from the right of way line will generally depend upon the terrain and obstructions such as trees and other existing underground and overhead objects. On highways with frontage roads, longitudinal installations shall be located between the frontage roads and the right of way lines. Utility companies shall include the placement of markers referenced in rule R930-7-11(5).

(ii) Unless UDOT grants a deviation, underground utility installations across existing roadways shall be performed by trenchless method in accordance with UDOT requirements and casings may be required. Bore pits shall be located outside of the clear zone and at least 30 feet from the edge of the nearest through traffic lane and at least 20 feet from the edge of pavement on ramps. On low traffic roadways and frontage roads, as determined by UDOT, bore pits shall be at least ten feet from the edge of pavement, five feet beyond toe of slope under fill sections and at least five feet from the face of curb and meet clear zone requirements from the edge of the traveled way whichever is greater. Bore pits shall be located and constructed to eliminate interference with highway structural footings. Shoring shall be used where necessary.

TABLE 1

Bore Pit Locations

Bore Pit Set Back	Outside Clear Zone
At least ten feet from the edge of pavement, five feet beyond toe of slope under fill sections 20 and at least five feet from the face of curb	At least 30 feet from the edge of the nearest through traffic lane and at least feet from the edge of pavement on ramps.

(iii) The depth of bury for all facilities under pavement, sidewalk, drainage features or existing ground surface shall meet the minimum requirements outlined in Table 2 or the Company shall install its facilities to the depth requirement stated in each individual permit.

(iv) All underground utility installed in the right of way must meet the minimum standards for compaction as outlined in the current edition of the UDOT Standards and Specifications for Road and Bridge Construction.

(v) Where minimum depth of bury is not feasible, the facility shall be rerouted or, if permitted by UDOT through the deviation process outlined in R930-7-13, shall be protected with a casing, encasement, concrete slab, or other suitable protective measures.

TABLE 2

MINIMUM DEPTH OF BURY (Cover) For Underground Utility Facilities*

Location	Under Pavement	Under Sidewalk	Under Ditch	Utility Location Less Than 20 ft. From Edge of Pavement	Utility Location Greater Than 20 ft. From Edge of Pavement
Minimum Depth	4 ft.	3 ft.	3 ft.	5 ft.	3 ft.**
Measured From	Top of Pavement	Top of Sidewalk	Low point of Ditch	Ground Surface	Ground Surface

Measured Top of Utility Facility or Utility Buffer Zone (if required To by Utility Company)

* Applies to longitudinal and crossing installations, cased and uncased. ** Specific types of facilities such as high-pressure gas lines may require additional cover.

(d) Crossings.

(i) Utility crossings shall be at 90 degrees unless a deviation from this rule is approved by UDOT through the deviation process outlined in R930-7-13. Crossing installations under paved surfaces shall be by trenchless methods. Jetting by means of water or compressed air is not permitted.

(ii) Utility crossings shall be avoided in deep roadway cuts, near bridge footings, near retaining and noise walls, at highway cross drains where flow of water may be obstructed, in wet or rocky terrain where it is difficult to attain minimum cover, and through slopes under structures.

(e) Median Installations.

(i) Overhead utility facilities such as poles, guys, or other related facilities shall not be located in highway medians. Deviations may be considered for crossings where wide medians provide for sufficient space to meet clear zone requirements from the edges of the travelled ways.

(f) Appurtenances.

(i) Utility appurtenances shall be located outside the clear zone and as close to the right of way line as practicable. Where these requirements cannot be met, and no feasible alternative exists, a deviation to locate appurtenances within the clear zone in areas that are shielded by traffic barriers may be considered after the utility company provides written justification for such location for UDOT review through the deviation process outlined in R930-7-13. Cabinets, regulator stations, and other similar utility components shall not be located on the right of way unless they are determined by UDOT to be sufficiently small to allow a deviation.

(ii) Manholes, valve pits, and similar appurtenances shall be installed so that their uppermost surfaces are flush with the adjacent undisturbed surface.

(iii) Utility access points and valve covers shall be located outside the roadway where practicable. In urbanized areas where no feasible alternative exists, the utility company must coordinate with UDOT to meet safety, operational, and maintenance requirements of both the utility company and UDOT.

(iv) Utility companies shall avoid placing manholes in the pavement of high speed and high-volume highways. Deviations may be considered after written justification for such location is submitted by the utility company and reviewed and approved by UDOT through the deviation process outline in R930-7-13. New manhole installations shall be avoided at highway intersections and within the wheel path of traffic lanes.

(v) Vents, drains, markers, utility access holes, shafts, shut-offs, cross-connect boxes, pedestals, pad-mounted devices, and similar appurtenances shall be located along or across highway rights of way in accordance with the provisions of the Americans With Disabilities Act.

(2) Environmental Compliance.

(a) The utility company shall comply with all applicable state and federal environmental laws and regulations and shall obtain necessary permits. Environmental requirements include but are not limited to the following:

(i) Water Quality. A "Storm Water General Permit for Construction Activities" is required from the Utah Division of Water Quality for disturbances of one or more acres of ground surface.

(ii) Wetlands and Other Waters of the U.S. A "Section 404 Permit" is required from the U.S. Army Corps of Engineers for any impact to a wetland or water of the U.S.

(iii) Threatened or Endangered (T and E) Species. Comply with the Endangered Species Act; avoid impacts to T and E species or obtain a Permit from the U. S. Fish and Wildlife Service.

(iv) Historic and Archaeological Resources. Comply with the "National Historic Preservation Act"; avoid impacts to historic and archaeological resources. If resources could be impacted, contact the Utah State Historic Preservation Office.

(b) The utility company is responsible for environmental impacts and violations resulting from construction activities performed by the utility company or its contractors.

(c) If UDOT discovers or is made aware of a violation by the utility company or a failure to comply with state and federal environmental laws, regulations and permits, UDOT may revoke the permit, notify appropriate agencies, or both.

(3) Installation of Utilities in Scenic Areas.

(a) The type, size, design, and construction of utility facilities in areas of natural beauty shall not materially alter the scenic quality, appearance, and views from the highway or roadsides. These areas include scenic strips, overlooks, rest areas, recreation areas, adjacent rights of way and highways passing through public parks, recreation areas, wildlife and waterfowl refuges, and historic sites. Utility installations in these areas shall not be permitted. Deviation from this requirement may be allowed if there is no reasonable or feasible alternative as determined by UDOT based on written justification submitted by the utility company through the deviation process outlined in R930-7-13. On Federal-aid highways, all decisions related to utility installations within these areas shall be subject to the provisions detailed in 23 CFR Section 645.209(h).

(i) New underground utility installations may be permitted within scenic strips, overlooks, scenic areas, or in the adjacent rights of way, when they do not require extensive removal, or alteration of trees, and other shrubbery visible to the highway user, or do not impair the scenic appearance of the area.

(ii) New overhead installations of telecommunication and electric power lines are not permitted in such locations unless there is no feasible and reasonable alternative as determined by UDOT through the deviation process outlined in R930-7-13. Overhead installations shall be justified to UDOT by demonstrating that other locations are not available and that underground facilities are not technically feasible, economical or are more detrimental to the scenic appearance of the area.

Any installation of overhead facilities shall be made at a location and in a manner that will not detract from the scenic quality of the area being traversed. The installation shall utilize a suitable design and use materials aesthetically compatible to the scenic area, as approved by UDOT.

(4) Casing and Encasement Requirements.

(a) General. A carrier pipe is sometimes installed inside of a larger diameter pipe defined as a casing. Casings are typically used to provide complete independence of the carrier pipe from the surrounding roadway structure, and to provide adequate protection to the roadway from leakage of a carrier pipeline. It also provides a means for insertion and replacement of carriers without access or disturbance to through-traffic roadways.

(b) Casing requirements for crossing installations.

(i) All pipelines under pressure crossing under the roadbed of highways shall be in casings unless the pipeline is welded steel, meets industry corrosion protection standards, complies with federal and state requirements, and meets accepted industry standards regarding wall thickness and operating stress levels. In some cases, UDOT may require a casing regardless of these exceptions if needed to protect the roadway, maintain public safety, or both.

(ii) In urban areas where space is limited for venting or where small pipelines are crossing, specifically intermediate high-pressure lines, deviations for casing may be granted by UDOT.

(iii) Where a casing is required, it must be provided under medians, from top of back-slope to top of back-slope for cut sections, five feet beyond toe of slope under fill sections, five feet beyond face of curb in urban sections and all side streets, and five feet beyond any structure where the line passes under or through the structure. Deviations, outlined in R930-7-13, must be approved by UDOT. On freeways, expressways, and other access-controlled highways, casings shall extend to the access control lines.

(iv) Utility installations by trenchless technologies, such as jacking, boring, or horizontal directional drilling methods, may be placed under highways without a casing pipe if approved by a UDOT through the deviation process outlined in R930-7-13.

(v) Where minimum depth of bury is not feasible, the facility shall be rerouted or protected with a casing, concrete slab, or other suitable measures as determined by UDOT through the deviation process outlined in R930-7-13.

(c) Casings shall be considered for the following conditions:

(i) as an expedient method for the insertion, removal, replacement, or maintenance of carrier pipe crossings of freeways, expressways, and other access-controlled highways, and at other locations where it is necessary to avoid open trenched construction;

(ii) as protection for carrier pipe from external loads or shock either during or after construction of the highway; and

(iii) as a means of conveying leaking fluids or gases away from the area directly beneath the roadway to a point of venting at or near the right of way line, or to a point of drainage in the highway ditch or a natural drainage way.

(d) UDOT may require casings for pressurized carriers or carriers of a flammable, corrosive, expansive, energized, or unstable material.

(e) Trenchless installations of coated carrier pipes shall be cased. Permission to deviate from this requirement may be granted where assurance is provided against damage to the protective coating.

(f) Encasement or other suitable protections shall be considered for pipelines with less than minimum cover, such as those near bridge footings or other highway structures, or across unstable or subsiding ground, or near other locations where hazardous conditions may exist.

(g) Rigid encasement or suitable bridging shall be used where support of pavement structure may be impaired by depression of flexible carrier pipe. Casings shall be designed to support the load of the highway and superimposed loads thereon and, as a minimum, shall be equal to or exceed the

structural requirements of UDOT highway culverts in the UDOT Structures Design and Detailing Manual (SDDM).

(h) Casings shall be sealed at the ends using suitable material to prevent water and debris from entering the annular space between the casing and the carrier. Such installations shall include necessary appurtenances, such as vents and markers.

(5) Mechanical and Other Protective Measures for Uncased Installation.

(a) When highway pipeline crossings are installed without casings or encasement, the following are controls for providing mechanical or other protection.

(i) The carrier pipe shall conform to utility material and design requirements and utility industry and government codes and standards. The carrier pipe shall be designed to support the load of the highway plus superimposed loads operating under all ranges of pressure from maximum internal to zero pressure. Such installations shall use a higher factor of safety in the design, construction, and testing than would normally be required for cased construction.

(ii) Suitable bridging, concrete slabs, or other appropriate measures shall be used to protect existing uncased pipelines which may be vulnerable to damage from construction or maintenance operations. Construction or maintenance activities shall not proceed until protective measures are approved by UDOT.

(b) Uncased crossings of welded steel pipelines carrying flammable, corrosive, expansive, energized, or unstable materials may be permitted if additional protective measures are taken in lieu of encasement. Such measures shall use a higher factor of safety in the design, construction, and testing of the uncased carrier pipe, including thicker wall pipe, radiograph testing of welds, hydrostatic testing, coating and wrapping, and cathodic protection.

R930-7-9. Utilities on Highway Structures.

(1) General.

(a) The installation of utility facilities on highway structures can adversely impact the integrity and capacity of the structure, the safe operation of traffic, maintenance efficiency, complexity to perform needed structure rehabilitation or replacement of the structure, and the aesthetic appeal of the structure. Utility facilities shall not be installed on highway structures except in extreme cases. When installation of utilities at an alternate location exceeds the cost of attaching to the structure by four times, UDOT will consider such an installation as described in paragraph (2) of this section, R930-7-9.

(b) Installing utility facilities within 50 feet of structures may impact the design, installation, operation, maintenance and safety of the structures, and the utility facilities. Utility companies shall address potential impacts when projects are proposed to ensure compatibility between utility facilities and UDOT structures and to assure all relevant utility industry codes and UDOT structural requirements are adequately addressed.

(2) Installation on Highway Structures.

(a) The utility company shall submit documentation requesting installation on a highway structure to UDOT through UDOT's permitting system for review and possible approval.

(b) Attachment of a utility facility will only be considered if the structure is adequate to support the additional load and can accommodate the utility without compromising highway features. This adequacy must be verified by a load rating completed by the utility company in accordance with the current versions of the UDOT Structures Design and Detailing Manual and UDOT Bridge Management Manual including calculations.

(c) If UDOT allows a utility installation on a highway structure, it shall be at a location and of a design approved by UDOT. In addition, the utility installation on a highway structure shall be subject to the following requirements:

(i) Due to variations in highway structure designs, site-specific conditions, and other considerations, there is no standardized method by which utilities are installed on structures. Therefore, each proposed installation shall be considered on its individual merits and shall be individually designed for the specific structure.

(ii) Where installations of pipelines carrying hazardous materials are allowed, the pipeline shall be cased. The casing shall be open or vented at each end to prevent possible build-up of pressure and to detect leakage. Where located near streams, casings shall be designed and installed so that leakage does not compromise the stream. If a deviation from this Rule, R930-7, is allowed for no casing, additional protective measures shall be used including higher standards for design, safety, construction and testing of the pipeline than would normally be required for cased construction.

(iii) All pipeline installations carrying gas or liquid under pressure which by their nature may cause damage or injury if leaked, shall be installed with emergency shutoff valves. Such valves shall be placed within an effective distance on each side of the structure, as approved by UDOT, and shall be automatic if required by UDOT.

(iv) Utility installations on highway structures shall not reduce vertical clearances above rivers, streams, roadway surfaces or rails. Installations should be designed to occupy a position beneath the deck in an interior bay of a girder or beam, or within a cell of a box girder bridge. Installations shall always be above the bottom of girders on a girder bridge or above the bottom of the bottom cord of a truss bridge. Utility installations outside of a bridge structure are unsightly and susceptible to damage and will only be approved by UDOT if there is no reasonable alternative.

(v) All utility facilities installed on highway structures shall be constructed of durable materials, designed with a long-life expectancy, and must be installed in a manner that will minimize routine servicing and maintenance.

(vi) Utility facility mountings shall be of sufficient strength to carry the weight of the utility and shall be of a design and type that will not rattle or loosen due to vibrations caused by vehicular traffic. Acceptable utility installation methods are hangers or roller assemblies suspended either from inserts from the underside of the bridge floor or from hanger rods clamped to the flange of a superstructure member. Bolting through the bridge floor is not permitted. Where there are transverse floor beams sufficiently removed from the underside of the deck, the utility placement shall allow adequate clearance to enable full inspection of both the deck and the utility line. UDOT may consider a proposal to support the utility line on top of the floor beams.

(vii) Telecommunication and electric power line installations shall be suitably insulated, grounded, and preferably carried in protective conduit or pipe from the point of exit from the ground to re-entry. Cable shall be carried to a manhole located beyond the back-wall of the structure. Access manholes are not allowed in a bridge deck.

(viii) Utility installations shall provide for lineal expansion and contraction due to temperature variations in conjunction with bridge movement.

(ix) All utility facility clearances from structure members must conform to all governing codes and shall not render any portion of the structure inaccessible for maintenance purposes.

(x) The utility company shall be responsible for restoration or repair of any portion of a structure or highway damaged by utility facility installation, maintenance or use.

(xi) The expansion of an existing utility facility carried by an existing structure may be permitted if the expansion does not adversely impact the performance and load carrying capacity of the structure and otherwise complies with this rule.

(xii) All components of the utility attachment shall be protected from corrosion. Steel components shall be stainless, galvanized or painted in accordance with the current UDOT Standard Specifications for Highway and Bridge Construction.

(3) Utility Company Responsibilities.

(a) It is the responsibility of the utility company to obtain approval from UDOT for a highway structure installation. The utility company shall know UDOT's requirements prior to initiating the design for installation. A Utah registered Professional or Structural Engineer shall be responsible for the design if the installation is allowed. The utility company must prepare and submit complete design documents showing all details of the proposed highway structure installation. These documents shall include plans, calculations, updated load rating with a Virtis load rating model, the permit application, and any other necessary information. The utility company shall be responsible for protecting, maintaining or relocating its utility installation, including the arrangement of service interruptions, to accommodate future UDOT structure work.

(b) All materials incorporated in the design must be certifiable for quality and strength and full specifications must be provided in support of the design.

(c) Adequate written justification must support the need for installing the utility facility on the structure and demonstrate that there is no viable cost-effective alternative.

(d) Design documents are required to meet requirements of the current versions of the AASHTO LRFD Bridge Design Specifications and UDOT Structures Design and Detailing Manual.

R930-7-10. Utilities within Interstate, Freeway and Access Controlled Right of Way.

(1) General Provisions. There are two basic types of access control.

No Access - provides access only at interchanges. Crossings at grade and direct driveway connections are prohibited. Access is controlled by fencing. This is typical of interstates and freeways.

Limited Access - provides access to selected roads. There may be some crossings at grade and some private driveway connections. This is typical of expressways and certain other highways.

(2) Factors UDOT may consider for allowing Utility accommodation within access controlled right of way include distance between distribution points, terrain, cost, and prior existence.

(3) Longitudinal telecommunication installations may be allowed under Rule R907-64 and Utah Code Section 72-7-108.

(4) Pursuant to FHWA regulations, UDOT may allow longitudinal accommodation of utility facilities but with greater restrictions within no access and limited access highway right of way as follows:

(a) Longitudinal installations within no access highway right of way are not permitted except in cases where no other feasible location exists and under strictly controlled circumstances. FHWA approval is required for installations on interstate roadways. Longitudinal telecommunication facilities are allowed pursuant to Utah Code Section 72-7-108.

(b) Longitudinal installations within limited access highway right of way are generally not permitted.

(5) Utility facilities may cross no access and limited access highway right of way but with additional requirements as noted below in Subsection R930-7-10(7).

(6) Longitudinal Utility Facilities.

(a) In addition to the requirements in Subsection R930-7-8(1)(a), the following requirements apply:

(i) Service connections are not permitted within no access highway right of way. Service connections are not permitted within limited access highway right of way unless no reasonable alternative exists as demonstrated by the utility company and as reviewed and approved by UDOT through the deviation process outlined in R930-7-13.

(ii) Service, maintenance, and operation of utilities installed along and within no access highway right of way may not be conducted from the through-traffic roadways or ramps. All maintenance activities must be accessed from a point approved by UDOT and FHWA.

(iii) An existing utility facility within the right of way acquired for an interstate, freeway, or access-controlled highway project may remain if it remains outside of the pavement section and within five feet of the outer most right of way limits, can be serviced, maintained, and operated without access from the through-traffic roadways or ramps, and it does not adversely affect the safety, design, construction, operation, maintenance, or stability of the interstate, freeway, or access-controlled highway. Otherwise, it shall be relocated.

(iv) Where approval for installation is permitted, utility installations and related components shall be buried parallel to the interstate, freeway, or access-controlled highway and shall be located within five feet of the outer most right of way limits. Utility appurtenances shall be located as close as possible to the right of way line.

(v) An existing utility carried on an interstate, freeway, or access-controlled highway structure crossing a major valley or river may be permitted by UDOT to continue to be carried at the time the route is improved if the utility facility is serviced without interference to the traveling public.

(7) Utility Crossings.

(a) In addition to the requirements in Subsection R930-7-8(1)(d), the following requirements apply.

(i) A utility following a crossroad or street which is carried over or under an interstate, freeway, or access-controlled highway must cross the interstate, freeway, or access-controlled highway at the location of the crossroad or street in such a manner that the utility can be serviced without access from the through-traffic roadways or ramps.

(ii) Overhead utility lines crossing an interstate, freeway, or access-controlled highway shall be adjusted so that supporting structures are located outside access control lines. In no case shall the supporting poles be placed within the clear zone. Where required for support, intermediate supporting poles may be placed in medians of sufficient width that provide the clear zone from the edges of both travelled ways. If additional lanes are planned, the clear zone shall be determined from the ultimate edges of the travelled way. When right of way lines and access control lines are not the same, such as when frontage roads are provided, supporting poles may be in the area between them.

(iii) At interchange areas, supports for overhead utility facilities will be permitted only if located beyond the clear zone of traffic lanes or ramps, sight distance is not impaired, and can be safely accessed.

(iv) Manholes and other points of access to underground utilities may be permitted within the right of way of an interstate, freeway, or access-controlled highway if they can be serviced or maintained without access from the through-traffic roadways or ramps. When right of way lines and access control lines are not the same, such as when frontage

roads are provided, manholes and other points of access may be in the area between them.

(v) Where a casing is not otherwise required, it shall be considered as expedient in the insertion, removal, replacement, or maintenance of carrier pipes crossing interstate, freeways, or access-controlled highways. Casings shall extend to the access control lines. See Subsection R930-7-8(4).

(8) Longitudinal Telecommunications Installation.

(a) Installation must comply with R907-64.

(9) Wireless Telecommunications Facilities.

(a) Facilities must comply with R907-64.

R930-7-11. Utility Construction and Inspection.

(1) General Provisions.

(a) The method used for utility construction work is generally determined by local conditions. The location, terrain, obstructions, soil conditions, topography, and UDOT standards to maintain the integrity and safety of the right of way and roadway are important considerations for the proper placing of utilities. Familiarity and compliance with this rule will facilitate the construction process for utility companies.

(b) UDOT may perform routine inspection of utility construction work to monitor compliance with the license agreement, encroachment permit and with state and federal regulations. A permit may be revoked for cause if a utility company or contractor is not complying with the terms and limitations of the permit which will require a new permit at the contractor's expense to proceed with the utility construction work.

(c) Costs associated with the inspection are the responsibility of the utility company. Failure to pay inspection invoices issued by UDOT may result in revocation of the permit and may require the posting of an inspection bond on future permit applications.

(2) Utility Construction and Maintenance.

(a) The utility company shall not begin any utility construction work on UDOT right of way until the permit is issued and notice to proceed is given to the utility company by UDOT. After notice to proceed is received, the utility company shall complete construction in accordance with UDOT requirements.

(b) Traffic control for utility construction and maintenance operations shall conform to UDOT's current accepted Utah MUTCD or UDOT Traffic Control Plans, whichever is more restrictive. All utility construction and maintenance operations shall be planned to keep interference with traffic to an absolute minimum. On heavily traveled highways, utility operations interfering with traffic shall not be conducted during periods of peak traffic flow. This work shall be planned so that closures of intersecting streets, road approaches, or other access points are held to a minimum.

(c) When utility construction work involves existing underground utility facilities, the utility company or Utility contractor shall comply with Utah Code Title 54, Chapter 8a, Damage to Underground Utility Facilities.

(d) Utility construction work shall be completed within the number of days specified in the approved permit. When the Utility construction work is not completed within the specified time UDOT has the option of extending the time or revoking the permit and acting on the appropriate bond to pay for completion of the Utility construction work. All time extensions granted by UDOT shall be in writing.

(e) Disturbance of areas within highway right of way during utility construction work shall be kept to a minimum and all right of way shall be restored to the satisfaction of UDOT. All utility construction work methods used within the highway right of way shall be performed in accordance with current Standard Specifications for Highway and Bridge Construction, UDOT Permit Excavation Handbook, the provisions of this rule, and encroachment permit requirements. Unsatisfactory utility construction work, as determined by UDOT's inspector, shall promptly be corrected to comply with appropriate standards and specifications. UDOT may issue written notification that identifies the deficiencies and the time to cure or correct the deficiencies. If the restoration is not performed within the specified time, UDOT may perform or have performed the corrective work and the utility company shall be responsible for all costs incurred.

(f) The utility company shall avoid disturbing or damaging existing highway drainage facilities and is responsible for repairs, including restoration of ditch flow lines. Wherever necessary, the utility company shall provide drainage away from its own facilities to avoid damage to the highway.

(g) The utility company is prohibited from spraying, cutting or trimming trees or other landscape elements unless specific written permission is obtained from UDOT. The approval of an encroachment permit does not include approval of such work unless the cutting, spraying, and trimming is clearly indicated on the permit application. In general, when permission is given, only light trimming will be permitted. When tree removal is approved, the stump shall be removed, and the hole properly backfilled to natural ground density or restored as otherwise approved by UDOT. The work site shall be left clean and trash free. All debris shall be removed. Reseeding shall be performed in accordance with UDOT's approved schedule.

(h) UDOT may require that any abandoned utility pipe or conduit be removed, capped, or filled with an appropriate material acceptable to UDOT.

(i) All utility facilities located within the highway rights of way shall be adequately maintained. Any physical modifications, relocations, additions, excavations, or impedance of traffic within the highway right of way shall require the submittal of a new encroachment permit application. No Utility construction work may begin until the new encroachment permit is approved.

(j) Restoration of the highway right of way disturbed by excavation, grading work, or other activities shall include reseeding and restoration of existing landscaping. All areas which are denuded of vegetation because of construction or maintenance shall be reseeded, which is subject to inspection and acceptance by UDOT.

(3) Open Trench Construction Traversing Highways.

(a) Open trench utility installations are not permitted unless an acceptable trenchless method is unfeasible such as in unsuitable soil conditions or extremely difficult rock. UDOT may also grant a deviation from requiring trenchless construction where older pavement is severely deteriorated.

(b) Open trench construction on highway rights of way is limited to areas where traffic impacts are minimal. Any pavement structure broken, disturbed, cut or otherwise damaged in any way shall be removed and replaced to a design equal to or greater than the surrounding undisturbed pavement structure, or as otherwise determined by UDOT.

(c) For open trench installations, the utility company is responsible for the restoration and maintenance of the pavement structure for three years as outlined in Section R930-7-6(6)(b), unless a deviation from this rule as outlined in R930-7-13 is granted by UDOT. When the utility company or its contractor performing the Utility construction work is not equipped, or fails to properly repair the damage to the pavement structure, UDOT will repair the damage and bill the utility company for the actual costs incurred, including any administrative costs. All pavement restoration work performed by the utility company shall be completed within

48 hours after completion of the excavation and backfill.

(d) All open trench utility installations shall conform to the applicable provisions of the current UDOT Standard Specifications for Road and Bridge Construction.

(e) It is the utility company's responsibility to restore the structural integrity of the roadbed, secure the utility facility against deformation and leakage, assure that the utility trench does not become a drainage channel, and that the backfilled trench doesn't impede or alter road drainage.

(f) Trenches shall be cut to have vertical faces. Maximum width shall be two feet or the outside diameter of the pipe plus one and one-half feet on each side. All trenches shall be shored where necessary and shall meet OSHA requirements.

(g) Bedding shall be provided to a depth of one-half the diameter of the pipe and shall consist of granular material, free from rocks, lumps, clods, cobbles, or frozen materials, and shall be graded to a firm surface without abrupt change in bearing value. Unstable soils and rock ledges shall be sub-excavated from beneath the bedding zone and replaced with suitable granular material.

(h) Backfill shall meet the current UDOT Standard Specification 02056 Embankment, Borrow and Backfill and 03575 Flowable Fill. Additional specifications may be required by UDOT.

(i) Pavement replacement may be performed by either the utility company or a contractor engaged by the utility company. The Region Permits Officer will determine pavement replacement requirements. The utility company is liable for three years from the date of completion of the pavement replacement for the cost of repairs if the backfill subsides or the patched pavement fails.

(j) Where a utility company fails to properly repair any damage to the pavement structure, UDOT may repair the damage and the costs, including administrative costs, will be the responsibility of the utility company.

(4) Trenchless Utility Construction.

(a) Trenchless utility installations are required for all utility crossings of highways or roadways, where practicable. This construction method is required to avoid disturbing the pavement surface, particularly where underground utilities exist on major highways, expressways, or freeways. Only UDOT approved methods may be used to install a utility facility under a highway.

(b) All trenchless pipeline installations shall extend under and across the entire roadway prism to a point five feet beyond the toes of the fore-slopes, borrow ditch bottom, or across the access controlled right of way lines, but never less than 15 feet from the edge of pavement or a ramp.

(c) Water jetting or tunneling may not be used. Water-assisted or wet boring may be permitted if the utility company can demonstrate to UDOT through the deviation process outlined in R930-7-13 that the operation will not adversely impact the roadway and sub-grade.

(d) The size of a trenchless operation shall be restricted to the minimum size necessary for the utility or pipeline installation and shall not exceed the utility facility or pipeline diameter by more than 5% unless otherwise required based on equipment and product manufacturer's specifications. Grout or flowable fill backfill shall be used for carriers or casings and for over-breaks, unused holes or abandoned carriers or casings. The composition of the grout shall be cement mortar, a slurry of fine sand or other fine granular materials.

(e) Portals including surface openings and bore pits shall be established safely beyond the highway surface and the clear zone to avoid impairing the roadway during installation of the pipeline.

(f) Where a bulkhead seals the pipeline portal, the portal shall be suitably offset from the surfaced area of the highway. Shoring and bulkheading shall conform to applicable federal, state, and local jurisdiction construction and safety standards. Where a bulkhead is not installed in the pipeline, the portal shall be offset no less than the vertical difference in elevation between the surfaced area of the highway and the bottom of the bore pit.

(g) The utility company shall follow manufacturer's guidelines and industry standards for equipment set-up and operation. The utility company shall assess soil conditions to determine the most appropriate installation technique. Subsurface bore paths shall be tracked and recorded by the utility company, and all failed bores shall be appropriately abandoned and backfilled by the utility company.

(h) Drilling fluids shall be prepared and used according to fluid and drilling equipment manufacturer's guidelines. The utility company shall use fluid containment pits at both bore entry and exits points and shall use appropriate operational controls so as to avoid heaving or loss of drilling fluids from the bore. Antifreeze additives shall be non-toxic and biodegradable products.

(i) The utility company shall dispose of drilling fluids and other materials in permitted facilities that accept the types of chemicals and wastes used in the trenchless operations.

(5) Utility Markers.

(a) The location of utility facilities within highway right of way presents certain risks to construction and maintenance activities, construction personnel, and to the facility itself when work in and around the area of the utility facility is in progress. To minimize risk and maximize safety, it is the utility company's responsibility to provide identification markers and tracer wire for all buried facilities located within the highway right of way.

(b) A trace wire, metallic tape, or other accepted industry material approved by UDOT for locating utilities with geophysical equipment shall be properly installed with all non-metallic underground utility facilities.

(c) The utility company shall place permanent markers identifying the location of underground utility facilities, whether they are crossing the highway right of way or installed longitudinally along the highway right of way. Markers shall not interfere with highway safety and maintenance operations. Preferably, markers shall be located at the right of way line if that location will provide adequate warning. The telephone number for one-call notification services to request marking the line location prior to excavation, and for emergency response, shall appear on the marker.

(d) The utility company shall maintain its markers in good condition. Color faded markers shall be replaced as necessary so that their visibility to maintenance crews and others is not impaired.

(6) GPS Requirements.

(a) It is the responsibility of the utility company to produce and maintain a set of certified reproducible plans and an electronic file showing the location of all its utility facilities within the highway right of way including overhead facilities and crossing points. The utility company is responsible to maintain an accurate file to be used by UDOT for future planning to avoid utility conflicts. These plans shall also include appropriate vertical and horizontal ties to the highway survey control.

(b) For new and relocated facility installations, the utility company shall use a survey grade Global Positioning System (GPS) to survey their facility locations and submit an electronic file to UDOT. Specific requirements for survey data will be determined by UDOT. The location survey points shall include major junction points, manholes, valves, changes in line or grade, and any other significant feature that will facilitate installation approval and future planning

activities.

(c) If the utility company fails to provide UDOT with a set of plans and files showing the surveyed utility locations upon request then the utility company is required to secure the actual locations of their facilities at no cost to UDOT. If the utility company fails to provide the utility location information requested within ten days, UDOT may hire a Subsurface Utility Engineering (SUE) consultant to locate the utilities at the utility company's expense.

R930-7-12. Maintenance Responsibility.

The utility company is responsible for maintaining its facilities and liability for all harm that that may arise that is related to or as a result of its utility facilities and appurtenances, whether operational, out of service, or abandoned, on or in UDOT right of way or UDOT property. Other than highway appurtenances, UDOT is not responsible to maintain any facility within the highway right of way or UDOT property.

R930-7-13. Deviations.

(1) Deviations from provisions of this rule may be allowed if they do not violate state and federal statutes, law, or regulations and UDOT has determined the use of the right of way will be for the public good without compromising the transportation purposes of the right of way.

(2) Requests for deviations with limited impact may be considered by UDOT on an individual basis, upon justification submitted by the utility company. UDOT will not consider cost to the utility company as the primary deciding factor in granting a deviation.

(3) Requests for significant deviations must demonstrate extreme hardship and unusual conditions and provide justification for the deviation. Requests must demonstrate that alternative measures can be specified and implemented and still fulfill the intent of state and federal statute and regulations. Requests for these deviations must include the following:

(a) formal request by the utility company; and

(b) an evaluation of the direct and indirect design, safety, environmental, and economic impacts associated with granting a deviation.

(4) In order for UDOT to grant a significant deviation the following approvals are necessary:

(a) formal recommendation for approval by the UDOT Region Preconstruction Engineer and Permits Officer or the officer's supervisor, as applicable;

(b) formal recommendation for approval from the UDOT Region Director or designee;

(c) concurrence of the UDOT Statewide Railroad and Utilities Director; and

(d) FHWA concurrence if the deviation applies to a utility facility located within a Federal-aid highway right of way.

(5) For UDOT projects that are solely state funded, UDOT may deviate from the utility relocation regulations contained in the Code of Federal Regulations by reimbursing a utility company for replacement of existing buildings with functionally equivalent buildings, if the following requirements are met:

(a) the utility company owns the property in fee that UDOT needs to acquire for its project;

(b) the utility company owns operational facilities located upon, below or above the property;

(c) the utility company owns a building on the property that provides maintenance services for the utility facility;

(d) a property purchase in accordance with 49 CFR 24 will not adequately compensate the utility company's costs to relocate and functionally re-establish the maintenance facility; and

(e) the deviation promotes the public interest.

R930-7-14. Enforcement.

(1) This rule is subject to enforcement pursuant to and as provided for in Utah Code, and in Utah Administrative Code, or federal regulations and may include, but not be limited to the following:

(a) administrative citations, in letter form, citing non-compliance items and proper redress requirements, including notice that UDOT may take whatever action is necessary to rectify the situation and subsequently submit a claim against the appropriate bond to recover from the utility company actual costs incurred by UDOT;

(b) increased bonding levels to recoup potential restoration costs on current or future utility projects;

(c) denial of future permits until past non-compliance is resolved;

(d) termination of the License Agreement; and

(e) legal action to secure reimbursement from the utility company for costs incurred by UDOT due to damages to the right of way or noncompliance with the permit, rule or License Agreement.

KEY: right of way, utilities, utility accommodation
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Notice of Continuation September 12, 2017

R930. Transportation, Preconstruction.
R930-8. Utility Relocations Required by Highway Projects.
R930-8-1. Purpose.

This Rule sets forth the Department's requirements and authority as to a Utility Company's coordination and cooperation when removal, relocation, or alteration of a utility facility is made necessary by a highway project and sets forth the options the Department may pursue to proceed with a highway project in the event that a utility company fails to cooperate or coordinate with the Department as required by statute or rule.

R930-8-2. Authority.

This Rule is enacted pursuant to Utah Code Sections 54-3-29(5)(b), (6), and (7), and 72-6-116(2) and (6).

R930-8-3. Definitions.

As used in this Rule R930-8:

(1) "Department" means the Utah Department of Transportation.

(2) "Non-operating Property" and "Non-operating Real Property" refer to property owned by a Utility Company that is not directly part of the Utility Company's physical plant or facilities that provide the utility service.

(3) "Utility Company" and "Utility" shall have the same definition as in Utah Code Section 72-6-116(b) and (c) and may be used interchangeably.

R930-8-4. Utility Company Coordination and Cooperation.

When the Department notifies a Utility that relocation of a utility facility may be necessary due to a highway project, both the Department and the Utility shall use their best efforts to identify conflicts, minimize utility relocation costs and operational impacts, highway project costs and delays, and to coordinate and cooperate with one another, as directed in Utah Code Sections 54-3-29(6)-(7) and 72-6-116(6). When the Department believes a conflict exists, it will offer an initial scoping meeting and provide authorization for the Utility to do preliminary design work. The Utility shall:

(1) Provide to the Department, the location of each utility facility likely to be affected following the process set forth in rule R930-7-11(6).

(2) Identify to the Department conflicts between the Department's proposed highway work and the Utility's operation of its utility facilities.

(3) Submit to the Department all conveyances, vesting documents, or other evidence of title to real property related to the potential relocation of utility facilities as early as practicable.

(4) Submit to the Department the Utility's proposed design for relocation; detailed cost estimates; a reasonable relocation schedule to accommodate the highway project; reasonable limits on highway project work, including utility outage windows and construction loadings by the Department; and communication procedures between the parties. A reasonable relocation schedule for the project includes, but is not limited to, work sequencing, task durations, material ordering, notification requirements, mobilization, third-party coordination, communication between the parties, and any other activity necessary for the relocation of the utility facility to accommodate the highway project. If the relocation work is to be completed prior to the Department awarding the highway project to its contractor, the Utility shall include specific dates in the schedule.

(5) Execute a written relocation agreement with the Department. The agreement shall include terms and conditions, including but not limited to, the relocation scope of work, reimbursement provisions, federal requirements, description and location of the work to be undertaken, plans and drawings, and detailed cost estimates.

(6) After the Department has awarded the highway project to a contractor, coordinate with the contractor to develop a detailed work plan and schedule and address all other matters of mutual concern during construction. Submit to the Department written acknowledgement of the approved schedule.

(7) Perform the work necessary for removal, relocation, or alteration of the utility facility in accordance with the detailed work plan and schedule developed in (4) and (6) above, and as described in the relocation agreement and supplemental agreements.

R930-8-5. Timeliness.

The work listed in Subsections R930-8-4(1) through (7) must be timely completed by the Utility as not to delay the highway project or otherwise increase costs to the project. The Department will provide reasonable deadlines for the Utility, so the Utility can meet the deadlines and not unnecessarily delay the highway project. The Department will also provide the Utility with reasonable updates of highway project schedule changes.

R930-8-6. Relocation.

The basic concept when relocating utility facilities is to functionally restore the Utility's operation facilities that existed prior to the Department constructing a highway project.

(1) The Department incorporates by reference 23 CFR Section 645, subpart A (05/15/1985), for all utility facility relocations required by the Department's highway projects. For deviations in determining whether the Utility's real property needed for the highway project should be handled as a utility relocation or right-of-way acquisition, rule R930-7-13(5) shall apply.

(2) If the Utility's regulatory and construction requirements can be met, the Department may require utility companies to jointly occupy trenches for the highway construction projects. To the extent Utilities have valid agreements concerning the joint use of above ground facilities, the Utilities shall cooperate with each other for the relocated joint use.

(3) If a Utility determines the existing utility facilities do not need to be replaced or are not needed to maintain its operational facilities, payment for the real property, which is needed to accommodate the construction of the highway project where the utility facilities are located, shall be handled as a right-of-way acquisition.

R930-8-7. Replacement of Property Rights.

(1) When the Department replaces a Utility's fee interest or easement, the Utility shall transfer title to the prior fee or easement to the Department without charge.

(2) If the Utility has facilities within a fee or easement and the facilities are relocated within the Department's right-of-way, the Utility shall transfer title to the fee or easement without charge to the Department and the Department shall reimburse the Utility 100% of the future utility relocation costs in compliance with 23 CFR Section 645, subpart A.

(3) When the Utility's facilities are located in a public utility easement as defined in Utah Code Section 54-3-27, the Department may purchase a replacement public utility easement and may require the Utility to relocate its facilities to the replacement public utility easement.

(4) The Utility shall pay UDOT for any betterment between the existing real property interest and the real property interest acquired for relocation.

(5) If the Department obtains a court ordered occupancy or right-of-entry from a property owner, the Utility shall relocate its facilities onto the replacement property rights while the Department obtains the final order or deeds from the property owner.

(6) Acquisition of Non-operating Real Property from a Utility shall be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and applicable right-of-way procedures in 23 CFR Section 710.203.

R930-8-8. Reimbursement of Relocation Costs.

(1) Reimbursement for relocation costs shall be determined in accordance with 23 CFR Section 645, 103, 107, 109, 111, 113, 115, 117, and the Program Guide, Utility Relocation and Accommodation on Federal-Aid Highway Projects, Sixth Edition, January 2003, as amended, Cost Development and Reimbursement, pages B-21 to B-23.

(2) If a Utility cannot provide a copy of a permit that shows the Department's acceptance of the deviation from the rule in effect at the time of installation of the utility facilities and the utility facilities do not meet the overhead and depth of bury clearance requirements, the Utility must relocate its facilities without any reimbursement from the Department. The Utility shall be responsible for 100% of its relocation costs for non-compliant utility facilities.

(3) When reimbursement is made on the basis of actual costs, the Utility's estimate and final billing shall be itemized to show the totals for labor, overhead construction costs, travel expenses, transportation, equipment, materials and supplies, handling costs, and other services.

(4) The Utility's final billing statement shall be provided in a format that facilitates making comparisons with the Department's approved estimates.

(5) A Utility must submit final billings to the Department within six months following the completion of the relocation work. The Department may make a final payment when the final bill is received from a Utility more than six months after the completion of the relocation work if the Department and the Utility have agreed in advance that a longer time period is needed.

(6) The costs incurred by the Department and a Utility for compliance with federal and state statutes, rules, and regulations will be included as part of the utility relocation costs.

(7) Temporary utility facility relocations required by the highway project will be included as part of the utility relocation costs.

(8) Telecommunication utility companies granted longitudinal interstate access are required to pay all relocation costs pursuant to Utah Code Section 72-7-108.

R930-8-9. Betterments.

No betterment credit is required for the replacement of utility devices or materials that are:

(1) Required by the highway project;

(2) Of equivalent standards although not identical;

(3) Of the next highest grade or size when the existing devices or materials are no longer regularly manufactured;

(4) Required by law pursuant to governmental and appropriate regulatory commission code; or

(5) Required by current design practices regularly followed by the Utility in its own work, and there is a resulting direct benefit to the highway project.

R930-8-10. Issuance of Administrative Order; Enforcement.

(1) In the event that a Utility fails to timely coordinate and cooperate with the Department at any point in the utility relocation process, the Department may issue an administrative order pursuant to Utah Code Section 72-6-116(2)(b) to the Utility to accommodate the highway project. The administrative order shall be issued by the Department's Statewide Railroad and Utilities Director and will include a reasonable timeframe for Utility Company actions to be complete the relocation of the utility facilities, including any design.

(2) If the Utility fails to comply with the Department's administrative order, and the failure to comply is not caused by a third party who the Utility has no control over, the Department may issue an administrative order to remedy non-compliance. The Department may order any or all the following remedies:

(a) The Department may recover from the Utility increased costs caused by the Utility's unreasonable or unjustified delays. Such actual and indirect costs may include, but are not limited to, increased costs on the current highway project or related projects, added expenses from loss of a construction season, and loss of project funding.

(b) The Department may deny further permits for utility installation under R930-7 until the Utility's non-compliance is resolved.

(c) The Department may perform design work and construction work on behalf of the Utility for those utility facilities located within the highway right-of-way, except for fiber for telecommunications, electricity, and natural gas. The Department will only perform such work if the work can be performed without violating any state or federal statute, regulation, or safety requirement. The Utility shall reimburse the Department for the costs the Department incurs to relocate the Utility's facilities, in amounts allowed by Utah Code Section 72-6-116(3).

(3) In addition, the Department may pursue additional remedies or claims against a Utility in a district court in Utah.

(4) The Department shall not limit or waive any of its remedies or claims allowed in this rule or law.

(5) The Department may require a Utility to comply with a practicable shortened process or expedited schedule when an emergency exists that could affect public safety or the structural or functional integrity of the highway.

R930-8-11. Agency review.

A Utility aggrieved by an administrative order issued under Rule R930-8-10 and Utah Code Section 72-6-116(2)(b) may file a written request for agency review with the Department pursuant to the Administrative Procedures Act, Utah Code Title 63G, Chapter 4, and Rule R907-1. The presiding officer for the agency review will be the Department's Director of Operations, who will issue the Department's Final Order. The administrative proceedings shall be informal.

KEY: right-of-way, utility accommodation, utility facilities, utilities

July 23, 2019 **54-3-29(5)(b)**
54-3-29(6)
54-3-29(7)
72-6-116(2)
72-6-116(6)

R945. UTech Board of Trustees, Administration.
R945-1. UTech Technical College Scholarship.
R945-1-1. Purpose and Authority.

(1) The purpose of this rule is to establish requirements related to the technical college scholarships described in Section 53B-2a-116, including a college's administration of the scholarships, student eligibility and priority, application processes, and determination of satisfactory progress.

(2) This rule is authorized and directed by Subsection 53B-2a-116(6).

R945-1-2. Definitions.

As used in this rule:

(1) "Career and Technical Education Pathway" means:

(a) For a technical college, a certificate-granting program approved in accordance with Utah System of Technical Colleges (UTech) policy;

(b) For an institution of higher education, a program approved in accordance with State Board of Regents policy that leads to a certificate and/or associate degree and that prepares students for an occupation; or

(c) For a school district or charter school, a sequence of courses that leads to a secondary school credential of labor market value approved by the State Board of Education.

(2) "Deferral" means the carrying forward of a UTech Scholarship, as described in Subsection R945-1-6(4).

(3) "Graduate from High School" means to qualify for a high school diploma as specified in Subsection R277-705-2(3).

(4) "High Demand Program" means the same as that term is defined in Subsection 53B-2a-116(1)(a).

(5) "Institution of Higher Education" means an institution within the Utah System of Higher Education described in Subsection 53B-1-102(1)(a).

(6) "Satisfactory Progress" means completion of any course, as included in an official transcript from the provider of a career and technical education pathway, that is specific to a career and technical education pathway discipline. Courses in a career and technical education pathway that are not specific to a pathway discipline, such as general education courses, are not eligible.

(7) "Secondary School" means grades 7-12 in whatever kind of school the grade levels exist, as provided in Subsection R277-705-2(5).

(8) "Technical College" means an institution within the Utah System of Technical Colleges described in Section 53B-2a-105.

(9) "Underserved Population" means any individual of ethnic or racial minority status; any individual with a disability; any individual identified as a displaced homemaker, single parent, economically disadvantaged, or of limited English proficiency under Carl D. Perkins Grant reporting procedures; or any individual receiving Pell Grant, Bureau of Indian Affairs, or Department of Workforce Services benefits.

(10) "UTech Scholarship" means a financial award provided by a technical college in accordance with Section 53B-2a-116 and this rule to a student enrolled in a technical college.

R945-1-3. Award Requirements.

To receive a UTech Scholarship, an applicant shall satisfy the following criteria:

(1) Graduate from high school within the 12 months prior to receiving a scholarship;

(2) Enroll in, or show intent to enroll in, a high demand program at a technical college within the 12 months after high school graduation, except as granted in a deferral; and

(3) While enrolled in a secondary school, make satisfactory progress in a career and technical education pathway offered by a technical college, an institution of higher education, or a school district or charter school.

R945-1-4. Application Process.

The process for an individual to apply to a technical college to receive a UTech Scholarship shall be administered by the technical college, and shall include the following:

(1) College Application: The technical college shall provide an application form, process, and instructions which include the elements provided in this rule, and which may be integrated with other scholarship application forms and processes administered by the college.

(2) UTech Scholarship Specificity: In its application forms and processes, the technical college shall clearly identify the UTech Scholarship's name, award requirements, use, and application process, and shall provide for the applicant to specify that the applicant is applying to be considered for the UTech Scholarship.

(3) Application Deadline: The technical college shall establish deadlines for submission of applications in accordance with the college's scholarship application processes.

(4) Required Documentation: The technical college shall require and retain the following information from each applicant in its application forms and accompanying documents:

(a) Identity and contact information consistent with the college's regular scholarship applications, such as name, address, and date of birth.

(b) Application date.

(c) UTech Scholarship specificity as described in Subsection R945-1-4(2).

(d) Demographic information to include underserved population identification.

(e) High school information, on transcripts or otherwise documented, to include:

(i) Name of high school attended;

(ii) Expected or actual high school graduation date; and

(iii) Expected or actual satisfactory progress in a career and technical education pathway offered by a technical college, an institution of higher education, or a school district or charter school.

(f) Technical college enrollment intentions to include:

(i) Name of technical college;

(ii) High demand program in which the student is enrolled or intends to enroll;

(iii) Date on which the student began or expects to begin the high demand program;

(iv) Intended enrollment hours per week;

(v) Expected program completion date; and

(vi) If a deferral is requested, justification for the deferral in accordance with 945-1-6(4)(a).

R945-1-5. Determination of Scholarship Awards and Amounts.

A technical college shall determine scholarship eligibility, prioritize selection of award recipients and the amount of each award, and grant scholarships according to the following provisions and sequence.

(1) Determination of Eligibility: For each application deadline in Subsection R945-1-4(3), the college shall identify from the application documentation:

(a) Eligible Applicant: Each applicant that satisfies or is expected to satisfy all award requirements in Section R945-1-3.

(b) Eligible Award Period: For each eligible applicant, the period determined by:

(i) Start Date: The date on which the applicant expects

to begin a high demand program, or, in the case of an applicant who has previously begun the intended high demand program, the day after the high school graduation date; and

(ii) End Date: 12 months after the high school graduation date, or, in the case of a requested deferral, 12 months after the start date.

(c) Eligible Award Amount: For each eligible applicant, the total cost of tuition, program fees, and required textbooks projected to accrue for the high demand program in which the applicant intends to be enrolled during the eligible award period, informed by the applicant's intended enrollment hours per week.

(2) Prioritizing and Awarding of Scholarships: The college shall award scholarships within an application deadline group as follows:

(a) Underserved Populations: The college shall first award a scholarship to each eligible applicant who is a member of an underserved population, in the amount provided in Subsection R945-1-5(3).

(b) Remaining Applicants: The college shall, with any funds remaining after awarding scholarships to members of underserved populations, award scholarships to all other eligible applicants in the amounts provided in Subsection R945-1-5(3).

(3) Calculation of Award Amounts: The college shall determine award amounts for each scholarship recipient identified in Subsection R945-1-5(2) as follows:

(a) Full Eligible Award Amount: If available funds provided in Section R945-1-7 are sufficient for the total of all eligible award amounts identified in Subsection R945-1-5(1)(c) in a given priority group designated in Subsection R945-1-5(2), then each eligible applicant in the group shall be awarded 100% of the applicant's eligible award amount.

(b) Partial Eligible Award Amount: If available funds are less than the total of all eligible award amounts for the priority group, the available funds shall be divided by the number of eligible applicants in the group to determine the maximum award per recipient. Each eligible applicant shall be awarded up to the maximum award, not to exceed 100% of the applicant's eligible award amount. Any unobligated funds remaining for applicants awarded less than the maximum award shall be retained in the scholarship fund for future applicants.

(c) Unavailability of Funds: If there are no available scholarship funds remaining after awards have been determined for a higher priority group, no scholarships shall be awarded for remaining applicants.

R945-1-6. Conditions and Utilization of Scholarship.

(1) Eligibility Verification: Before applying funds for a scholarship awarded in Subsection R945-1-5(2) to a student, a technical college shall verify that all award requirements in Section R945-1-3 have been met by obtaining and retaining additional documentation of actual qualifications which at the time of application were expected or intended to have been met.

(2) Use of Funds: Scholarship funds may be used only for tuition, program fees, and required textbooks in a high demand program in which the recipient is enrolled, up to the recipient's award amount determined in Subsection R945-1-5(3). Funds shall be applied by the college directly to authorized costs and shall not be issued to a recipient in cash.

(3) Time Limitation: Except in the case of a granted deferral, a technical college may only apply a scholarship toward a recipient's costs described in Subsection R945-1-6(2) from the day on which the college awards the scholarship as identified in Subsection R945-1-5(2) until 12 months after the day on which the recipient graduates from high school.

(4) Deferral: A college may, by request from the recipient at any time before or during the recipient's award period, defer all or any portion of a scholarship for up to three years after the day on which the recipient graduates from high school.

(a) Deferrals may be granted at the discretion of the college for military service, humanitarian/religious service, documented medical reasons, or other exigent reasons.

(b) The duration of a deferred scholarship shall be for the time remaining in the recipient's award period, not to exceed 12 months.

(5) Cancellation: A technical college may cancel a scholarship if the recipient does not, as determined by the college:

(a) Maintain enrollment in the college on at least a half-time basis; or

(b) Make satisfactory progress toward the completion of a certificate in a high demand program.

(6) Unused Funds: Upon termination of a recipient's scholarship due to non-acceptance, completion, cancellation, or any other reason, any unused award amounts shall be removed from liability/obligated status under Subsection R945-1-7(4) and retained in the college's restricted UTech Scholarship account.

R945-1-7. UTech Scholarship Funds.

(1) Distribution of Award Funds: The annual distribution of UTech Scholarship award funds to technical colleges by the Board of Trustees shall be as provided in Subsection 53B-2a-116(2).

(2) Restricted Funds: UTech Scholarship funds shall be considered restricted funds by a technical college, shall be recorded only in restricted UTech Scholarship accounts, and shall be used only for scholarship recipients' tuition, program fees, and required textbooks during their award periods.

(3) Unused/Carryover Funds: Each technical college is encouraged to annually utilize all UTech Scholarship funds for qualified students. Surplus funds (i.e., fund balance or net assets) shall be retained in the restricted fund and carried over from one fiscal year to the next.

(4) Obligated Funds: The projected value of a given student's scholarship award shall be recorded as a liability from the time of the student's selection until the student's scholarship ends, and shall be regarded as utilized funds when determining unused/carryover funds. Obligated funds remaining after the student's scholarship ends shall be returned to unused/carryover funds.

R945-1-8. Appeals.

A technical college shall provide a process and criteria, to be referenced in application materials, by which an applicant may appeal a decision made by the college that is related to this rule, to include provision for any unresolved appeal to be submitted to the Commissioner of Technical Education for final agency action.

R945-1-9. Reporting.

A technical college shall submit calendar year-end data regarding its UTech Scholarships to the Office of the Commissioner by January 15 of each year, and at other times as required by the Office of the Commissioner, to include information pertaining to the provisions of this rule with respect to applications, awards, enrollments, utilization, funding, or other information as directed by the Commissioner.

KEY: scholarships, technical college, career and technical education, secondary education
July 16, 2019 53B-2a-116

R990. Workforce Services, Housing and Community Development.
R990-200. Private Activity Bonds.
R990-200-1. Purpose.

The purpose of this rule is to establish criteria for allocating private activity bond volume cap to a qualified applicant, whether an allocation of private activity bond volume cap may be extended, and related matters.

R990-200-2. Authority.

Section 35A-8-2104 requires the Private Activity Bond Review Board (Board of Review) to make rules for the allocation of volume cap for private activity bonds.

R990-200-3. Definitions.

Terms used in these rules are defined in Section 35A-8-2102. Terms not defined in that Section or in these rules shall be defined as used and characterized in the Private Activity Bonds Application, Scoring Criteria and other Board of Review authorized documents. In addition:

(1) "Affordable" means at least 20% of the residential units in the project are set aside for families whose incomes do not exceed 50% of Area Median Income (AMI), adjusted for family size; or at least 40% of the residential units in the project are set aside for families whose incomes do not exceed 60% of AMI, adjusted for family size.

(2) "Applicant" means a borrower or issuing authority submitting an application for an allocation of volume cap or a project sponsor submitting an application on behalf of an issuing authority for an allocation of volume cap.

(3) "Available Volume Cap" means the unencumbered volume cap.

(4) "Application" means:

(a) the electronic state of Utah Federal Low-Income Housing Credit Consolidated Application for multi-family applicants;

(b) the Private Activity Bond Authority Manufacturing Facility Application for the manufacturing, redevelopment or exempt facility applicants; or

(c) the Private Activity Bond Authority Application for Single Family or Student Loan applicants.

(5) "Closed" or "close" means the time at which bonds are exchanged for funds.

(6) "Good standing" means the applicant or recipient has, for the immediately preceding five years:

(a) timely remitted any required fees and payments due,

(b) timely submitted any required reports,

(c) has not failed to close, and

(d) has not misrepresented an application or a previous or current project to the Board of Review.

(e) In addition, for multi-family projects, the applicant or recipient, for the immediately preceding five years:

(i) has not exceeded rent or income limits,

(ii) has not converted any affordable unit into a market rate unit, and

(iii) has rented designated affordable units only to qualified Low and Moderate Income tenants.

(7) "Project" means the applicant's plan for which the private activity bonds are being sought.

(8) "Recipient" means a borrower or issuing authority that has been awarded an allocation of volume cap.

(9) "Low and Moderate Income" means a household whose income upon initial occupancy does not exceed 140% of AMI adjusted for family size.

(10) "Market Rate" means housing units that are not affordable.

R990-200-4. Applicant Qualifications.

(1) An application will be presented to the Board of Review only if each project applicant, owner, developer, and manager:

(a) is in good standing;

(b) has not been disbarred by any state or federal agency within the previous ten years;

(c) has not been in bankruptcy within the previous ten years;

(d) has not been in default or breach of any mortgage or project-related contract within the previous five years; and

(e) is not subject to a pending fair housing or civil rights investigation or, within the previous ten years, a negative fair housing or civil rights determination.

(2) An application shall include documentation executed by each applicant, owner, developer, and manager certifying that each signatory meets each requirement identified in R990-200-4(1).

(a) An application shall include documentation supporting and verifying the accuracy of each certification.

(3) Each applicant shall provide any necessary and required materials and supporting documents not less than 30 nor greater than 120 calendar days before the Board of Review meeting when the application will be considered.

(4) Application forms and materials are available on the Department of Workforce Services Housing and Community Development website.

(5) An application will not be considered until any necessary and required materials are provided and complete.

(6) An incomplete application will be returned to the applicant without further action.

(7) No new, additional, or replacement documentation will be accepted after the application submission deadline specified in R990-200-4(3).

R990-200-5. Criteria for Allocating Volume Cap.

(1) Private activity bond volume cap allocations are made each calendar year based upon available volume cap.

(a) The decision whether to allocate volume cap to an applicant shall be determined by the Board of Review, in its sole discretion.

(b) Allocations are not made on a first-come-first-served basis.

(c) Each complete application submitted before the deadline will be evaluated and scored in comparison with other applications for the same type of project use. The weight each evaluation criteria is given is as identified on the score sheet approved by the Board of Review.

(d) The Private Activity Bond program staff and consultants under contract with the Board of Review will evaluate and score each application. In the event demand for funding exceeds the available volume cap, applications will be numerically ranked for the purpose of allocation.

(e) When considering multiple applications at a meeting, the Board of Review may choose to award each applicant an equal share, pro rata share, priority for multi-family housing or other classification, or other division of available volume cap.

(2) When deciding to allocate volume cap to an applicant, the Board of Review shall consider the criteria outlined in Section 35A-8-2105 and the following additional criteria:

(a) timely submission of completed application;

(b) timely payment of applicable fees;

(c) applicant's experience in successfully completing projects utilizing private activity bonds;

(d) project financing, including executed letters of intent for debt and equity funding;

(e) project readiness, including required public entity approvals, site ownership, and architect and construction contracts;

(f) timely response to any questions raised by the Board of Review and Private Activity Bond program staff;
(g) status of project's financing at time of application;
(h) appointment of bond counsel;
(i) letter from bond counsel opining the project qualifies for private activity bonds;
(j) appointment of investment banker or, if private placement, buyer of the bonds;
(k) detailed commitment letters from financial entities involved;
(l) ability to cause bonds to be issued within 12 months of allocation;
(m) past history of forfeited allocation commitments;
(n) length of tax-exempt bond amortization; and
(o) other factors considered appropriate by the Board of Review.

(3) Multi-Family Housing applicants must meet the criteria of the Low-Income Housing Tax Credit Program administered by the Utah Housing Corporation. In addition to the criteria in R990-200-5(2), the Board of Review shall consider the following criteria when deciding to allocate volume cap to Multi-Family Housing applicants:
(a) bond amount per unit;
(b) bond amount per affordable unit;
(c) the percentage, in relation to the group of applications currently being evaluated, of the private activity bond allocation being requested;
(d) percentage of public financing, including the value of grants, loans, fee waivers, and concessions, but excluding housing tax credits;
(e) total cost per unit and per unit square footage;
(f) percentage of developer fee contributed to project;
(g) percentage of affordable units;
(h) percentage of special needs units;
(i) cash flow per unit;
(j) percentage of taxable bonds;
(k) location, with preference for projects located in:
(i) underserved areas,
(ii) communities without the same type of projects, and
(iii) difficult to develop areas as defined by HUD;
(l) project characteristics, including:
(i) day care,
(ii) education center,
(iii) mixed income projects, with both affordable and market rate units, and
(iv) size of proposed project;
(m) mitigation of environmental issues, including installing radon gas extraction fans or removing the source of radon; and
(n) acquisition, rehabilitation, and remediation of buildings with Utah or federal historic designation, including removal of hazards and including appraisals and a relocation plan for current residents.

(4) In addition to the criteria in R990-200-5(2), the Board of Review shall consider the following criteria when deciding to allocate volume cap to Manufacturing Facility, Redevelopment and Exempt Facilities applicants:
(a) new full-time-equivalent job creation, including a list of new positions and wages, and excluding construction and other temporary jobs;
(b) retention of jobs;
(c) training and education of employees;
(d) bond amount to permanent full-time-equivalent jobs ratio;
(e) permanent full-time-equivalent jobs created or retained that provide above average wages when compared to other applicants' average wages and the community average wage;
(f) demonstrated need for tax-exempt financing, including:
(i) projected cash flow for the first three years of operation, including supporting documentation, and
(ii) explanation for selecting variable or fixed rates;
(g) community support, including:
(i) financial support,
(ii) zoning approval,
(iii) tax increment financing, and
(iv) deferral of fees;
(h) competitive costs for construction and equipment related expenses; and
(i) ready-to-go status, including:
(i) manufacturing facility zoned for use,
(ii) proximity of infrastructure to site,
(iii) need for special infrastructure,
(iv) environmental study, if required by lender,
(v) current title report and site plan of project, and
(vi) building description.

(5) Prior to considering an application, a Board of Review member shall disclose the substance of any communication the member has had outside of a public meeting with an applicant or other interested party regarding the project.

(6) The allocation certificate issued for Multi-Family Housing volume cap shall restrict the occupancy of market rate rental units to families whose incomes do not exceed 150% of Area Median Income (AMI), adjusted for family size, for at least 51 years from the date on which at least 50% of the residential units in the project are first occupied.

(a) Recipients and owners shall comply with any terms of the Certificate of Allocation, including any Additional Conditions approved by the Board of Review.

(b) Recipients and owners shall submit documentation to Private Activity Bond program staff within 15 days after the issuance of bonds, and at other times upon request, to verify compliance with the terms of the Certificate of Allocation.

(7) A recipient may not be awarded additional volume cap for a previously funded project. A recipient may relinquish allocated volume cap and submit a new application for the total amount requested.

R990-200-6. Fees.

(1) An application fee shall be submitted together with the application.

(2) An extension fee shall be submitted together with the extension request.

(3) A certificate fee shall be submitted upon award of allocation and before issuance of a certificate.

(4) An application, extension request, or other action may not be processed or added to the Board of Review agenda until required fees are paid.

(5) Fees are non-refundable.

R990-200-7. Extensions.

(1) A recipient that has not closed its volume cap allocation within 95 calendar days of the date of Board of Review approval may request an extension from the Board of Review.

(a) Manufacturing projects, qualified redevelopment projects, and exempt facility projects are not eligible to carry forward their volume cap allocation beyond the end of the calendar year in which they received the allocation. The bonds must close by the third Saturday in December in the same year the recipient received the allocation. Any volume cap not issued by this date is automatically relinquished back to the Board of Review.

(b) The Board of Review makes no representation as to whether an issuer will allow the allocation to be transferred to

another project if the previously approved transaction fails.

(2) A recipient requesting an extension of a previously approved and current volume cap allocation shall submit a completed extension form to the Private Activity Bond program staff no later than 21 calendar days before the Board of Review meeting.

(3) An extension request will not be presented to the Board of Review if the request for an extension is received more than 20 months after the initial allocation.

(4) An extension request will not be presented to the Board of Review unless the recipient's account is in good standing.

(5) An extension request for a second or more extension will be evaluated, scored, and considered by the Board of Review, subject to the provisions of R990-200-7(8).

(6) An extension approval may not exceed ninety-five (95) calendar days or until the date of the next Board of Review meeting, whichever is sooner.

(7) A recipient requesting a second or more extension shall submit a completed extension request status report and extension fee, no later than 21 calendar days before the Board of Review meeting, on the form provided on the website of the Board of Review, together with each request.

(a) Private Activity Bond program staff shall perform a comprehensive progress review before the Board of Review meeting where an extension will be considered, and shall prepare a recommendation.

(b) The applicant may be required to reapply after the third extension review if there is no substantial evidence of being able to close the bonds.

(8) A recipient may not receive more than five extensions. A request for a sixth or more extension will not be presented to the Board of Review, and the previously allocated volume cap shall be revoked.

(9) A recipient requesting an extension shall attend the Board of Review meeting, prepared to update the Board of Review on the progress of the development and answer any questions

(10) A City or County issuer may submit a request for a Carryforward Certificate no later than 21 calendar days before the December Board of Review meeting.

(11) A City or County issued a Carryforward Certificate shall comply with the extension request requirements for each three month period after an allocation has been made to a project, including but not limited to:

(a) attendance at each Board of Review meeting, prepared to update the Board of Review on the progress of the development and answer any questions, and

(b) submission of a complete comprehensive progress report.

(12) Allocations to the Utah Housing Corporation, a municipality, a county, or a public university may be extended for no more than three years.

(a) Allocations that are not issued in the same calendar year may be carried forward but may not be extended.

(13) The Board of Review reserves the right to approve or reject an extension or Carryforward certificate in accordance with the criteria established by this Rule.

(14) In the event an extension or Carryforward Certificate request is untimely, denied by the Board of Review in its sole discretion, or otherwise not presented to the Board of Review in accordance with these Rules, the allocation shall be revoked.

R990-200-8. Revocation of Private Activity Bond Allocation.

(1) The Board of Review reserves the right to revoke a recipient's allocation and authority to issue the bonds if there is credible information that a material misrepresentation was presented to the Board of Review or any of its members.

(2) The Board of Review reserves the right to revoke a recipient's allocation if:

(a) the project's affordable units are reduced by 10% or more;

(b) the project's total number of units are reduced by 15% or more;

(c) the site location of the project is changed;

(d) total costs per unit are increased by 15% or more;

(e) total project costs are increased by 20% or more; or

(f) the Board of Review determines there is no substantial evidence the recipient will be able to close the bonds.

(3) A recipient in good standing may submit a new application with updated information for a volume cap allocation.

KEY: allocation, private activity bond, volume cap
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