R33. Administrative Services, Purchasing and General Services.
R33-1. Utah Procurement Rules, "General Procurement Provisions," Definitions.
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 responsive bidders or offerors.

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

(4) "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.

(5) "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.

(6) "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.

(7) "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.

(8) "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.

(9) "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.

(10) "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.

(11) "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.

(12) "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.

(13) "Favored vendor" means, as it relates to this administrative rule, a situation wherein a procurement officer, evaluation committee member, contract administrator, or public employee unfairly, by means of deceit or in violation of law, favor one vendor over another vendor(s) in the process of awarding a public contract. Examples of ways in which public contracts are improperly steered to a "favored vendor" include, but are not limited to:

(a) Collusion or manipulation of the procurement to steer a contract award to a particular vendor;

(b) Illegal bribes or kickbacks paid by a vendor in exchange for a contract award;

(c) Unjustified sole source contract awards to a vendor;

(d) Bid rigging schemes;

(e) Writing specifications that are overly restrictive or in a way that gives an unfair advantage to a particular vendor;

(f) Improperly splitting purchases to avoid the standard competitive procurement process;

(g) Leaking bid or proposal information to a particular vendor at the exclusion of other vendors; or

(h) Not following established policies and procedures when approving changes orders.

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

(15) "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.

(16) "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.

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

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

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

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

(21) "Section and Subsection" refers to the Utah Code.

(22) "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.

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

KEY: government purchasing, Utah procurement rules, general procurement provisions, definitions
January 28, 2015 63G-6a
Notice of Continuation July 8, 2014

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 and responsive bidder.

(3)(a) The award of a contract shall be to the lowest responsive and responsible bidder 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 Submissions.

(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 Rule 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;

(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 submission of bids, 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. Bids and Modifications to a Bid Received After the Due Date and Time.

(1) Bids and modifications to a bid submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason, except as determined in R33-6-105(4).

(2) When submitting a bid or modification 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 system will stop the process and the bid or modification to the bid will not be accepted.

(3) When submitting a bid or modification to 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 or modification to a bid being late.

(a) All bids or modifications to 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 or modification to a bid not being received by the established due date and time, the bid or modification to a bid shall be accepted as being on time.

R33-6-106. Errors in Bids.

The following shall apply to the correction or withdrawal of an inadvertently erroneous bid, or the cancelation of an award or contract that is based on an unintentionally erroneous bid. A decision to permit the correction or withdrawal of a bid or the cancellation of any award or a contract under this Rule shall be supported in a written document, signed by the in the chief procurement officer or head of a procurement unit with independent procurement authority.

(1) Errors attributed to a bidder's error in judgment may not be corrected.

(2) Provided that there is no change in bid pricing or the cost evaluation formula, errors not attributed to a bidder's error in judgment may be corrected if it is in the best interest of the procurement unit and correcting the mistake maintains the fair treatment of other bidders.

(a) Examples include:

(i) missing signatures,

(ii) missing acknowledging receipt of an addendum;

(iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the chief procurement officer or head of a procurement unit with independent procurement authority to correct this mistake;

(iv) typographical errors;

(v) mathematical errors not affecting the total bid price; or

(vi) other errors deemed by the chief procurement officer or head of a procurement unit with independent procurement authority to be immaterial or inconsequential in nature.

(3) The chief procurement officer or head of a procurement unit with independent procurement authority shall approve or deny, in writing, a bidder's request to correct or withdraw a bid.

(4) Corrections or withdrawal of bids shall be conducted in accordance with Section 63G-6a-605.

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 and responsible bid is received in response to an Invitation for Bids, including multiple stage bidding, an award may be made to the single bidder if the procurement officer determines that the price submitted is fair and reasonable, 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;

(b) the procurement canceled; or

(c) the procurement may be conducted as a sole source under Section 63G-6a-802.

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, Utah Procurement Code.

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

R33-6-114. Technology Acquisitions for Executive Branch Procurement Units.

(1) For executive branch procurement units, the Invitation for Bids may state that at any time during the term of a contract, the acquiring agency may undertake a review in consultation with the Utah Technology Advisory Board and the Department of Technology Services to determine whether a new technology exists that is in the best interest of the acquiring agency, taking into consideration cost, life-cycle, references, current customers, and other factors and that the acquiring agency reserves the right to:

(a) negotiate with the contractor for the new technology, provided the new technology is substantially within the original scope of work;

(b) terminate the contract in accordance with the existing contract terms and conditions; or

(c) conduct a new procurement for an additional or supplemental contract as needed to take into account new technology.

(2) Subject to the provisions of Section 63G-6a-802, the trial use or testing of new technology may be permitted for a duration not to exceed the maximum time necessary to evaluate the technology.

KEY: government purchasing, sealed bidding, multiple stage bidding, reverse auction
January 28, 2015 63G-6a
Notice of Continuation July 8, 2014

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

Request for Proposals shall be conducted in accordance with the requirements set forth in Sections 63G-6a-701 through 63G-6a-711, 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 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-402(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.

R33-7-104. 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) 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 Rule 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 Rule 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. This Rule 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.

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.

R33-7-401. Modification or Withdrawal of Proposal Prior to Deadline.

A proposals may be modified or withdrawn prior to the established due date and time for responding.

R33-7-402. Proposals and Modifications, Delivery and Time Requirements.

Except as provided in Rule R33-7-402(3), the following shall apply:

(1) proposals and modifications to a proposal submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason.

(2) When submitting a proposal or modification to 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 system should stop the process and the proposal or modification to a proposal will not be accepted.

(3) When submitting a proposal or modification to 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 or modification to a proposal being late.

(a) All proposals or modifications to 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 or modification to a proposal not being received by the established due date and time, the proposal or modification to a proposal shall be accepted as being on time.

R33-7-403. Errors in Proposals.

The following shall apply to the correction or withdrawal of an unintentionally erroneous proposal, or the cancellation of an award or contract that is based on an unintentionally erroneous proposal. A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract shall be supported in a written document, signed by the chief procurement officer or head of a procurement unit with independent procurement authority.

(1) Mistakes attributed to an offeror's error in judgment may not be corrected.

(2) Unintentional errors not attributed to an offeror's error in judgment may be corrected if it is in the best interest of the procurement unit and correcting the error maintains the fair treatment of other offerors.

(a) Examples include:

(i) missing signatures,

(ii) missing acknowledgement of an addendum;

(iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the chief procurement officer or head of a procurement unit with independent procurement authority to correct this mistake;

(iv) typographical errors;

(v) mathematical errors not affecting the total proposed price; or

(vi) other errors deemed by the chief procurement officer or head of a procurement unit with independent procurement authority to be immaterial or inconsequential in nature.

(3) Unintentional 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 error does not violate the requirements of the Utah Procurement Code or these administrative rules.

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.

R33-7-501a. Minimum Score Thresholds.

(1) An executive branch conducting procurement unit shall establish minimum score thresholds to advance proposals from one stage in the RFP process to the next, including contract award.

(2) 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. Correction or Withdrawal of Proposal.

(1) In the event an offeror submits a proposal that on its face appears to be impractical, unrealistic or otherwise in error, the chief procurement officer or head of a procurement unit with independent procurement authority may contact the offeror to either confirm the proposal, permit a correction of the proposal, or permit the withdrawal of the proposal, in accordance with Section 63G-6a-706.

(2) Offerors may not correct errors, deficiencies, or incomplete responses in a proposal that has been determined to be not responsible, not responsive, or that does not meet the mandatory minimum requirements stated in the request for proposals in accordance with Section 63G-6a-704.

R33-7-503. Interviews and Presentations.

(1) Interviews and presentations may be held as outlined in the RFP.

(2) Offerors invited to interviews or presentations shall be limited to those offerors meeting minimum requirements specified in the RFP.

(3) Representations made by the offeror during interviews or presentations shall become an addendum to the offeror's proposal and shall be documented. Representations must be consistent with the offeror's original proposal and may only be used for purposes of clarifying or filling in gaps in the offeror's proposal.

(4) The chief procurement officer or head of a procurement unit with independent procurement authority shall establish a date and time for the interviews or presentations and shall notify eligible offerors of the procedures. Interviews and presentations will be at the offeror's expense.

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, or the Utah Procurement Code. This administrative rule 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.

(a) An evaluation committee may request best and final offers when:

(i) no single proposal addresses all the specifications;

(ii) all or a significant number of the proposals received are unclear and the evaluation committee requires further clarification;

(iii) additional information is needed in order for the evaluation committee to make a decision;

(iv) the differences between proposals in one or more categories are too slight to distinguish;

(v) all cost proposals are too high or over the budget;

(vi) multiple contract awards are necessary to achieve regional or statewide coverage for a procurement item under an RFP and there are insufficient cost proposals within the

budget to award the number of contracts needed to provide regional or statewide coverage.

(2) Only offerors meeting the minimum qualifications or scores described in the RFP are eligible to respond to best and final offers.

(3) Proposal modifications submitted in response to a request for best and final offers may only address the specific issues and/or sections of the RFP described in the request for best and final offers.

(a) Offerors may not use the best and final offers process to correct deficiencies in their proposals not addressed in the request for best and final offers issued by the procurement unit.

(4) When a request for best and final offers is issued to reduce cost proposals, offerors shall submit itemize cost proposals clearly indicating the tasks or scope reductions that can be accomplished to bring costs within the available budget.

(a) The cost information of one offeror may not be disclosed to competing offerors during the best and final offers process and further, such cost information shall not be shared with other offerors until the contract is awarded.

(b) A procurement unit shall ensure that auction tactics are not used in the discussion process, including discussing and comparing the costs and features of other proposals.

(5) 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.

(6) 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.

(7) If a proposal modification is made orally during the interview or presentation process, the modification must be confirmed in writing.

(8) A request for best and final offers issued by a procurement unit shall:

(a) comply with all public notice requirements provided in Section 63G-6a-406;

(b) include a deadline for submission that allows offerors a reasonable opportunity for the preparation and submission of their responses;

(c) indicate how proposal modifications in response to a request for best and final offers will be evaluated;

(9) If an offeror does not submit a best and final offer, its immediately previous proposal will be considered its best and final offer;

(10) Unsolicited best and final offers will not be accepted from offerors.

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.

R33-7-701a. 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 may:

(a) conduct a review to determine if:

(i) the proposal meets the minimum requirements;

(ii) pricing and terms are reasonable; 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 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 Criteria Other Than Cost.

(1)(a) In accordance with Utah Code 63G-6a-704, the conducting procurement unit shall conduct an initial review of any applicable pass/fail minimum requirements set forth in the RFP to determine whether proposals are responsive and responsible or in violation of the Utah Procurement Code prior to submitting proposals to the evaluation committee. Examples of pass/fail minimum requirements include:

(i) Timeliness of receipt of proposals

(ii) Qualifications;

(iii) Certifications;

(iv) Licensing;

(v) Experience;

(vi) Compliance with State or Federal regulations;

(vii) Services provided;

(viii) Product availability;

(ix) Equipment;

(x) Other pass/fail minimum requirements set forth in the RFP.

(b) The evaluation committee may not evaluate proposals deemed non-responsive, nonresponsible or disqualified for violations of the Utah Procurement Code under (1)(a).

(c) In accordance with Utah Code 63G-6a-704, an evaluation committee may, after the initial pass/fail review by the conducting procurement unit or at any time during the RFP process, reject a proposal if it is determined that the person submitting the proposal is not responsible or the proposal is not responsive.

(2) In accordance with Utah Code 63G-6a-707, the evaluation committee shall evaluate each responsive and responsible proposal that has not been disqualified from consideration under the provisions of this chapter, using the criteria described in the request for proposals using the following procedures:

(a) Prior to the scoring of proposals, a procurement officer from the issuing procurement unit will meet with the evaluation committee and any staff that will have access to the proposals to:

(i) discuss the evaluation and scoring process to ensure that each committee member has a clear understanding of the scoring process and how points will be assigned;

(ii) discuss requirements regarding conflicts of interests,

the appearance of impropriety, and the importance of confidentiality;

(iv) discuss the scoring sheet and evaluation criteria set forth in the RFP; and

(v) provide a copy of Administrative Rule R33-7-703 to the evaluation committee and any staff that will have access to the proposals.

(b) Once the proposals have been received and it is clear which offerors are involved in 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 Utah Code 63G-6a-707 and administrative rule R33-24-107

(3) Unless an exception is authorized by the head of the issuing procurement unit, in order to avoid cost influencing the evaluation committee's scoring of non-price criteria, in accordance with Utah Code 63G-6a-707, costs may not be revealed to the evaluation committee until after the committee has finalized its scoring on all other technical non-price criteria in the RFP.

(4) After receipt of proposals, each committee member shall independently, as described in R33-7-705, read and score each proposal based on the technical non-price criteria set forth in the RFP to assess the completeness, quality, and desirability of each proposal.

(a) proposals must be evaluated solely on the stated criteria listed in the RFP.

(i) past performance ratings and references may be considered if listed as evaluation criteria in the RFP;

(ii) personal bias based on prior experience with a procurement item or the offeror cannot be considered in scoring proposals, except as provided in the RFP;

(iii) personal favoritism for a vendor or bias against a vendor cannot be considered in scoring proposals; and

(iv) subsections (ii) and (iii) shall not be construed to prevent a committee member from having a bias based on their review of a proposal in regard to the criteria in the solicitation. Evaluators are encouraged to request technical support from the conducting procurement unit or the issuing procurement unit when conducting their independent assessments and scoring.

(a) any request for technical support shall be submitted in writing to the conducting procurement unit or the issuing procurement unit.

(b) After the proposals have been evaluated and scored by individual committee members, the entire committee shall meet to discuss the proposals, if applicable conduct interviews, resolve any factual disagreements, and arrive at the final scoring. All committee members must be present to take any official action.

(i) If a committee member does not attend an evaluation committee meeting, the member shall be removed from the evaluation committee and the remainder of the committee may proceed with the evaluation, provided there are at least three evaluation committee members remaining.

(c) During committee discussions, each member may change their initial scoring. If additional information or clarification is needed from an offeror, the committee may, with approval by the issuing procurement unit, request information or clarification from an offeror. Such request will only be approved if it can be done in a manner that is fair to all offerors.

(d) At any time during the evaluation process, the evaluation committee may, with the approval of the issuing procurement unit, request best and final offers from responsible and responsive offerors and evaluate those offers in accordance with Utah Code 63G-6a-708 and Administrative Rule R33-7-601.

(e) Each evaluation committee member shall turn in a completed scoring sheet, signed and dated by the evaluation committee member.

(5) The evaluation committee may tally the final scores for criteria other than cost to arrive at a consensus score by the following methods:

(a) total of all of the points given by individual committee members; or

(b) an average of the individual scores.

(6) The evaluation shall submit its final recommended scores for all criteria other than cost to the issuing procurement unit.

(7) The issuing procurement unit shall follow the procedures set forth in Utah Code 63G-6a-707(5) pertaining to the following:

(a) reviewing the evaluation committee's final recommended scores for each proposal for all criteria other than cost;

(b) scoring cost based on the applicable scoring formula; and

(c) calculating the total combined score for each responsive and responsible proposal.

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

(9) The issuing procurement unit's role as a non-voting member of the evaluation committee will be to facilitate the evaluation process within the guidelines of the Utah procurement code and administrative rule.

(10) The issuing procurement unit may replace any member on the committee or reconstitute the committee in any way the issuing procurement unit deems appropriate to cure any impropriety. If the impropriety cannot be cured by replacing a member, then a new committee may be appointed or the procurement cancelled.

R33-7-704. Scoring of Evaluation Criteria, Other Than Cost, for Proposals Meeting Mandatory Minimum Requirements.

(1) The scoring of evaluation criteria, other than cost, for proposals meeting the mandatory minimum requirements in an RFP shall be based on a one through five point scoring system.

(2) Points shall be awarded to each applicable evaluation category as set forth in the RFP, including but 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) Other requirements specified in the RFP.

(3) Scoring Methodology:

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

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

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

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

(e) One point (Poor): The proposal fails to addresses the requirements described in the RFP or it addresses the

requirements inaccurately or poorly.

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 Rule R33-7-105;

(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under Rule 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 Rule 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.

KEY: government purchasing, request for proposals, standard procurement process
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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-402(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 administrative rule 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.

R33-12-404a. 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 Rule 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 Rule R33-8-401(3) and is subject to Section 63G-6a-803.

(2) Any contract change order authorized by a procurement unit under Rule 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. Technology Modifications.

(1) Any contract subject to a modification for technological upgrades shall have had a provision to that effect included in the solicitation. Any modification to a contract for upgraded technology must be substantially within the scope of the original procurement or contract, and if both parties agree to the modification, then the contract may be modified.

(2) Any contract subject to a modification for technological upgrades shall have had a provision to that effect included in the solicitation. No contract modification for new technology requested by an acquiring agency shall be exercised without the approval required under Section 63F-1-205, the new technology modification has been subject to the review as described in Rule R33-6-113 and the contracting parties agree to the modification.

(3) No contract may be extended beyond the term of the contract included in the solicitation 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 bidders or offerors;

(b) awarding a sole source contract; or

(c) identifying price outliers in bids and offers.

(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. Audit.

A procurement unit may, at reasonable times and places, audit or cause to be audited by an independent third party firm, by another procurement unit, or by an agent of the procurement unit, the books, records, and performance of a contractor, prospective contractor, subcontractor, or prospective subcontractor.

R33-12-606. Retention of Books and Records.

Contractors shall maintain all records related to the contract. These records shall be maintained by the contractor for at least six years after the final payment, unless a longer period is required by law.

All accounting for contracts and contract price adjustments, including allowable incurred costs, shall be conducted in accordance with generally accepted accounting principles for government.

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

(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", as defined in Section 63G-6a-103(40) and in the solicitation documents, has been met or are 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 Rule 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
January 28, 2015 63G-6a
Notice of Continuation July 8, 2014

R33. Administrative Services, Division of Purchasing and General Services.
R33-16. Controversies and Protests.
R33-16-101. Conduct.

Controversies and protests shall be conducted in accordance with the requirements set forth in Sections 63G-6a-1601 through 13G-6a-604. 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.

R33-16-201. 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.

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
January 28, 2015 63G-6a

R33. Administrative Services, Purchasing and General Services.
R33-26. State Surplus Property.
R33-26-101. State Surplus Property - General.

This rule sets forth policies and procedures which govern the acquisition and disposition of state and federal surplus property, vehicles, and firearms. 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 state surplus property and the state surplus property contractor.

R33-26-102. Requirements.

Under the provisions of Section 63A, Chapter 2, Section 103, the division shall:

(1) Except when a state surplus property contractor administers the state's program for disposition of state surplus property operate, manage, and maintain the state surplus property program;

(2) When a state surplus property contractor administers the state's program for disposition of state surplus property, oversee the state surplus property contractor's administration of the state surplus property program.

(3) Manage 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.

(4) Manage the disposition of state owned vehicles.

(5) Control the sale or transfer of firearms from state agencies and participating local agencies, as authorized in Section 63A, Chapter 2, Section 4.

(6) Handheld devices/technology (not transferred from state agencies to public schools).

R33-26-103. Definitions.

(1) Terms used in the Surplus Property Rules are defined in Section 63A-2-101.5.

(2) In addition:

(a) "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;

(b) "All-terrain type II vehicle" means any other motor vehicle, not defined in Subsection (2), (11), or (22), 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) "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.

(5) "Division" means the Division of Purchasing and General Services within the Department of Administrative Services created under Section 63A-2-101.

(6) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(7) "Firearm" means any state owned firearm, including any confiscated or seized firearm over which the state has disposal authority, and any firearm declared to be surplus property by a local subdivision.

(8) "Handgun" means any pistol or revolver.

(9) "Hunting or sporting rifle" means any long barreled shotgun or rifle manufactured for hunting or sporting purposes.

(10) "Licensed firearm dealer" means a firearms dealer licensed by the Federal Bureau of Alcohol, Tobacco and Firearms.

(11) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

(12) "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.

(13) "Motor vehicle" means a self-propelled vehicle intended primarily for use and operation on the highways.

(14) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle, all-terrain type II vehicle, or motorcycle.

(15) 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.

(16) "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.

(17)(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.

(18) "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.

(19)(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.

(20) "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.

(21) "Sailboat" means any vessel having one or more sails and propelled by wind.

(22) "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.

(23)(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.

(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) "USASP" means Utah State Agency for Surplus Property.

(28) "Vehicle" means the items identified and defined in Rule R33-26-103,except items (5), (7),(8), (9) (15), and (27), and includes all auxiliary equipment and components associated or attached to the vehicle and equipment used by the vehicle for its intended purpose. Examples of auxiliary equipment and components include snow plow blades, spreaders, sanders, vehicle fire extinguishers, emergency equipment, radios, truck bed racks and truck bed covers, generators, mounted welders, non-OEM, lights and light bars, etc.

(29) "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.

R33-26-201. 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. State-owned non-vehicle personal property shall not be processed by the division.

(2) This rule applies to and includes any residue that may be remaining from agency cannibalization of property.

(3) When a department or agency of state government determines that state-owned non-vehicle personal property is in excess to current needs, it will:

(a) transfer the non-vehicle surplus property directly to another department or agency of the state without involvement of the division; or

(b) notify the state surplus property contractor that the department or agency has surplus property.

R33-26-202. Information Technology Equipment.

(1) State-owned information technology equipment may be transferred directly to public institutions, such as schools and libraries, by the owning agency.

(2) Pursuant to the provisions of Section 63A-2-407, state-owned information technology equipment may be transferred directly to non-profit entities for distribution to, and use by, persons with a disability as defined in Subsection 62A-5-101(9). However, interagency transfers and sales of surplus property to state and local agencies shall have priority over transfers under this subsection.

(3) Prior to submitting information technology equipment to the state surplus property contractor, another department or agency, or donating it directly to public institutions or non-profit entities, agencies shall delete all information from all storage devices. Information shall be deleted in such a manner as to not be retrievable by data recovery technologies.

(4) Except as it relates to a vehicle or federal surplus property, the transfer of surplus property from one agency directly to another does not require approval by the division, the director of the division, or any other person.

R33-26-203. Federal Surplus Property.

(1) Federal Surplus Property is 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.

R33-26-204. 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 Section 63A-2. A conflict of interest may exist or appear to exist when a related party attempts to purchase surplus property.

(2) A related party is defined as someone who may fit into any of the following categories pertaining to the surplus property 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) has perceived to be a related party using other criteria which may prohibit independence.

R33-26-205. Priorities.

(1) Public agencies are given priority for the purchase of state-owned surplus property.

(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 through the state surplus property contractor.

(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 personal property that is 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 federal surplus property.
(2) The division will require regular and detailed accounting by the state surplus property contractor of:
(a) the receipt and sale of state surplus property;
(b) the receipt and payment of any and all funds; and
(c) ensure public transparency regarding the sale of state surplus property.
(3) 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) After paying the amount owed to the state surplus property contractor, the division shall transfer the remaining money to the agency that requested the sale of the particular item in accordance with Title 63J, Budgetary Procedures Act.
(2) Vehicle reimbursements to state agencies from the sale of their vehicles will be made through the Division of Finance on interagency transfers or warrant requests. The division is authorized to deduct operating costs from the selling price of all vehicles. In all cases property will be priced to sale 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.
(3) Payment for vehicles, information technology equipment, federal surplus property, personal handheld devices, and firearms shall be as follows:
(a) payment received from public purchasers may be in the form of cash and/or certified funds, authorized bank credit cards, and personal checks. Personal checks may not be accepted for amounts exceeding $200. 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.
(4) 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 is returned for "insufficient fund," 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.

R33-26-501. Surplus Firearms.
This subsection sets forth policies and procedures for disposing of surplus firearms from state agencies and participating local agencies, as authorized in Section 63A-2-4. This rule governs the destruction, sale, transfer, or donation of surplus firearms to any agency or to the general public.

R33-26-502. Procedures.
(1) All state owned firearms shall be disposed of under the general provisions of this Rule.
(a) The sale of firearms directly to the general public by the division is prohibited.
(b) Hunting and sporting rifles meeting Federal Firearms regulations may be sold only to firearms dealers licensed by the Federal Bureau of Alcohol, Tobacco and Firearms.
(c) Except as provided in this subsection (c), handguns shall be transferred to the Utah State Public Safety Crime Lab for use or to be destroyed.
(i) The owning agency may trade a handgun into a licensed firearm dealer for credit toward the current purchase of a new handgun.
(ii) The division may authorize the sale of a handgun to a legally constituted law enforcement agency.
(iii) The division may authorize the sale of a handgun to a POST certified individual if the owning agency submits a signed request that includes:
(A) the individual's name;

(B) the serial number of the handgun to be sold; and
(C) the signature of an authorized agent of the owning agency.
(2) All firearms retained by the division shall be in accordance with Federal Firearms regulations pursuant to Sections 921(a)(19) and 922(s) of Title 18, United States Code.
(a) Written certification that surplus firearms meet federal firearms regulations shall be provided by the owning agency or a qualified armorer.
(3) All firearms retained by the division shall be in good working condition.
(a) Written certification specifying the condition of surplus firearms shall be provided by the owning agency or a qualified armorer.

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 Section 63G-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 need 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.

R33-26-701. State Surplus Property Contractor.
(1) The state surplus contractor must be selected through a Request for Proposals that results in a term contract.
(2) The contractor may sell state surplus property by auction, bid or other manner designed to get the best price available for the state surplus property.
(3) The contractor may not engage in the sale of state surplus property in a manner that would constitute a conflict of interest.
(4) The contractor must submit regular and detailed accounting to the division of:
(a) the receipt and sale of state surplus property; and,
(b) the receipt and payment of funds by the contractor.
(5) The contractor must ensure public transparency regarding the sale of state surplus property and is required to:
(a) post online information related to a sale or attempted sale of state surplus property that includes:
(i) a detailed description of the item or items;
(ii) the name of the state agency that requested the sale;
(iii) the price at which the state surplus property was sold; and,
(iv) post the information within a period of time established by the division.
(6) The division may, through the contract with the state surplus contractor, require the state surplus contractor:
(a) to store the state surplus property; or,
(b) charge for the storage of state surplus property.

R33-26-801. Donation, Disposal, or Destruction of State Surplus Property.
(1) A state agency or department may donate to a charitable organization, destroy, or dispose of as waste any state surplus property that is worth less than $30.00 without involvement of the division or state surplus property contractor if:
(a) the state surplus property fails to sell at auction;
(b) the cost of selling the state surplus property is greater or equal to the value of the state surplus property;
(c) the state surplus property is no longer usable;
(d) the state surplus property is damaged and either cannot be repaired or the cost of repair is greater than or equal to the value of the state surplus property in a repaired state; or
(e) the state surplus property can be replaced for less than the cost of repairing the state surplus property.

KEY: state surplus property, federal surplus property, procurement procedures, public sales
July 8, 2014 **63A-2**

R58. Agriculture and Food, Animal Industry.
R58-7. Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers, and Livestock Market Weighpersons.
R58-7-1. Authority.

A. Promulgated under authority of Section 4-30-3 and Section 4-2-2.

B. It is the intent of these rules to provide uniformity and fairness in the marketing of livestock within the state, whether sold through regularly established livestock markets or other types of sales.

R58-7-2. Definitions.

A. "Commissioner" means the commissioner of Agriculture and Food.

B. "Livestock" means cattle, domestic elk, swine, equines, sheep, goats, camelids, ratites, and bison.

C. "Representative" means a dealer licensed in Utah under Section 4-7-7 who is a resident of this state, or who is a representative of, or who in any capacity conducts business with a livestock auction market licensed under Section 4-30-4, which does business with an in state or out of state satellite video livestock auction market.

D. "Satellite video livestock auction market" means a place or establishment or business conducted or operated for compensation or profit as a public market where livestock or other agricultural related products located in this state are sold or offered for sale at a facility within or outside the state through the use of an electronically televised or recorded media presentation, which is, or can be exhibited at a public auction.

E. "Livestock market" means a public market place consisting of pens or other enclosures where all classes of livestock or poultry are received on consignment and kept for subsequent sale, either through public auction or private sale.

F. "Livestock dealer" means a person engaged in the business of purchasing livestock for immediate resale or interstate shipment for immediate resale.

R58-7-3. Livestock Markets.

A. Standards for Approved and Non-approved Markets. The operator of a livestock market shall maintain the following standards in order to obtain, retain or renew a livestock market license:

1. Follow procedures outlined in Section 4-30-4, and all state and federal laws and regulations pertaining to livestock health and movement.

2. Conduct all sales in compliance with the provisions of Utah laws and rules pertaining to livestock health and movement.

3. Furnish the Department with a schedule of sale days, which have been previously approved by the Commissioner of Agriculture and Food, giving the beginning hour.

4. Maintain records of animals in the market in accordance with United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Brucellosis Eradication Uniform Methods and Rules, Part II, U, 2 to 4. Records must be retained for 2 years.

5. Maintain the identity of ownership of all animals as set forth in Section 4-24-20, and these rules. All test eligible females and breeding bulls two years of age and over shall be backtagged for individual identification as outlined in 9 CFR 71.18 71.19 and 9 CFR 79, January 1, 2001, edition. The tags are not to be removed in trading channels.

6. Permit authorized state or federal inspectors to review all phases of the livestock market operations including, but not limited, to records of origin and destination of livestock handled by the livestock market.

7. Provide adequate space for pens, alleyways, chutes, and sales ring; cover sales ring with a leak-proof roof.

8. Have floors in all pens, alleyways, chutes, and sales ring constructed in such a manner as to be safe, easily cleaned and properly drained in all types of weather and to be easily maintained in a clean and sanitary condition.

9. Maintain all alleyways, pens, chutes, and sales rings in a clean, safe, and sanitary manner.

10. Furnish and maintain one or more chutes (in addition to the loading chute) at a convenient and usable place in a covered area, suitable for restraining, inspecting, examining, testing, tagging, branding and other treatments and procedures ordinarily required in providing livestock sanitary or health service at markets in a safe manner. Furnish personnel as required to assist Department or federal inspectors.

11. Provide specially designated pens or a provision for yarding for diseased animals infected with or exposed to brucellosis, tuberculosis, scabies, anaplasmosis, vesicular disease, pseudorabies, hog cholera, sheep foot rot, or other contagious or infectious disease.

12. Provide adequate facilities and service at a reasonable cost for cleaning and disinfecting cars, trucks and other vehicles which have been used to transport diseased animals as directed by the Department of Agriculture and Food or its authorized representative.

13. Do not release any diseased animal or animal exposed to any contagious, infectious or communicable disease from a livestock market until it has been approved for movement by the Department or its authorized representative.

14. Do not release any livestock from the market which have not complied with Utah laws and rules.

B. Additional Standards for Approved Markets.

1. Weigh each reactor individually and record reactor tag number, tattoo or other identifying marks on a separate weigh ticket, and record sales price per pound and net return after deducting expenses for required handling of such reactor. Restrict sale of all reactors to a slaughtering establishment where federal or state inspection is maintained.

2. Reimburse the Department monthly an amount equal to expenses incurred in providing a veterinarian at the livestock market.

3. Provide specially designated pens or a provision for yarding for animals classified as reactors, exposed, suspects or "S" branded.

4. Provide suitable laboratory space at the market as agreed between the market and the livestock market veterinarian for the conducting of brucellosis and other necessary tests.

C. Veterinary Medical Services. These services, fees, and collection procedures will be outlined and negotiated between the Department of Agriculture and Food, Livestock Auctions, and Veterinarians in contract agreements signed by each party. Any procedures, payments fees and collection methods done outside the contract terms will be worked out between the livestock market and the veterinarian.

D. Denial, Suspension or Cancellation of Registration. The Department may, after due notice and opportunity for a hearing to the livestock market involved, deny an application for registration, or suspend or cancel the registration when the Department is satisfied that the market has:

1. Violated state statutes or rules governing the interstate or intrastate movement, shipment or transportation of livestock, or

2. Made false or misleading statements in their application for licensing, or false or misleading statements as to the health or physical conditions of livestock regarding official test results or status of the herd of origin, or

3. Knowingly sold for dairy or breeding purposes cattle

which were affected with a communicable disease, or

4. Demonstrated their inability or unwillingness to carry out the record keeping requirements contained in this rule, or

5. Failed to comply with any law or rule pertaining to livestock health or movement, or

6. Failed to maintain market facilities in a safe, clean and sanitary manner, or

7. Operated as a livestock market without proper licensing.

E. Relating to temporary livestock market:

Temporary Livestock Market Licensees shall not be required to abide by the provisions in R58-7-3A (1,4,5,7-14), R58-7-3B (1-4), and R58-7-3C.

R58-7-4. Temporary Livestock Sale License.

A. A temporary livestock sales license shall be required for each sale where:

1. Livestock is offered for public bidding and sold on a yardage, commission or percentage basis.

2. Sales are conducted by or for a person at which livestock owned by such person are sold on his own premises, see R58-7-3 and 4.

3. Sales are conducted for the purpose of liquidation of livestock by a farmer, dairyman, livestock breeder or feeder.

4. Sales conducted by non-profit breed or livestock associations or clubs:

a. It is not the intent of this rule to require a bond from non-profit breed or livestock associations or clubs, or from liquidation sales if they conduct sales themselves and do not assume any financial responsibility between the seller and the buyer. However, if such sales are conducted by outside or professional management a license and either a bond, trust fund agreement or letter of credit will be required.

5. Other sales may be approved by the Department of Agriculture and Food.

B. A temporary license shall not be required for:

1. Sales conducted by Future Farmers of America or 4H Club groups.

2. Sales conducted in conjunction with state, county, or private fairs.

C. The Department shall be notified 10 days prior to all such sales.

D. A temporary livestock sales license shall be issued when the Department finds:

1. That an application as approved by the Department has been received, along with the payment of a $10.00 license fee.

2. That the applicant has filed with the Department where applicable a bond as required by the Department or in accordance with the Packers and Stockyards Act (7 U.S.C. 181 et seq.), except that a letter of credit or a trust fund agreement, as approved by the Department, may replace the bonding requirements.

R58-7-5. Dealers.

A. Dealer Licensing and Bonding:

No person shall operate as a livestock dealer in the state without a license and bond in accordance with Title 4, Chapter 7.

1. Upon receipt of a proper application and payment of a license fee in the amount of $25.00 and meeting current bonding requirements the Department will issue a license allowing the applicant to operate as a livestock dealer through December 31 of each year.

2. The Department, after due notice and opportunity for hearing to the dealer involved, may deny an application for license, suspend or cancel the license when the Department is satisfied that the applicant or dealer has:

a. Violated state statutes or rules governing the interstate or intrastate movement, shipment, or transportation of livestock, or

b. Made false or misleading statements in their application for licensing, or false or misleading statements as to the health or physical conditions of livestock regarding official test results or status of the herd of origin, or

c. Knowingly sold for dairy or breeding purposes cattle which were affected with a communicable disease, or

d. Demonstrated their inability or unwillingness to carry out the record keeping requirements contained in this rule, or

e. Failed to comply with any law or rule pertaining to livestock health or movement, or

f. Operated as a dealer without meeting proper licensing and bonding requirements.

B. Record Keeping.

1. All livestock dealers must keep adequate records to allow accurate trace back of all livestock to the prior owner Section 4-7-9.

2. Dealers shall permit the Department or its authorized representative to review all phases of the livestock dealer operations including, but not limited to, records of origin and destination of livestock handled by the livestock dealer.

3. Dealers shall retain above records for a period of two years.

R58-7-6. Responsibilities of a Bonded and Licensed Weighperson.

A. Weighperson operator to be competent, licensed and bonded.

1. Stockyard owner, market agencies, and dealers shall employ only competent, licensed and bonded persons of good character and known integrity to operate scales for weighing livestock for the purpose of purchase or sale. Any person found to be operating scales incorrectly, carelessly, in violation of instructions, or in such manner as to favor or injure any party or agency through incorrect weighing or incorrect weight recording shall be removed from his weighing duties.

2. The primary responsibility of a weigher is to determine and accurately record the weight of a livestock draft without prejudice or favor to any person or agency and without regard for livestock ownership, price condition, fill, shrink, or other considerations. A weigher shall not permit the representations or attitudes of any persons or agencies to influence his judgment or action in performing his duties.

3. Unused scale tickets, or those which are partially executed but without a printed weight value, shall not be left exposed or accessible to unauthorized personnel. All such tickets shall be kept under lock when the weigher is not at his duty station.

4. Accurate weighing and correct weight recording require that a weigher shall not permit the operations to be hurried to the extent that inaccurate weights or incorrect weight records may result. Each draft of livestock must be weighed accurately to the nearest minimum weight value that can be indicated or recorded. Manual operations connected with balancing, weighing, and recording shall be performed with the care necessary to prevent damage to the accurately machined and adjusted part of weigh-beams, poses, and printing devices.

5. Livestock owners, buyers, or others having legitimate interest in a livestock draft must be permitted to observe the balancing, weighing, and recording procedures, and a weigher shall not deny them that right or withhold from them any information pertaining to the weight of that draft. He shall check the zero balance of the scale or reweigh a draft of livestock when requested by such parties.

B. Balancing the empty scale.

1. The empty scale shall be balanced each day before

weighing begins, and maintained in correct balance while weighing operations continue. The zero balance shall be verified at intervals of not more than 15 drafts or 15 minutes, whichever is completed first. In addition, the zero balance of the scale shall be verified whenever a weigher resumes weighing duties after an absence from the scale and also whenever a load exceeding half the scale capacity or 10,000 pounds (whichever is less) has been weighed and is followed by a load of less than 1,000 pounds, verification to occur before the weighing of the load of less than 1,000 pounds.

2. The time at which the empty scale is balanced or its zero balance verified shall be recorded on scale tickets or other permanent records. Balance tickets must be filed with other scale tickets issued on that date.

3. Before balancing the empty scale, the weigher shall assure himself that the scale gates are closed and that no persons or animals are on the scale platform or in contact with the stock rack, gates, or platform. If the scale is balanced with persons on the scale platform, the zero balance shall be verified whenever there is a change in such persons. When the scale is properly balanced and ready for weighing, the weigher shall so indicate by an appropriate signal.

C. Weighing the load.

1. Before weighing a draft of livestock, the weigher shall assure himself that the entire draft is on the scale platform with the gates closed and that no persons or animals off the scale are in contact with the platform, gates or stock rack.

D. Sale of livestock by weight.

All livestock sold by weight through a satellite video auction market must be sold based on the weight of the livestock on the day of delivery. All livestock sold by weight must be weighed on scales that have been tested and inspected by the Department of Weights and Measures in the manner prescribed by law.

R58-7-7. Satellite Video Livestock Auction Market.

1. Before entering into business as or with a satellite video livestock auction market and annually, on or before January 1, each market or representative shall file an application for a license to transact business as or with a satellite video livestock auction market with the commissioner on a form prescribed by the commissioner. The application must show:

a. the nature of the business for which a license is desired;

b. the name of the representative applying for the license;

c. the name and address of the proposed satellite video auction or the name and address of the satellite video auction the representative proposes to transact business with; and

d. other information the commissioner may require as listed in Subsection 4-7-6.

2. The application for a license or for a renewal for a license must be accompanied by:

a. a license fee in accordance with Section 4-30-4, determined by the department pursuant to Subsection 4-2-2(2).

b. evidence of proper security bonding as required in Subsection 4-30-4(3) for the satellite video auction and Section 4-7-7 for the representative.

c. a schedule of fees and commissions that will be charged to owners, sellers, or their agents; and

d. other information the commissioner may require as listed in Section 4-7-6.

3. Each satellite video auction will be considered as a temporary livestock sale unless licensed under this chapter as a satellite video auction market. Sales operated by a representative will be required to make application as designated in R58-7-4.

4. A copy of each and any contract between the representative and the satellite video auction market with which the representative proposes to transact business or a contract with the proposed satellite video auction market must be supplied to the department.

The contract must include a provision authorizing the commissioner or the commissioners designee to have access to the books, papers, accounts, financial records held by financial institutions, accountants or other sources; and other documents relating to the activities of the satellite video livestock market and requiring the satellite video auction market to make such documents reasonably available upon the request of the commissioner or the commissioners designee. If the contract between a representative and the satellite video auction market is terminated, rescinded, breached, or materially altered, the representative and the satellite video auction market shall immediately notify the commissioner. Failure to notify will be deemed failure to keep and maintain suitable records and be deemed to be a false entry or statement of fact in application filed with the department. (Section 4-7-11.)

R58-7-8. Livestock Market Committee.

A. Hearing on License Application; Notice of Hearing.

1. Upon filing of an application as a satellite video auction livestock market, the chairman of the Department of Agriculture and Food's Livestock Market Committee shall set a time and place for a hearing to review the application and determine whether a license will be issued.

2. Upon filing of an application as a representative of a satellite video auction market, the chairman of the Department of Agriculture and Food's Livestock Market Committee may elect to hold a hearing to review the application and determine whether a license will be issued.

B. Guidelines delineated for decision on application shall be in accordance with 4-30-6 and shall apply to the livestock auction market and the satellite video livestock auction market.

KEY: livestock
October 12, 2010 4-2-2
Notice of Continuation January 13, 2015 4-30-3

R58. Agriculture and Food, Animal Industry.
R58-11. Slaughter of Livestock and Poultry.
R58-11-1. Authority.

Promulgated under authority of Section 4-32-8.

R58-11-2. Definitions.

(1) "Adulterated" means as defined in Section 4-32-3(1).

(2) "Bill of Sale for Hides" means a hide release or some other formal means of transferring the title of hides.

(3) "Business" means an individual or organization receiving remuneration for services.

(4) "Commissioner" means the Commissioner of Agriculture or his representative.

(5) "Custom Slaughter-Release Permit" means a permit that will serve as a brand inspection certificate and will allow animal owners to have their animals farm custom slaughtered.

(6) "Department" means the Utah Department of Agriculture and Food.

(7) "Detain or Embargo" means the holding of a food or food product for legal verification of adulteration, misbranding or proof of ownership.

(8) "Emergency Slaughter" means for the purpose of this chapter that Emergency Slaughter is no longer allowed for non-ambulatory injured cattle. Non-ambulatory disabled cattle that cannot rise from a recumbent position or cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column or metabolic conditions, are not allowed to be slaughtered for food.

(9) "Farm Custom Slaughtering" means the slaughtering, skinning and preparing of livestock and poultry by humane means for the purpose of human consumption which is done at a place other than a licensed slaughtering house by a person who is not the owner of the animal.

(10) "Food" means a product intended for human consumption.

(11) "Immediate Family" means persons living together in a single dwelling unit and/or their sons and daughters.

(12) "License" means a license issued by the Utah Department of Agriculture and Food to allow farm custom slaughtering.

(13) "Licensee" means a person who possesses a valid farm custom slaughtering license.

(14) "Misbranded" means as defined in Section 4-32-3(27).

(15) "Owner" means a person holding legal title to the animal.

R58-11-3. Registration and License Issuance.

(1) Farm Custom Slaughtering License.

(a) Any person or person desiring to do farm custom slaughtering shall apply to the Department. Such application for a license will be made on a department form for a Farm Custom Slaughter License. The form shall show the name, address and telephone number of the owner, the name, address and telephone number of the operator if it is different than the owner, a brief description of the vehicle and the license number. Licenses will be valid for the calendar year (January 1 to December 31). Each licensee will be required to re-apply for a license every calendar year. Change of ownership or change of vehicle license will require a new application to be filed with the Department.

(b) Registration will not be recognized as complete until the applicant has demonstrated his ability to slaughter and has completed and signed the registration form.

(c) A fee must be paid prior to license issuance.

R58-11-4. Equipment and Sanitation Requirements.

(1) Unit of vehicle and equipment used for farm custom slaughtering:

(a) The unit or vehicle used for farm custom slaughtering shall be so constructed as to permit maintenance in a clean, sanitary manner.

(b) A tripod or rail capable of lifting a carcass to a height which enables the carcass to clear the ground for bleeding and evisceration must be incorporated into the unit or vehicle. Hooks, gambles, or racks used to hoist and eviscerate animals shall be of easily cleanable metal construction.

(c) Knives, scabbards, saws, etc. shall be of rust resistant metal or other impervious easily cleanable material.

(i) A clean dust proof container shall be used to transport and store all instruments and utensils used in slaughtering animals.

(d) A water tank shall be an integral part of the unit or vehicle. It shall be of approved construction with a minimum capacity of 40 gallons. Water systems must be maintained in a sanitary manner and only potable water shall be used.

(e) A tank (for sanitizing) large enough to allow complete emersion of tools used for slaughtering must be filled during slaughter operations with potable water and maintained at a temperature of at least 180 degrees Fahrenheit. In lieu of 180 degrees Fahrenheit water, chemical sterilization may be used with an approved chemical agent after equipment has been thoroughly cleaned. Chloramine, hypochloride, and quaternary ammonium compounds or other approved chemical compounds may be used for this purpose and a concentration must be maintained at sufficient levels to disinfect utensils. Hot water, cleaning agents, and disinfectant shall be available at all times if chemicals are used in lieu of 180 degrees Fahrenheit water.

(f) Cleaning agents and paper towels shall be available so hands and equipment may be cleaned as needed.

(g) Aprons, frocks and other outer clothing worn by persons who handle meat must be clean and of material that is easily cleanable.

(h) All inedible products and offal will be denatured with either an approved denaturing agent or by use of pounch material as a natural denaturing agent.

(i) When a licensee transports uninspected meat to an establishment for processing, he shall:

(i) do so in a manner whereby product will not be adulterated or misbranded, and/or mislabeled; and

(ii) transport the meat in such a way that it is properly protected; and

(iii) deliver carcasses in such a way that they shall be placed under refrigeration within one hour of time of slaughter (40 degrees F).

(j) Sanitation.

(i) Unit or Vehicle.

(A) The unit or vehicle must be thoroughly cleaned after each daily use.

(B) All food-contact and non-food contact surfaces of utensils and equipment must be cleaned and sanitized as necessary to prevent the creation of insanitary conditions and the adulteration of carcasses and parts.

(C) Carcasses must be protected from adulteration during processing, handling, storage, loading, unloading and during transportation to processing establishments.

(ii) Equipment.

(A) All knives, scabbards, saws and all other food contact surfaces shall be cleaned and sanitized prior to slaughter and as needed to prevent adulteration.

(B) Equipment must be cleaned and sanitized after each slaughter and immediately before each slaughter.

(iii) Inedibles.

(A) Inedibles shall be placed in designated containers and be properly denatured, and the inedible containers must

be clearly marked (Inedible Not For Human Consumption in letters not less than 4 inches in height).

(B) Containers for inedibles shall be kept clean and properly separated from edible carcasses to prevent adulteration.

(iv) Personal Cleanliness.

(A) Adequate care shall be taken to prevent contamination of the carcasses from fecal material, ingesta, milk, perspiration, hair, cosmetics, medications and similar substances.

(B) Outer clothing worn by permittee shall, while handling exposed carcasses, be clean.

(C) No licensee with a communicable disease or who is a disease carrier or is infected with boils, infected wounds, sores or an acute respiratory infection shall participate in livestock slaughtering.

(D) Hand wash facilities shall be used as needed to maintain good personal hygiene.

R58-11-5. Slaughtering Procedures of Livestock.

(1) Slaughter Area

(a) Slaughtering shall not take place under adverse conditions (such as blowing dirt, dust or in mud).

(b) If a slaughter area is used for repeated kills, the area should be maintained to prevent blood from collecting, running off on to adjacent property, or contaminating water sources.

(c) Hides, viscera, blood, pounch material, and all tissues must be removed and disposed at a rendering facility, landfill, composting or by burial as allowed by law.

(2) Humane Slaughter - Animals shall be rendered insensible to pain by a single blow, or gun shot or electrical shock or other means that is instantaneous and effective before being shackled, hoisted, thrown, cast or cut.

(3) Hoisting and Bleeding - Animals shall be hoisted and bled as soon after stunning as possible to utilize post-stunning heart action and to obtain complete bleeding. Carcasses shall be moved away from the bleeding area for skinning and butchering.

(4) Skinning - Carcass and head skin must be handled without neck tissue contamination. This may be done by leaving the ears on the hide and tying the head skin. Feet must be removed before carcass is otherwise cut. Except for skinning and starting skinning procedures, skin should be cut from inside outward to prevent carcass contamination with cut hair. Hair side of hide should be carefully rolled or reflected away from carcass during skinning. When carcass is moved from skinning bed, caution should be taken to prevent exposed parts from coming in contact with adulterating surfaces.

(5) Evisceration - Before evisceration, rectum shall be tied to include bladder neck and to prevent urine and fecal leakage. Care should also be taken while opening abdominal cavities to prevent carcass and/or viscera contamination.

(6) Carcass washing - Hair, dirt and other accidental contamination should be trimmed prior to washing. Washing should proceed from the carcass top downward to move away any possible contaminants from clean areas.

R58-11-6. Identification and Records.

(1) Livestock Identification - Pursuant to requirements of Section 4-24-13, it shall be unlawful for any license holder to slaughter livestock which do not have a Brand Inspection Certificate or Farm Custom Slaughter Tag filled out at time of slaughter.

(a) Animal owners must have a Brand Inspection Certificate for livestock intended to be farm custom slaughtered, issued by a Department Brand Inspector prior to slaughter, paying the legal brand inspection fee and beef promotion fee. This will be accomplished by the animal owner contacting a Department Brand Inspector and obtaining a Brand Inspection Certificate (Custom Slaughter-Release Permit).

(b) Animal owners must also obtain farm custom slaughter identification tags from a Department Brand Inspector for a fee of $1 each. These tags will be required on beef, pork, and sheep.

(2) Records.

(a) The Custom Slaughter-Release Permit or Farm Custom Slaughter Tag will record the following information:

(i) An affidavit with a statement that shall read "I hereby certify ownership of this animal to be slaughtered by (name). I fully understand that having my animal farm custom slaughtered means my animal will not receive meat inspection and is for my use, the use of my immediate family, non-paying guests, or full-time employees. The carcass will be stamped "NOT FOR SALE" and will not be sold." This statement must be signed by the owner or designee.

(ii) In addition to this affidavit, the following information will be recorded:

(A) date;

(B) owner's name, address and telephone number;

(C) animal description including brands and marks;

(D) Farm Custom Slaughter tag number.

(b) The Farm Custom Slaughter tag must record the following information:

(i) date;

(ii) owner's name, address and telephone number;

(iii) location of slaughter;

(iv) name of licensee;

(v) licensee permit number; and

(vi) carcass destination.

(c) Prior to slaughter the licensee shall:

(i) Prepare the Farm Custom Slaughter tag with complete and accurate information;

(A) One tag shall stay in the license holder's file for at least one year.

(B) One tag plus a copy of the Farm Custom Slaughter-Release Permit shall be sent into the Department by the 10th of each month for the preceding month's slaughter by the licensee.

(C) After slaughter, all carcasses must be stamped "NOT FOR SALE" on each quarter with letters at least 3/8" in height; further, a Farm Custom Slaughter "NOT FOR SALE" tag must be affixed to each quarter of beef and each half of pork and sheep.

(D) Hide Purchase - Licensee receiving hides for slaughtering services must obtain a copy of the Custom Slaughter-Release Permit to record transfer of ownership as required by Section 4-24-18.

R58-11-7. Poultry Slaughter.

(1) Personal Use Exemption.

(a) A person who raises poultry may slaughter and or process the poultry if:

(i) slaughtering or processing poultry is not prohibited by local ordinance;

(ii) the poultry product derived from the slaughtered poultry is consumed exclusively by the person or the person's immediate family, regular employees of the person, or nonpaying guests;

(iii) the slaughtering and processing of the poultry is performed only by the owner or an employee;

(iv) the poultry is healthy when slaughtered;

(v) the exempt poultry is not sold or donated for use as human food; and

(vi) the immediate containers bear the statement, "NOT FOR SALE".

(2) Farm Custom Slaughter/Processing

(a) A person may slaughter and or process poultry belonging to another person if:

(i) the person holds a valid farm custom slaughter license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

(iii) the licensee does not engage in the business of buying or selling poultry products capable for use as human food;

(iv) the poultry is healthy when slaughtered;

(v) the slaughtering and or processing is conducted in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

(vi) the unit or vehicle used for farm custom slaughtering shall be so constructed as to permit maintenance in a clean and sanitary manner;

(A) the immediate containers bear the following information:

(B) the owner's name and address;

(C) the licensee's name and address, and;

(D) the statement, "NOT FOR SALE".

(3) Producer/Grower 1,000 Bird Limit Exemption

(a) A poultry grower may slaughter no more that 1,000 birds of his or her own raising in a calendar year for distribution as human food if;

(i) the person holds a valid poultry exemption license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

(iii) the poultry grower does not engage in buying or selling poultry products other than those produced from poultry raised on his or her own farm (includes rented or leased property);

(iv) the slaughtering and or processing is conducted in a approved establishment and in accordance with sanitation performance standards, and procedures that produce poultry products that are sound, clean, and fit for human food;

(v) the producer keeps slaughter records and records covering the sales of poultry products to customers for the current calendar year, and;

(vi) the immediate containers bear the following information:

(A) name of product;

(B) ingredients statement (if applicable);

(C) net weights statement;

(D) name and address of processor;

(E) Safe food handling statement;

(F) date of package and/or Lot number, and;

(G) the statement "Exempt R58-11-7(C)".

(4) Producer/Grower 20,000 Bird Limit Exemption

(a) A poultry grower may slaughter no more that 20,000 birds of his or her own raising in a calendar year for distribution as human food if;

(i) the person holds a valid poultry exemption license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

(iii) the poultry grower does not engage in buying or selling poultry products other than those produced from poultry raised on his or her own farm (includes rented or leased property);

(iv) the slaughtering and or processing is conducted in a fixed establishment and in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

(v) the producer keeps slaughter records and records covering the sales of poultry products to customers for the current calendar year, and;

(vi) the immediate containers bear the following information:

(A) name of product;

(B) ingredients statement (if applicable);

(C) net weights statement;

(D) name and address of processor;

(E) Safe food handling statement;

(F) date of package and/or Lot number, and;

(G) the statement "Exempt R58-11-7(D)".

(5) Producer/Grower or Other Person Exemption

(a) The term "Producer/Grower or Other Person" in this section means a single entity, which may be:

(i) A poultry grower who slaughters and processes poultry that he or she raised for sale directly to household consumers, restaurants, hotels, and boarding houses to be used in those homes and dining rooms for the preparation of meals served or sold directly to customers.

(ii) A person who purchases live poultry from a grower and then slaughters these poultry and processes such poultry for sale directly to household consumers, restaurants, hotels, and boarding houses to be served in those homes or dining rooms for the preparation of meals sold directly to customers.

(b) A business may slaughter and process poultry under this exemption if;

(i) the person holds a valid poultry exemption license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

(iii) the producer/grower or other person slaughters for processing and sale directly to household consumers, restaurants, hotels, and boarding houses for use in dining rooms or in the preparation of meals sold directly to customers;

(iv) the producer/grower or other person slaughters no more than 20,000 birds in a calendar year that the producer/grower or other person raised or purchased;

(v) the producer/grower or other person does not engage in the business of buying or selling poultry or poultry products prepared under an other exemptions in the same calendar year he or she claims the Producer/Grower or Other Person Exemption;

(vi) the processing is limited to preparation of poultry products from poultry slaughtered by the Producer/Grower or Other Person for distribution directly to: 1) household consumers, 2) restaurants, 3) hotels, and 4) boarding houses for use in their dining rooms or in the preparation of meals sold directly to consumers within the jurisdiction were it is prepared;

(vii) the slaughtering and or processing is conducted in a fixed establishment and in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

(viii) the producer keeps slaughter records and records covering the sales of poultry products to customers for the current calendar year, and;

(ix) the immediate containers bear the following information:

(A) name of product;

(B) ingredients statement (if applicable);

(C) net weights statement;

(D) name and address of processor;

(E) safe food handling statement;

(F) date of package and/or Lot number, and;

(G) the statement "Exempt R58-11-7(E)".

(c) A business preparing poultry product under the Producer/Grower or Other Person Exemption may not slaughter or process poultry owned by another person.

(d) A business preparing poultry products under the

Producer/Grower or Other Person Exemption may not sell poultry products to a retail store or other producer/grower.

(6) Small Enterprise Exemption

(a) A business that qualifies for the Small Enterprise Exemption may be:

(i) A producer/grower who raises, slaughters, and dresses poultry for use as human food whose processing of dressed exempt poultry is limited to cutting up;

(A) A business that purchases live poultry that it slaughters and whose processing of the slaughtered poultry is limited to the cutting up; or

(B) A business that purchases dressed poultry, which it distributes as carcasses and whose processing is limited to the cutting up of inspected or exempted poultry products, for distribution for use as human food.

(ii) A business may slaughter, dress, and cut up poultry for distribution as human food if;

(A) the person holds a valid poultry exemption license issued by the department;

(B) slaughtering or processing poultry is not prohibited by local ordinance;

(C) the processing of federal or state inspected or exempt poultry product is limited to the cutting up of carcasses or the business slaughters and dresses or cuts up no more than 20,000 birds in a calendar year;

(D) the slaughtering and or processing is conducted in a fixed establishment and in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

(E) the facility used to slaughter or process poultry is not used to slaughter or process another person's poultry;

(F) the immediate containers bear the following information:

(I) name of product;

(II) ingredients statement (if applicable);

(III) net weights statement;

(IV) name and address of processor;

(V) safe food handling statement;

(VI) date of package and/or Lot number, and;

(VII) the statement "Exempt R58-11-7(F)"

(iii) A business may not cut up and distribute poultry products produced under the Small Enterprise Exemption to a business operating under the following exemptions:

(A) Producer/Grower or PGOP Exemption,

(B) Retail Dealer, or

(C) Retail Store.

R58-11-8. Enforcement Procedures.

(1) Livestock and Poultry Slaughtering License:

(a) It shall be unlawful for any person to slaughter or assist in slaughtering livestock and poultry as a business outside of a licensed slaughterhouse unless he holds a valid Farm Custom Slaughtering License issued to him by the Department.

(b) Only persons who comply with the Utah Meat and Poultry Products Inspection and Licensing Act and Rules pursuant thereto, and the Utah Livestock Brand and Anti-Theft Act shall be entitled to receive and retain a license.

(c) License may be renewed annually and shall expire on the 31st of December of each year.

(2) Suspension of license - license may be suspended whenever:

(a) The Department has reason to believe that an eminent public health hazard exists;

(b) Insanitary conditions are such that carcasses would be rendered adulterated and or contaminated.

(c) The license holder has interfered with the Department in the performance of its duties;

(d) The licensee violates the Utah Meat and Poultry Products Inspection and Licensing Act or the Utah Livestock Brand and Anti-Theft Act or rules pursuant to these acts.

(3) Warning letter - In instances where a violation may have occurred a warning letter may be sent to the licensee which specifies the violations and affords the holder a reasonable opportunity to correct them.

(4) Hearings - Whenever a licensee has been given notice by the Department that suspected violations may have occurred or when a license is suspended he may have an opportunity for a hearing to state his views before the Department.

(5) Reinstatement of Suspended Permit - Any person whose license has been suspended may make application for the purpose of reinstatement of the license. The Department may then re-evaluate the applicant and conditions; if the applicant has demonstrated to the Department that he will comply with the rules, the license may be reinstated.

(6) Detainment or Embargo - Any meat found in a food establishment which does not have the proper identification or any uninspected meat slaughtered by a licensee which does not meet the requirements of these rules may be detained or embargoed.

(7) Condemnation - Meat which is determined to be unfit for human consumption may be denatured or destroyed.

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Notice of Continuation January 13, 2015

R58. Agriculture and Food, Animal Industry.
R58-17. Aquaculture and Aquatic Animal Health.
R58-17-1. Authority and Purpose.

(A) This rule is promulgated under the authority of Section 4-37-101 (et seq.) Amendments, Subsection 4-2-2(j) and 4-37-503.

(B) This rule establishes a program for the registration and fish health monitoring of aquaculture facilities, fee-fishing facilities, fish brokering, public aquaculture facilities, public fishery resources, private fish ponds, institutional facilities, private stocking, short-term fishing events and displays. This rule also addresses the importation of aquatic animals into Utah and establishes requirements for health approval of aquatic animals and their sources. The program is based on the monitoring of facility operations and aquatic animal movements to prevent the exposure to and spread of pathogens or diseases which adversely affect both cultured and wild aquatic animal stocks.

(C) Persons engaged in operations listed in R58-17-1(B) must comply with the rules for site selection and species control under Department of Agriculture and Food 4-37-201(3)and 4-37-301(3) and Department of Natural Resources rules R657-3 and R657-16.

(D) This rule is part of a statewide aquaculture disease control effort that includes procedures and policies established and adopted by the Fish Health Policy Board.

R58-17-2. Definitions.

(A) The following terms are defined for this rule:

(1) "Aquaculture" means the controlled cultivation of aquatic animals. In this rule, the word "aquaculture" refers to commercial aquaculture.

(2)(a) "Aquaculture facility" means any tank, canal, raceway, pond, off-stream reservoir, fish processing plant or other structure used for aquaculture. "Aquaculture facility" does not include any public aquaculture facility, private fish pond or fee fishing facility, as defined in this rule.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate aquaculture facilities regardless of ownership.

(3)(a) "Aquatic animal" means a member of any species of fish, mollusk, crustacean, or amphibian.

(b) "Aquatic animal" includes a gamete or egg of any species listed in definitions under Subsection R58-17-2(3)(a).

(4) "Blue Book" means a set of the most current standard procedures approved by the American Fisheries Society for inspecting the health of aquatic animals.

(5) "Brokers or fish brokering" refers to the activities of dealers, entities, individuals or companies that are in the business of buying, selling, exchanging or transferring live aquatic animals between approved or licensed facilities pursuant to R58-17-13(C) and R58-17-14 without being actively involved in the culture, rearing or growth of the animals. This includes a person or company who rears aquatic animals, but also buys and sells (brokers) additional aquatic animals without rearing them.

(6) "Certificate of Registration (COR)" means an official document which licenses facilities with the Department of Agriculture and Food or which licenses facilities and events with the Division of Wildlife Resources pursuant to R58-17-4. The purpose of the COR is to establish the legal description of the facility, the species of aquatic animals reared and to grant the authority to engage in the described activity.

(7) "Department" means the Department of Agriculture and Food with appropriate regulatory responsibility pursuant to R58-17-4(A)(1) in accordance with the provisions of Sections 4-2-2 and 4-37-104, Utah Code.

(8) "Disease History" means a record of all known pathogens that have historically affected aquatic animals reared at a facility that seeks health approval pursuant to R58-17-15(C)(2)(b).

(9) "Division" means the Division of Wildlife Resources in the Department of Natural Resources with the appropriate regulatory responsibility pursuant to R58-17-4(A)(2), R657-3, R657-16 in accordance with the provisions of Sections 23-14-1 and 4-37-105, Utah Code.

(10) "Egg only sources" refers to a separate category of salmonid fish health approval that allows for the purchase of "fish eggs only" from a facility pursuant to R58-17-15(B)(5) and (D)(1). This category makes the distinction between those pathogens that are vertically transmitted (from parent to offspring through the egg, i.e., Renibacterium salmoninarum (BKD), IHNV, IPNV, OMV, VHSV, SVCV, EHNV) and those horizontally transmitted (from one fish to another by contact or association, i.e., Aeromonas salmonicida, Asian tapeworm, Ceratomyxa shasta, Tetracapsuloides bryosalmonae (PKX), Myxobolus cerebralis (whirling disease), and Yersinia ruckeri).

(11) "Emergency prohibited pathogen" is a pathogen that causes high morbidity and high mortality, is exotic to Utah, and requires immediate action. These pathogens generally cannot be treated and shall be controlled through avoidance, eradication, and disinfection (see R58-17-20).

(12) "Emergency Response Procedures" are procedures established by the Fish Health Policy Board to be activated any time an emergency prohibited or prohibited pathogen is reported pursuant to R58-17-9 and R58-17-15(D)(6).

(13) "Emergency response team" means teams as defined by the Fish Health Policy Board responsible for developing and executing action plans to respond to and report findings of emergency prohibited or prohibited pathogens pursuant to R58-17-9, R58-17-10(A)(1) and R58-17-10(B)(1).

(14) "Entry Permit" means an official document issued by the Department which grants permission to the permit holder to import aquatic animals into Utah pursuant to R58-17-13. An entry permit is issued for up to 30 days and stipulates the species, size or age, weight and source of aquatic animals to be imported.

(15) "Facility disease history report" means a report of all known pathogens that have historically affected aquatic animals reared at a facility seeking approval pursuant to R58-17-15, subsections (B)(6), (C)(1)(a), and (C)(2)(b) and (d).

(16) "Fee fishing facility" means a body of water used for holding or rearing aquatic animals for the purpose of providing fishing for a fee or for pecuniary consideration or advantage pursuant to Section 4-37-103 and R58-17-18.

(17) "Fish health approved/health approval" means a system of procedures which allows an assessment of the disease history of a facility or population of aquatic animals and which grants a statistical assurance that neither "emergency prohibited" nor "prohibited" pathogens are present. The Department's and Division's responsibilities for granting health approval are delineated in R58-17-15. Health Approval status is granted to qualified COR holders in Utah and to aquatic animal sources inside and outside of Utah, all of which have satisfactorily completed health approval requirements pursuant to R58-17-15, and placed on the fish health approval list (R58-17-13(C)). Health approval of the source facility is necessary before a purchase may be made from the source facility or before the source facility may sell, transfer, or broker aquatic animals in or into Utah pursuant to R58-17-14.

(18) "Fish Health Policy Board" means the board created pursuant to Amendment 4-37-503 and referred to in R58-17 as the "Board".

(19) "Fish processing plant" means a facility pursuant to R58-17-13(G) and (H), and R58-17-17 used for receiving whole dead, eviscerated fresh or frozen salmonids or other live and dead aquatic animals as approved on the COR for processing.

(20) "Five-year disease history" means a report of all known pathogens affecting each stock native to, propagated at, or imported to the originating facility. These stocks or the offspring of these stocks are subsequently moved to another facility that seeks health approval pursuant to R58-17-15 subsections (B)(6), (C)(1)(a), and (C)(2)(b) and (d). The report shall cover up to the previous five years.

(21) "Import/importation" means to bring live aquatic animals, by any means into the State of Utah from any location outside the state and to subsequently possess and use them for any purpose.

(22) "Institutional aquaculture" means aquaculture engaged in by any institution of higher learning, school, or other educational program.

(23) "OIE" means the Office International des Epizooties of the World Organization for Animal Health, an intergovernmental organization that was established in 1924 to promote world animal health. The OIE provides guidelines and standards for health regulations and diagnostic tests. The most recent manual of health standards for aquatic animals is used to inspect for aquatic animal pathogens, for which the Bluebook has not developed standards. Such pathogens include EHNV, WSSV, YHV, TSV, and IHHNV covered in R58-17-20.

(24) "Ornamental fish" means any species of aquatic animals that are reared or marketed for their beauty or exotic characteristics, rather than for consumptive or recreational use. Tropical fish, goldfish and koi are included in the category of ornamental fish. This does not include those species of aquatic animals listed as prohibited or controlled in Department of Natural Resources rule R657-3. Ornamental fish are not regulated under rules R58-17 or R657-3. If the Department or Division determines that an introduction of ornamental fish poses a disease risk for aquatic animals, then all requirements under this rule apply.

(25)(a) "Private fish pond" means a body of water where privately owned aquatic animals are propagated or kept for a private, non-commercial purpose.

(b) "Private fish pond" does not include any aquaculture facility or fee fishing facility.

(26) "Procedures for the Timely Reporting of Pathogens" means procedures established by the Board for the timely reporting of emergency prohibited, prohibited, or reportable pathogens from any source in Utah or from any out-of-state health approved source pursuant to R58-17-9 and R58-17-15(D)(5).

(27) "Prohibited pathogen" is a pathogen that can cause high morbidity or high mortality, may be endemic to Utah, and requires action in a reasonable time. Prohibited pathogens are generally very difficult or impossible to treat and can only be controlled through avoidance, eradication, and disinfection, etc (see R58-17-20).

(28)(a) "Public aquaculture facility" means a tank, canal, raceway, pond, off-stream reservoir, or other structure used for the controlled cultivation of aquatic animals by the Division, the U.S. Fish and Wildlife Service, or an institution of higher education.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate public aquaculture facilities.

(29) "Public fishery resource" means aquatic animals produced in public aquaculture facilities, purchased or acquired for public fishery waters and sustained as wild and free ranging populations in the surface waters of the state.

(30) "Quarantine" means the restriction of movement of live or dead aquatic animals regardless of age and of all equipment and hauling trucks into or from an area designated by the Commissioner of Agriculture or State Veterinarian pursuant to R58-17-10 and Agricultural code 4-31-16 and 17.

(31) "Reportable pathogen" is a pathogen that generally is prevented using good management practices. Reportable pathogens are not prohibited in Utah but may be prohibited in some other states or countries (see R58-17-20). Inspections are not required for reportable pathogens, but positive findings must be reported to the Board.

(32) "Salmonid and non-salmonid" designate aquatic animals based on the range of optimal growth temperatures used in their culture. "Salmonid" means any species of aquatic animal that is of the order Salmoniformes and optimally lives in coldwater conditions. "Non-salmonid" means any species of aquatic animal that is not of the order Salmoniformes nor cultured in coldwater conditions. For purposes of R58-17, aquatic animals such as cool water fish, warm water fish, and crustaceans (shrimp, crayfish, and prawns) are classified as non-salmonids.

(33) "Source" means all rearing or holding locations during all of the life stages of an aquatic animal.

(34) "Unregulated pathogen" is a pathogen that is not regulated in Utah. Unregulated pathogens include all pathogens not classified as either emergency prohibited, prohibited, or reportable. Reporting of these pathogens to the Fish Health Policy Board is not required (see R58-17-20).

R58-17-3. Penalties.

Any violation of or failure to comply with any provision of this rule, R657-59 or R657-16 or any specific requirement contained in a certificate of registration or entry permit issued pursuant to this rule, R657-59 or R657-16 may be grounds for issuance of citations, levying of fines, revocation of the certificate of registration or denial of future certificates of registration pursuant to Subsections 4-2-2(1)(f) and 4-2-15(1), as determined by the Commissioner of Agriculture and Food and pursuant to Sections 23-19-9 and 23-13-11, as determined by the Director of the Division of Wildlife Resources.

R58-17-4. Certificate of Registration (COR) Required.

(A) Activities requiring a COR:

(1) A COR, issued by the Department, is required before a person may engage in the following activities within Utah:

(a) Operate an aquaculture facility.

(b) Operate a fee-fishing facility.

(c) Operate a fish processing plant.

(d) Broker aquatic animals.

(2) A COR, issued by the Division, is required for operation of the following activities within the State of Utah:

(a) public aquaculture facilities;.

(b) private fish ponds unless otherwise exempt from COR requirements under R657-59-3 and R657-59-7;

(c) institutional aquaculture facilities (R657-16-13);

(d) short term fishing events (R657-16-11);

(e) private stocking (R657-16-12);

(f) displays (R657-16-14).

(3) Entry permits shall be issued to holders of current CORs for the activities named in this subsection and to private fish pond owners pursuant to R58-17-13 (J) and R657-59.

R58-17-5. Species Allowed.

(A) Pursuant to Division of Wildlife Resources rules R657-3, R657-59, R657-16, and Utah Code sections 23-15-10 and 23-13-5, only those species authorized by the Division

or the Wildlife Board may be imported, possessed, or transported in conjunction with the authorized activity.

(B) Pursuant to 4-37-105(1), 4-37-201(3)(B) and 4-37-301(3)(B) the Department shall coordinate with the Division to determine which species the holder of a COR may propagate, possess, transport or sell.

(C) The Department will monitor sales receipts to insure that the species described on CORs, sales receipts, and entry permits issued by the Department are those authorized by the Division.

R58-17-6. Qualifying Waters.

(A) A private or public aquaculture facility, fee-fishing facility or private fish pond may not be developed on natural lakes, natural flowing streams, or reservoirs constructed on natural stream channels. Offstream reservoirs, and excavated ponds or raceways may be considered for use as an aquaculture or fee-fishing facility.

(B) During the COR application process, the Department shall coordinate with the Division to determine the suitability of the proposed site pursuant to R58-17-6(A), 4-37-111, 4-37-201(3) and 4-37-301(3).

R58-17-7. Screens Required.

(A) Screens or other devices that are designed to prevent the movement of fish into or out of an aquaculture facility, fee-fishing facility, public aquaculture facility, private fish pond, institutional aquaculture facility, short term fishing event or display must be placed at the inflow and outflow. The presence of adequate screening or other devices is a precondition to issuance or renewal of CORs pursuant to R58-17-4 and a precondition to delivery of aquatic animals to private fish ponds from health approved sources as provided in section 23-15-10 and R657-59-15.

(B) As part of the COR issuance process, the Department or the Division shall make site visits and determine the adequacy of screening.

(C) The Department or Division may inspect screening or other devices in their respective areas of responsibility to assure compliance with Subsections R58-17-7(A) and (B) and Section 23-15-10 and R657-59-15 during reasonable hours.

(D) It is the responsibility of the private fish pond owner or COR holder to report to the Department or Division, depending on which agency has jurisdictional authority, all escapements of aquatic animals from facilities. This is to be done within 72 hours of the loss or knowledge of the loss. The report shall include facility names, date of loss, estimate of number of aquatic animals lost, names of the public water the aquatic animals escaped into, remedial actions taken, and plans for future remedial action. The COR holder and/or facility operator or private fish pond owner will bear all costs for remedial actions. The Department or Division shall notify all affected agencies and parties within two working days. The agency having responsibility may suspend all activities at the facility, including aquatic animal imports, transfers, sales, fishing, etc., until the investigation and remedial actions are completed.

R58-17-8. Application and Renewal of Certificates of Registration (CORs).

(A) Application process.

(1) For application procedures pursuant to R58-17-4, contact the Fish Health Program of the Department at 350 N. Redwood Road, Box 146500, Salt Lake City, UT 84114-6500 for activities listed in R58-17-4(A)(1) or the Wildlife Registration Office of the Division at 1594 West North Temple, Suite 2110, Salt Lake City, UT 84114-6301 for activities listed in R58-17-4(A)(2).

(2) The application form must be completed and sent to the appropriate address with the required fee. Forms that are incomplete, incorrect or not accompanied by the required fee may be returned.

(3) Department or Division authorization of the site and species will be done at the earliest possible date. The Department will make every effort to process applications submitted to it within 14 work days pursuant to R58-17-5 and R58-17-6. Pursuant to R657-16-4, applications submitted under the jurisdiction of the Division require up to 45 days for processing, except for short-term fishing events, which require up to 10 days.

(4) If the application is granted, a written COR and COR number will be issued. The COR holder shall keep a copy of the COR on file for 2 years pursuant to Section 4-37-110.

(5) If the application is denied, a written explanation will be sent to the applicant.

(B) Renewal process.

(1) All CORs are valid until December 31 for the calendar year issued unless specified otherwise on the COR or unless renewed sooner.

(2) CORs must be renewed annually by submitting a completed application and the required fee to the Department or Division, and by complying with all other applicable renewal criteria.

(3) Failure to timely renew the COR annually may result in the loss of health approval, denial of future CORs, and the removal or destruction pursuant to R58-17-13(G) of the live or dead aquatic animals at the facility. Removal or disposal of live or dead aquatic animals is the responsibility of the owner and shall be done by means acceptable to the agency having responsibility.

(C) CORs are not transferable.

R58-17-9. Reporting Fish Diseases.

Persons involved in aquaculture and being regulated by this rule, R657-59, or R657-16, having knowledge of the existence in the state of any of the diseases currently on the pathogen list, Subsection R58-17-15(D)(2), (3), and (4), shall report it to the Department, Fish Health Program or the Division, Aquatics Section. The Department or Division will follow the Procedures for the Timely Reporting of Pathogens and the Emergency Response Procedures established by the Board. All confirmed findings of pathogens pursuant to R58-17-15(D)(2), (3), and (4), determined from such incidents or from inspections or diagnostic work initiated by the Department or the Division, will be reported to the Board.

R58-17-10. Quarantine of Aquatic Animals and Premises.

(A) If evidence exists that the aquatic animals in any facility are infected with or have been exposed to pathogens listed in R58-17-15(D)(2) and (3), then either quarantine or removal from the approval list (R58-17-2 (17), depending on the pathogen, may be imposed by the Commissioner of Agriculture or the State Veterinarian. Any action other than a quarantine must be approved by the Board.

(1) Lifting of the quarantine imposed on a facility infected with or exposed to emergency or prohibited pathogens requires the creation and implementation of a biosecurity plan that specifies action to control the pathogen and includes testing requirements of all lots of fish to verify the absence of the pathogen. In addition, the Department may require decontamination of the facilities and equipment in accordance with current medical knowledge of the organism, the Blue Book, and guidelines set forth by the Emergency Response Team.

(2) If the Department has reasonable evidence that the contagion is still present pursuant to R58-17-11, then quarantine, closure, or other measures such as

decontamination of the facility and equipment, destruction of aquatic animals, etc. may be imposed. Such measures will be in accordance with current medical knowledge of the organism, the Blue Book, and guidelines set forth by the Emergency Response Team.

(B) A quarantine may be imposed by the Commissioner of Agriculture or the State Veterinarian where aquatic animals are possessed, transported or transferred in violation of this rule, wildlife rules, or statute and consequently pose a possible disease threat; or where a quarantine is reasonably necessary to protect aquatic animals within the state. This action may be reviewed by the Board for recommendations to the Department.

(1) Quarantines imposed on facilities for rule or statute violations or for purposes of protecting aquatic animals may be lifted once sufficient evidence is presented to the State Veterinarian's satisfaction that infection is not present at the facility or that biosecurity control measures are being followed which will control further spread of the pathogen, and that removal of the quarantine does not create a risk to other aquatic animal populations. In addition, the Department may require decontamination of the facilities and equipment in accordance with current medical knowledge of the organism, Blue Book procedures, and guidelines set forth by the Emergency Response Team.

(2) If the Department has reasonable evidence that the contagion is present pursuant to R58-17-11, then quarantine, closure, or other measures shall be imposed pursuant to R58-17-10(A)(2).

(C) Any person, licensed pursuant to R58-17 and affiliated with a facility under quarantine, who delivers aquatic animals from health-approved sources for other public or private aquaculture facilities may, with written permission from the Department, use their hauling trucks if the operator either houses the truck off the quarantined facility, or sanitizes the truck according to Department recommendations each time it leaves the quarantined facility.

R58-17-11. Handling of Aquatic Animals and Premises Confirmed to Be Infected With a Listed Pathogen in R58-17-15(D).

(A) Where any facility or group of aquatic animals is confirmed to be infected with one or more of the pathogens listed in R58-17-15(D), the Commissioner of Agriculture and Food or State Veterinarian may either quarantine or remove the facility from the health approval list pursuant to R58-17-10 and take steps to prevent the spread of the pathogen and to eliminate it. These actions may be reviewed by the Board for recommendations to the Department. The Department or Division, in their respective areas of responsibility, may take one or more of the following actions as listed below in this subsection, depending on the pathogen involved and the potential effects of the pathogen on the receiving water, neighboring aquaculture facilities or the public fishery resource.

(1) Destruction and disposal of all infected and exposed aquatic animals.

(2) Cleaning and decontamination or disposal of all handling equipment and holding facilities.

(3) Testing is required of all lots of fish, which may be at the owner's expense, to detect the presence or spread of the pathogen. This may include the use of sentinel fish. After two negative tests, six months apart, the quarantine shall be reassessed, possibly released, and/or other measures may be imposed pursuant to R58-17-10(A)(2). Once sufficient evidence shows that the pathogen is not present at a facility, full restocking may begin.

(4) The infected aquatic animals may be allowed to remain on the premises through the production cycle depending on the pathogen involved and its potential effects on adjacent animals. All stocks within the facility shall be tested according to provisions outlined in the biosecurity plan to determine if the pathogen persists. At the end of the production cycle, then testing should be done at least annually. If the pathogen is not found after two consecutive annual inspections, then testing may revert to the original requirements for the facility. If biosecurity of the facility cannot or is not being maintained, immediate destruction of the stocks may be required. The biosecurity plan for the facility shall remain in effect if the COR holder sells or goes out of business.

R58-17-12. Statement of Variances.

Circumstances may arise which cannot be adequately addressed or resolved with this rule. The Board may grant specific variances to the rule if the following conditions are met:

(A) The variance is based on scientifically sound information and rationale.

(B) The variance will cause no significant threat to other aquaculture operations, state or private, or to public fishery resources.

(C) The variance is documented appropriately.

R58-17-13. Importation of Aquatic Animals or Aquaculture Products Into Utah.

(A) An official ENTRY PERMIT is required to import live aquatic animals or their gametes into Utah. This permit is in addition to the COR for operation of the facility or as otherwise specified in R58-17-4. The entry permit can be obtained at no charge by contacting the Department, Fish Health Program and providing the following information:

(1) Name, address, phone number and COR number of importer.

(2) Species, size and/or number of aquatic animals to be imported.

(3) Name and health approval number of sources, origin of aquatic animals, transfer history, and approximate date of shipment.

(4) For international shipments, a certificate of veterinary inspection from the source must be obtained by the importer indicating a negative record of testing by OIE reference labs for prohibited pathogens pursuant to R58-17-15(D)(2) and (3), a negative record of other OIE-listed pathogens affecting the aquatic animals to be imported, and that known nuisance species are not found in the water source. In addition, written authorization from the US Department of Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS) for the importation must be included.

(B) Each shipment of live aquatic animals must be authorized. A copy of the entry permit will be sent to the requesting party and a copy must accompany the shipment. The permit holder shall allow up to two weeks for the Department to verify the health approval status of the source and to verify authorized species status pursuant to R58-17-5.

(C) All import shipments of live aquatic animals must originate from sources that have been health approved by the Department pursuant to R58-17-15(A)(2) and (B). A list of approved sources is maintained by the Department, but the list is not published due to frequent updates. Information on currently approved sources may be obtained by contacting the Department Fish Health Program.

(D) All importations must be species that have been authorized by the Wildlife Board and the Division pursuant to R657-3, R657-59-16, and 4-37-105(1).

(E) To import live grass carp (Ctenopharyngodon idella), the fish must be verified as being triploid (sterile) by a

laboratory and method acceptable to the Department. A U. S. Fish and Wildlife Service triploid verification form must be obtained from the supplier as required in R657-16-7. Both this form and the Department's statement verifying treatment or testing for the Asian tapeworm must be on file with the Department prior to shipment of the fish. Copies of the entry permit, treatment or testing statement and the triploid verification forms must accompany the fish during transit. The statement verifying treatment or testing is also required for all aquatic animal species that are known or reported hosts or carriers of the Asian tapeworm.

(F) The State Veterinarian may require inspection, treatment or testing of any aquatic animal and plant species, including aquatic invasive species, water, vehicle, or container, in accordance with current scientific knowledge before importation.

(G) Whole dead and eviscerated fresh or frozen salmonid fish or live aquatic animals may be imported into Utah for processing at a fish processing plant without an Entry Permit. Live salmonid fish may be imported into and transported within Utah for processing at a fish processing plant without an Entry Permit, but they must be killed upon release from the transport vehicle and may not be held live at the fish processing plant. Waste products, i.e., brine shrimp cysts, carcasses, viscera and waste water, must be incinerated, buried with "quick lime" (Calcium oxide), composted, digested, or disposed of by means acceptable to the Department to deter the spread of pathogens and non-native species pursuant to R657-3 by water or animals. The Department may apply the requirements in this subsection to other species of aquatic animals and pathogens if future needs arise.

(H) Placement of dead fish, fish parts, or fish waste products from a fish processing plant, or live or dead aquatic animals from any facility into public waters is illegal. Proper disposal is the responsibility of the processor/owner/broker pursuant to R58-17-13(G).

(I) All transport vehicles, importing aquatic animals imported into Utah or transporting them through Utah pursuant to R58-17-14(C), must have proper documentation and are subject to inspection. The lack of proper documentation and/or the findings of an inspection may result in entry denial, fines, or other Department actions. All inspection costs will be born by the importer.

(J) Aquatic animals may be imported and transported to a private fish pond by an out-of-state source, approved by the Department, or by an aquaculture facility representative with a current COR by following requirements in section 4-37-204. The approved or licensed facility representative and the private fish pond representative shall sign and forward receipts pursuant to R58-17-17 (D).

R58-17-14. Buying, Selling, and Transporting Aquatic Animals.

(A) Buying aquatic animals:

Live aquatic animals, except ornamental fish, unless the ornamental fish are determined a risk pursuant to R58-17-2(A)(24), may be purchased or acquired only by persons or entities who possess a valid COR that authorizes the animals or as otherwise specified in R58-17-4. This applies to separate facilities owned by the same individual. Live aquatic animals must be purchased only from sources that either are located in-state and have a valid COR for aquaculture or are located outside of Utah. In both cases, the sources must also be on the current fish health approval list.

(B) Selling aquatic animals:

Live aquatic animals, except ornamental fish, unless the ornamental fish are determined a risk pursuant to R58-17-2(A)(24), may be sold only by a person or entity located in-state who possesses a valid COR for aquaculture or by a person or entity located outside of Utah. Current listing for each source and species on the health approval list is also required. Within Utah, an aquaculture facility operator may only sell or transfer live aquatic animals to a person or entity, which has been issued a valid COR to possess such animals or as otherwise specified in R58-17-4.

(C) Transporting aquatic animals:

(1) Any person possessing a valid COR may transport the live aquatic animals specified on the COR to the facility named on the COR.

(2) All transfers or shipments of live aquatic animals within Utah, except ornamental fish, unless the ornamental fish are determined a risk pursuant to R58-17-2(A)(24), must be accompanied by documentation of the source and destination, including:

(a) Name, address, phone number, COR number and COR expiration date, fish health approval number and expiration date of source and transfer history.

(b) Species, size, number or weight being shipped.

(c) Name, address, phone number, COR number and COR expiration date of the destination or as specified in R58-17-4.

(d) Date of transaction.

(3) Live aquatic animals may be shipped through Utah without a COR, provided that the animals will not be sold, released or transferred, the products remain in the original container, water from the out-of-state source is not exchanged or released, and the shipment is in Utah no longer than 72 hours. Proof of legal ownership, origin of aquatic animals and destination must accompany the shipment.

(4) Any person who hauls fish may transport a species other than those listed on their COR provided the source facility and destination both have a valid COR to possess that species. Transportation of aquatic animals to a private fish pond may not require a COR pursuant to R657-59-3, but movement and delivery of the aquatic animals is subject to the species restrictions in R657-59-16.

(5) No person may move or cause to be moved aquatic animals from a facility known to be exposed to or infected with any of the pathogens on the pathogen list, R58-17-15(D)(2) through (4), without first reporting it to the appropriate regulating agency pursuant to R58-17-9 and receiving written authorization to move the aquatic animals.

(D) Brokers:

(1) Brokers shall follow the same requirements that other producers follow as to importation, health approval of their facility and their source facilities and assuring that live sales are only made to those with valid CORs.

(2) To qualify for health approval of their fish, brokers shall obtain health approval for all source facilities from which they broker fish.

R58-17-15. Aquatic Animal Health Approval.

(A) Live aquatic animals, except ornamental fish, unless the ornamental fish are determined a risk pursuant to R58-17-2(A)(24), may be acquired, purchased, sold or transferred only from sources which have been granted health approval by the Department pursuant to this section. This applies to separate facilities owned by the same individual and to both in-state and out-of-state facilities.

(1) The Department shall be responsible for granting health approval and assigning a health approval number to aquaculture facilities in Utah, and to any out-of-state sources pursuant to 4-37-501(1). The Division shall be responsible for granting health approval and assigning a health approval number to public aquaculture facilities within the state, and for the movement of live aquatic animals from wild populations in waters of the state pursuant to 4-37-501(1).

(2) The Department is responsible for granting health approval for the importation into or transportation through Utah of aquatic animals.

(3) The Board may review health approval actions of the Department or the Division.

(B) Basis for Health Approval:

(1) Health approval for salmonid aquatic animals is based on the statistical attribute sampling of each lot of aquatic animals at the facility in accordance with current Blue Book procedures. This shall require minimum sampling at the 95% confidence level, assuming a 5% carrier prevalence for the prohibited pathogens, pursuant to R58-17-15(D)(2) and (3). Health approval is applied to the entire facility, not individual lots of fish.

(2) All lots of fish shall be sampled.

(3) For brood facilities, lethal sampling may be required on

the brood fish if the following conditions exist:

(a) Progeny are not available at the facility for lethal sampling;or

(b) A statistically valid sample of ovarian fluids from ripe females is not tested.

(4) Collection, transportation and laboratory testing of the samples will follow standard procedures specified by the Department, the Division and the Board. Inspections will be conducted under the direction of an individual certified by the American Fisheries Society as a fish health inspector.

(5) EGG ONLY sources - A facility which cannot gain full health approval because of a horizontally transmitted pathogen, may be approved to sell eggs provided the eggs are free of the listed vertically transmitted pathogens pursuant to R58-17-15(D)(1) and are properly disinfected using approved methods prior to shipment. Eggs may be required to be from incubation units isolated from hatchery and open water supplies and to be from fish-free water sources.

(6) Health approval for non-salmonid aquatic animals is based on specific pathogen testing for that identified aquatic animal as per R58-17-15(D). In addition, the agency having responsibility pursuant to R58-17-15(A)(1) and (2) will discuss the disease history of the facility with the producer, and then contact acceptable fish health professionals to identify other existing or potential disease problems.

(7) Under no circumstances shall health approval be granted to a facility if any lots test positive for pathogens listed in R58-17-15(D)(2) or (3) or if any of the same pathogens contaminate the facility's production waters or water source.

(C) Approval Procedures:

(1) Applicable to all aquatic animals.

(a) To receive initial health approval, inspection reports or other evidence of the disease status of an aquaculture facility or public aquaculture facility must be submitted to the appropriate agency (see R58-17-15(A)(1) and (2)). Applicants seeking initial approval and annual renewal for non-salmonid aquatic animals shall complete and submit forms provided by the Department or Division. Initial approval also requires the applicant to include information on origins of the aquatic animals at the facility, available disease histories by means of a facility disease history report and a five year disease history report, and fish transfer histories. The same application materials shall be required annually for renewal of health approval for activities occurring between applications.

(b) Inspections are conducted pursuant to Utah Code Section 4-37-502 and this section rule to detect the presence of any prohibited pathogens listed under R58-17-15(D)(2) and (3). Overt disease need not be evident to disqualify a facility. To qualify for initial and renewal of health approval, evidence must be available verifying that prohibited pathogens listed under R58-17-15(D)(2) and (3) are not present.

(c) Once requirements for health approval have been met, the facility shall be added to the health approval list of the responsible agency and assigned a health approval number for the current year. Health approval of each facility shall be reviewed annually for continuance on the lists maintained by the Department and the Division pursuant to R58-17-15(A)(1).

(d) The Department will report all confirmed results of pathogens pursuant to R58-17-15(D) for sources under its jurisdiction at each meeting of the Board.

(e) Public aquaculture facilities and wild brood stocks are included on the health approval list maintained by the Division. The Division will report all confirmed results of pathogens pursuant to R58-17-15(D) for sources under its jurisdiction at each meeting of the Board.

(f) If all aquatic animals are removed from an approved facility for a period of three months or more, or if health approval is canceled or denied, then subsequent health approval may be granted only after the facility owner has satisfactorily reapplied pursuant to R58-17-15(C).

(2) Applicable to salmonid aquatic animals:

(a) For initial approval of new facilities, two inspections of the same lot, at least four months apart and negative for any prohibited pathogen listed in R58-17-15(D)(2) and (3), are required. The aquatic animals must have been at the facility at least six months prior to the first inspection. During the inspections, the aquatic animals shall be reared for appropriate periods in waters from one source, and lots from all source waters at a facility shall be inspected.

(b) For initial approval of existing facilities, health inspection reports for a minimum of the previous two years, and facility disease history reports for up to the previous five years and five-year disease histories for all stocks transferred to the facility are required.

(c) All lots of aquatic animals at the facility as well as any outside sources of these aquatic animals must be inspected for initial approval and for renewals pursuant to R58-17-15(B)(4).

(d) After initial approval, annual inspections shall be conducted to renew health approval. A two-month grace period is granted at the completion of the annual inspection for laboratory testing of samples and reporting of test results. This is to allow the facility to conduct business while awaiting test results. Health inspection reports, the facility disease history for at least the previous year, and disease histories for at least the previous year for all stocks imported to the facility shall be required before each renewal.

(3) Applicable to non-salmonid aquatic animals:

(a) For approval of facilities, one inspection of aquatic animals to be approved from the pond, reservoir, or holding facility and negative testing of an appropriate attribute sample for any applicable prohibited pathogen pursuant to R58-17-15(D)(2) and (3)is required. A composite sample of 60 fish of the same lot from all ponds in the shipment from the same water source may be accepted in lieu of a full attribute sample.

(b) In addition, a written report is required from an acceptable fish health professional stating that no clinical signs of any infectious fish disease are ongoing and that certain pathogens are not infecting the species to be imported at the time of importation.

(D) Prohibited and reportable pathogen list:

(1) Pathogens requiring control are classified as emergency prohibited, prohibited, or reportable. Those pathogens denoted by an asterisk (*) preceding the name will only be tested for if the aquatic animals or eggs originate from an area where the pathogen is found. Pathogens denoted by a

double asterisk (**) after the name can only be transmitted in fish and not in the eggs, therefore permitting the special provisions for egg only sources provided in R58-17-2(A)(10) and R58-17-15(B)(5). Excluding Artemia cysts, aquatic shrimp and prawns are not marketed as eggs, thus exempting shrimp and prawns from the egg-only provisions. However, the egg-only provision may be applied should shrimp or prawns be marketed as eggs and the Department or Division determines a vertically transmissible, emergency prohibited pathogen is present. Pathogens of aquatic shrimp and prawns are denoted with a triple asterisk (***) after the name. Pathogens that are inspected using the most current OIE Manual of Diagnostic Tests for Aquatic Animals are denoted with the pound sign (#) after the name.

(2) Emergency prohibited pathogens.

(a) Infectious hematopoietic necrosis virus (IHNV).

(b) Infectious pancreatic necrosis virus (IPNV).

(c) Viral hemorrhagic septicemia virus (VHSV).

(d) *Oncorhynchus masou virus (OMV).

(e) Spring viremia of carp virus (SVCV).

(f) *Epizootic hematopoietic necrosis virus (EHNV)#.

(g) White spot syndrome virus (WSSV)***#.

(h) Yellow head virus (YHV)***#.

(i) Taura syndrome virus (TSV)***#.

(j) Infectious hypodermal and hematopoietic necrosis virus (IHHNV)***#.

(3) Prohibited pathogens.

(a) Myxobolus cerebralis (whirling disease)**.

(b) Renibacterium salmoninarum (bacterial kidney disease (BKD)).

(c) *Ceratomyxa shasta (ceratomyxosis disease)**.

(d) Bothriocephalus (Asian tapeworm disease bothriocephalosis)**.

(e) *Tetracapsuloides bryosalmonae or PKX (proliferative kidney disease (PKD))**.

(4) Reportable pathogens.

(a) Yersinia ruckeri (enteric redmouth disease)**.

(b) Aeromonas salmonicida (furunculosis disease)**.

(c) Centrocestus formosanus.

(d) Emerging fish pathogens (including any filterable agent or agent of clinical significance as determined by the Board).

(5) The Procedures for the Timely Reporting of Pathogens shall be followed if any emergency prohibited, prohibited, or reportable pathogen is found. Inspection for reportable pathogens is optional, but positive findings of these pathogens must be reported to the Board. Reporting of unregulated pathogens to the Board is not required.

(6) The Emergency Response Procedures shall be activated any time a confirmed finding or unconfirmed evidence of an emergency prohibited or prohibited pathogen is reported.

R58-17-16. Inspection of Records and Facilities.

(A) Except as otherwise provided in R657-16-9 and R657-59-12, the following records shall be maintained for a period of up to five years and be available for inspection during reasonable hours by the appropriate agency pursuant to R58-17-4.

(1) Purchase, acquisition, distribution, and production histories of live aquatic animals.

(2) CORs and entry permits.

(3) Valid identification of stocks, including origin of stocks.

(B) The appropriate agency representatives pursuant to R58-17-4 and Utah Codes 4-1-4, 4-31-16 and 23-15-10 and under appropriate regulatory responsibility may conduct pathological or physical investigations at any registered facility, private fish ponds and fish being imported or transported in vehicles, during reasonable hours if there is cause to believe that a disease condition exists or as otherwise authorized in R58-17-7, R58-17-17 (D), R657-59 and R657-16. Any laboratory testing as a result of this investigation will be at the owner's expense if evidence indicates that R58-17 has been violated pursuant to the investigation.

R58-17-17. Aquaculture Facilities, Fish Processing Plants, Brokers.

(A) COR required:

A COR is required to operate an aquaculture facility or a fish processing plant and to act as a broker. A separate COR and fee are required for each facility defined under "aquaculture facility", Section 4-37-103(2), regardless of ownership.

(B) Live aquatic animals may be sold or transferred:

The operator of an aquaculture facility with health approval may take the aquatic animals as authorized on the COR from the facility at any time and offer them for sale. Within Utah, live aquatic animals can only be sold to other facilities which have a valid COR for that species. Fish processing plants dealing with salmonids shall neither hold nor sell live salmonids.

(C) Fee-fishing facility and/or fish processing plant allowed: The operator of an aquaculture facility may also operate a fee-fishing facility pursuant to R58-17-18 and/or a fish processing plant pursuant to R58-17-17 and R58-17-13(G) and (H), provided the fee-fishing facility or the fish processing plant is within one half mile distance from the aquaculture facility, contains only those species authorized on the COR for the aquaculture facility, and this activity is listed on the COR for the aquaculture facility.

(D) Receipts required: Any sale, shipment, or transfer of live aquatic animals from an out-of-state approved source, from an aquaculture facility or by a broker must be accompanied by a receipt. A receipt book will be provided by the Department upon request. Copies of all receipts will be submitted to the Department with the annual report. The receipt will contain:

(1) Names, addresses, phone numbers, COR numbers, COR expiration dates, fish health approval numbers and expiration dates of sources.

(2) Number, strain name, species name, age/size, reproductive capability and weight being shipped.

(3) Names, addresses and phone numbers of destinations.

(4) COR numbers and COR expiration dates for destinations excluding private fish pond owners that qualify to operate without a COR.

(5) Dates of transactions.

(6) Signatures of seller and buyer or as otherwise required in R657-59.

(E) Annual reports required:

Aquaculture facility owners, fish processing plant owners, and brokers shall submit annual reports of all sales, transfers, and purchases to the Department at the time of the COR renewal, pursuant to R58-17-8(B)(2). Report forms will be provided by the Department.

(1) The report will contain: (a) Names, addresses, phone numbers, COR numbers and health approval numbers of sources.

(b) Number, size and weight by species.

(c) Names, addresses, phone numbers, COR numbers of the destinations.

(d) Dates of transactions.

(2) Copies of receipts pursuant to R58-17-17(D), shall be submitted as part of the annual report to the Department.

(3) Reports shall be submitted to the Department by December 31 each year and must be received before a COR

will be renewed. If the report, application, receipts and fee are not received by December 31 pursuant to R58-17-8(B), the COR will no longer be valid and regulatory action may be initiated pursuant to R58-17-8(B)(3). For sales made after submittal of the annual report and before January 1, the facility owner shall submit an addendum report that is due by January 31.

(4) The report made by operators of fish processing plants shall also contain all purchases and transfers to and from the facility and shall address proper methods of disposal with dates and locations pursuant to R58-17-13(G) and (H).

(F) Fees assessed:

The initial and annual renewal COR fee for aquaculture facilities, brokers, and fish processing plants is $150.00, pursuant to Section 4-37-301.

(G) The COR holder shall keep a copy of CORs, reports, and records on file for two years pursuant to 4-37-110.

R58-17-18. Fee-Fishing Facilities.

(A) COR required:

A COR is required to operate a fee-fishing facility. A separate COR is necessary for separate fee-fishing facilities as defined under "aquaculture facility", Section 4-37-103(2), regardless of ownership.

(B) Live sales or transfers prohibited:

The operator of a fee-fishing facility may not sell, donate, or otherwise transfer live aquatic animals, except when the approved species may be transferred into the same facility from an approved source.

(C) Fishing licenses not required:

A fishing license is not required to take aquatic animals at a fee-fishing facility.

(D) Receipts required:

To transport dead aquatic animals from a fee-fishing facility, the customer (owner associations and catch and release operations are exempt) shall receive from the operator a receipt which includes:

(1) Name, address, COR number, COR expiration date and phone number of the facility.

(2) Date caught.

(3) Species and number of fish.

(E) Annual report required:

The operator of a fee-fishing facility shall submit to the Department an annual report of all live aquatic animals purchased or acquired during the year. A report form will be provided by the Department. This report must contain:

(1) Names, addresses, phone numbers, health approval numbers, COR numbers and COR expiration dates of all sources.

(2) Number, size and weight by species.

(3) Dates of purchase and acquisition of aquatic animals.

(F) Fees assessed and annual report deadline:

(1) The initial and annual renewal fee for a fee fishing COR is $30.00, pursuant to 4-37-301.

(2) Holders of CORs, who renew applications including report, receipts, and fee after December 31 pursuant to R58-17-17(E)(3), shall be assessed a $25.00 late fee. If the application, report, receipts and fee are not received by December 31 pursuant to R58-17-8(B)(1), the COR will be no longer valid and regulatory action may be initiated pursuant to R58-17-8(B)(3).

(G) The COR holder shall keep a copy of CORs, reports, logs, and records on file for two years pursuant to 4-37-110.

R58-17-19. Public Aquaculture, Private Fish Ponds, Institutional Aquaculture Facilities, Short Term Fishing Events, Private Stocking and Displays.

Details on the COR and regulatory requirements pursuant to R58-17-4 for operating public aquaculture, private fish ponds, institutional aquaculture facilities, short term fishing events, private stocking and displays are found in Division of Wildlife Resources' Rules R657-16 and R657-59.

R58-17-20. Classification of Pathogens.

TABLE

I. Emergency prohibited pathogens are pathogens that cause high morbidity and high mortality, are exotic to Utah, and require immediate action. These pathogens generally can not be treated and shall be controlled through avoidance, eradication, and disinfection.

Pathogen	Classification	Species	Inspection Requirement/ Comment
Infectious Hematopoietic Necrosis Virus (IHNV)	Emergency Prohibited	Salmonids	
Infectious Pancreatic Necrosis Virus (IPNV)/Aquatic Birnaviruses	Emergency Prohibited	All susceptible hosts	May be isolated from many species of aquatic organisms
Viral Hemorrhagic Septicemia Virus (VHSV)	Emergency Prohibited	Salmonids, pike, herring turbot, pilchard, etc.	
Oncorhynchus Masou Virus (OMV)	Emergency Prohibited	Salmonids	
Spring Viremia Of Carp Virus (SVCV)	Emergency Prohibited	All cyprinids esocids Shrimp	Required use of Bluebook designated, cell lines; inspection requirement shall be applied as needed to koi and ornamental fish
Epizootic Hematopoietic Necrosis Virus (EHNV)	Emergency Prohibited	Salmonids, percids, ictalurids, silurids, Gambusia, etc.	Required only for fish from endemic areas; use OIE Manual for test protocol
White Spot Syndrome Virus (WSSV)	Emergency Prohibited	Freshwater or marine shrimp	Protocol for testing in OIE Manual
Yellow Head Virus (YHV)	Emergency Prohibited	Freshwater or marine shrimp	Protocol for testing in OIE Manual
Taura Syndrome Virus (TSV)	Emergency Prohibited	Freshwater or marine Shrimp	Protocol for testing in OIE Manual
Infectious Hypodermal and Hematopoietic Necrosis Virus (IHHNV)	Emergency Prohibited	Freshwater or marine shrimp	Protocol for testing in OIE Manual

II. Prohibited pathogens are pathogens that can cause high morbidity or high mortality, may be endemic to Utah, and require action in a reasonable time. Prohibited pathogens are generally very difficult or impossible to treat and can only be controlled through avoidance, eradication, and disinfection, etc.

Myxobolus cerebralis (Whirling Disease)	Prohibited	Salmonids	Focus on more susceptible species as per Bluebook

Renibacterium salmoninarum (Bacterial Kidney Disease, BKD)	Prohibited	Salmonids	Required for salmonid species with more frequently reported clinical disease, such as Pacific salmon, brook trout, lake trout, Atlantic salmon, grayling, etc.
Ceratomyxa shasta	Prohibited	Salmonids	Inspect fish only from reported endemic areas
Bothriocephalus acheilognathi (Asian tapeworm)	Prohibited	All cyprinids, one Poecilid	Mosquito fish (Gambusia affinis) is the poecilid regulated under this section
Tetracapsuloides bryosalmonae (proliferative kidney disease, PKD)	Prohibited	Salmonids	Inspect fish only from reported endemic areas

III. Reportable pathogens are pathogens that are generally prevented using good management practices. Reportable pathogens are not prohibited in Utah, but may be prohibited in some other states or countries (see R58-17-20). Inspections are not required for reportable pathogens, but all positive findings must be reported to the Board.

Yersinia ruckeri (enteric redmouth disease)	Reportable		No inspection requirement in Utah
Aeromonas salmonicida (furunculosis)	Reportable		No inspection requirement in Utah
Centrocestus formosanus	Reportable		Not applicable. Usually diagnosed by the presence of metacercarial cysts in gills via light microscopy: no inspection protocols available

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R58. Agriculture and Food, Animal Industry.
R58-21. Trichomoniasis.
R58-21-1. Authority.

(1) Promulgated under authority of Section 4-31-109.

(2) It is the intent of this rule to eliminate or reduce the spread of bovine trichomoniasis in Utah.

R58-21-2. Definitions.

(1) "Acceptable media" means any Department approved media in which samples may be transferred and transported.

(2) "Approved slaughter facility" means a slaughter establishment that is either under state or federal inspection.

(3) "Approved test" means a test approved by the state of origination to diagnose trichomoniasis in bulls. If the state of orgination has no approved test for the diagnosis of trichomoniasis it shall mean one sample tested by a method approved by the Department.

(4) "Brand" means a minimum of a 2 X 3 hot iron single character lazy V applied to the left of the tailhead of a bull, signifying that the bull is infected with the venereal disease, trichomoniasis.

(5) "Certified veterinarian" means a veterinarian who has been certified by the Utah Department of Agriculture and Food to collect samples for trichomoniasis testing.

(6) "Commuter bulls" means bulls traveling across state lines for grazing purposes while utilizing a Commuter Permit Agreement approved by both the respective State Veterinarians or bulls traveling on a Certificate of Veterinary Inspection where there is no change of ownership.

(7) "Confinement" means bulls held in such manner that escape is improbable. Typical barbed wire or net pasture fencing does not constitute confinement.

(8) "Department" means the Utah Department of Agriculture and Food.

(9) "Exposed to female cattle" means bulls with freedom from restraint such that breeding is a possible activity.

(10) "Feeder Bulls" means bulls not exposed to female cattle and kept in confinement for the purpose of feeding and only go to slaughter.

(11) "Negative bull" means a bull that has been tested with official test procedures and found free from infection by Tritrichomonas foetus.

(12) "Official tag" means a tag authorized by the Department that is placed in the right ear of a bull by a certified veterinarian after being tested for trichomoniasis. The color of the official tag shall be changed yearly.

(13) "Official test" means a test currently approved by the Department for detection of Tritrichomonas foetus.

(14) "Positive bull" means a bull that has been tested with official test procedures and found to be infected by Tritrichomonas foetus.

(15) "Positive herd" means any herd or group of cattle owned by one or more persons which shares common grazing or feeding operations and in which one or more animals has been diagnosed with trichomoniasis within the last 12 months.

(16) "Qualified feedlot" means a feedlot approved by the Utah Department of Agriculture and Food to handle heifers, cows, or bulls. These animals shall be confined to a dry lot area which is used to upgrade or finish feeding animals going only to slaughter.

(17) "Test chart" means a document which certifies that a bull has been subjected to an official test for trichomoniasis and indicates the results of the test.

(18) "Trichomoniasis" means a venereal disease of bovidea caused by the organism Tritrichomonas foetus.

R58-21-3. Trichomoniasis - Sampling and Testing Procedures.

(1) Sample collection - Samples are obtained from a vigorous scraping of the bull's prepuce using a sterile syringe and new pipette on each bull.

(2) Sample handling - Samples shall be transferred and transported in approved media. Media should be maintained at 65 to 90 degrees Fahrenheit (18 to 32 degrees Celsius)during sampling and transport to clinic. Samples shall be set up for incubation within 24 hours of sampling. Samples shall also be protected from direct sunlight.

(3) Polymerase Chain Reaction (PCR) testing - The inoculated media shall be incubated at 98 degrees Fahrenheit (37 degrees Celsius) for 24 hours and then frozen. Samples may remain frozen for up to 3 weeks. The frozen sample(s) shall be sent overnight on postal approved frozen packs to the Utah Veterinary Diagnostic Laboratory (950 East 1400 North, Logan, Utah 84341) or an other approved laboratory for PCR testing.

R58-21-4. Trichomoniasis - Rules - Prevention and Control.

(1) All bulls twelve months of age and older, entering Utah, must be tested with an approved test for trichomoniasis by an accredited veterinarian prior to entry into Utah. Bulls that have had contact with female cattle subsequent to testing must be retested prior to entry.

(2) The following bulls are exempted from (A) above:

(a) Bulls going directly to slaughter or to a qualified feedlot,

(b) Bulls kept in confinement operations,

(c) Rodeo bulls for the purpose of exhibition, and

(d) Bulls attending livestock shows for the purpose of exhibition, only to be returned to the state of origin immediately after the event.

(3) Rodeo and exhibition bulls with access to grazing, or exposed to female cattle, or being offered for sale are required to be tested prior to entry.

(4) All bulls twelve months of age and older residing in Utah, and all commuter bulls must be tested with an official test for trichomoniasis annually, between October 1 and April 30 of the following year, or prior to exposure to female cattle according to approved sampling and testing procedures. All bulls must be classified as a negative bull prior to exposure to female cattle or offered for sale.

(5) Testing shall be performed by a certified veterinarian.

(a) All test results shall be recorded on test charts provided by the Department or electronic forms created by the certified veterinarian.

(i) Electronic forms shall have the following information:

(A) Veterinarian's name and contact information

(B) Owner's name and contact information

(C) Bull's trichomoniasis tag number, age, breed

(D) Date of collection

(E) Test results

(b) A copy of all test charts shall be submitted to the Department within ten (10) days of collecting the sample.

(6) All bulls twelve months of age and older being offered for sale for reproductive purposes in the state of Utah must be tested for trichomoniasis with an official test prior to sale. Bulls that have had contact with female cattle subsequent to testing must be re-tested prior to sale or transfer of ownership.

(7) It shall be the responsibility of the owner or his agent to declare, on the auction drive-in slip, the trichomoniasis status of a bull being offered for sale at a livestock auction.

(a) Untested bulls (i.e. bulls without a current

trichomoniasis test tag), including dairy bulls, must be sold for slaughter only, for direct movement to a qualified feedlot, or confinement operation, unless untested bulls are tested prior to exposure to female cattle.

(8) Any bull which has strayed and commingles with female cattle may be required to be tested (or re-tested) for trichomoniasis. The owner of the offending bull shall bear all costs for the official test.

(9) All Utah bulls, which are tested, shall be tagged in the right ear with an official tag by the certified veterinarian performing the test.

(10) Bulls entering the State of Utah under the provisions of this rule may be tagged upon arrival by a certified veterinarian upon receipt of the trichomoniasis test charts from the testing veterinarian.

(11) Bulls which bear a current trichomoniasis test tag from another state which has an official trichomoniasis testing program will be acceptable to the State of Utah providing that they meet all trichomoniasis testing requirements as described above.

R58-21-5. Trichomoniasis - Rules - Positive Bull.

(1) A bull is considered positive ifa laboratory identifies Tritrichomonas foetus using an official test.

(2) All bulls testing positive for trichomoniasis must be reported within 48 hours to: 1) the owner, and 2) the State Veterinarian, by the certified veterinarian performing the test.

(4) The owner shall be required to notify the administrators of the common grazing allotment and any neighboring (contiguous) cattleman within ten days following such notification by the certified veterinarian.

(5) All bulls which test positive for trichomoniasis must be sent by direct movement within 14 days, to:

(a) Slaughter at an approved slaughter facility, or

(b) To a qualified feedlot for finish feeding and slaughter, or

(c) To an approved auction market for sale to one of the above facilities.

(d) An exemption to the 14 day requirement will be given by the State Veterinarian to owners of bulls that are required to be in a drug withdrawal period prior to slaughter.

(6) Such bulls must move only when accompanied by a VS 1-27 Form issued by the testing veterinarian or other regulatory official.

(7) Positive bulls entering a qualified feedlot, or approved auction market shall be identified with a lazy V brand on the left side of the tailhead by either the livestock inspector or the contract veterinarian, indicating that the bull is infected with trichomoniasis.

(8) All bulls from positive herds are required to have one additional individual negative Polymerase Chain Reaction (PCR) test prior to exposure to female cattle, unless they are being sent to slaughter, to a qualified feedlot, or being feed for slaughter in a confinement operation.

R58-21-6. Trichomoniasis - Rules - Non-compliance.

(1) Any person who fails to satisfy the requirements of this rule or who knowingly sells animals infected with trichomoniasis, other than to slaughter, without declaring their disease status shall be subject to citation and fines as prescribed by the department or may be called to appear before an administrative proceeding by the department.

(2) After April 30, owners of all untested bulls will be fined $200.00 per violation.

(3) Owners of untested bulls that have been exposed to female cattle will be fined 200.00 per violation regardless of the time of year.

KEY: disease control, trichomoniasis, bulls, cattle

January 4, 2013 **4-31-21**
Notice of Continuation January 21, 2015

R81. Alcoholic Beverage Control, Administration.
R81-4E. Resort Licenses.
R81-4E-1. Licensing.

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

R81-4E-2. Application.

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

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

(b) the department has inspected the resort premise.

(2) Pursuant to 32B-5-203 and 32B-8-204, each sublicense of a resort license is not required to:

(a) submit an application or renewal application that is separate from the resort license application;

(b) carry public liability or dramshop insurance coverage that is separate from that carried by the resort licensee; or

(c) post a bond that is separate from the bond posted by the resort licensee if the aggregate of any bonds posted by the resort licensee covers each sublicense under the resort license.

(3) Pursuant to 32B-8-302, a resort spa sublicense is not required to file a separate application from the application for the resort license unless the resort spa sublicense is being sought after the resort license has already been granted. If a resort licensee seeks to add a resort spa sublicense after its resort license is granted, the application shall comply with 32B-8-204(3)(b), and this rule.

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

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

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

R81-4E-3. Bonds.

No part of any corporate surety or cash bond required by Section 32B-5-204 and 32B-8-202(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate surety or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4E-4. Insurance.

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

R81-4E-5. Resort License Liquor Order and Return Procedures.

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

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

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

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

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

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

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

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

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

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

R81-4E-6. Resort Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32B-8-304(4) and -401(2)(b). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4E-7. Sale and Purchase of Alcoholic Beverages in Locations Operated Under a Restaurant or Limited Restaurant Sublicense.

(1) With respect to a restaurant sublicense or limited restaurant sublicense, alcoholic beverages (including light beer) must be sold in connection with an order for food placed and paid for by a patron. An order for food may not include food items gratuitously provided by the restaurant to patrons. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab shall be commenced

upon the patron's first purchase and shall be maintained by the restaurant during the course of the patron's stay at the restaurant regardless of where the patron orders and consumes an alcoholic beverage.

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

(3) Liquor dispensing shall be in accordance with Section 32B-5-304; and Section R81-1-9 (Liquor Dispensing Systems), and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-4E-8. Liquor Storage.

With respect to restaurant, on-premise banquet, resort spa, and club sublicenses, liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area as approved by the department.

R81-4E-9. Alcoholic Product Flavoring.

Resort licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours allowed by law. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

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

R81-4E-10. Table and Counter Service.

A wine service may be performed by the server at the patron's table or counter for wine either purchased at a restaurant, limited restaurant, club, or resort spa sublicensed premises or carried in by a patron. The wine may be opened and poured by the server.

R81-4E-11. Consumption at Patron's Table or Counter in Locations Operated Under a Restaurant or Limited Restaurant Sublicense.

(1) With respect to restaurant sublicenses and limited restaurant sublicenses, a patron's table or counter may be located in waiting, patio, garden and dining areas previously approved by the department.

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

R81-4E-12. Menus; Price Lists.

(1) Contents of Alcoholic Beverage Menu.

(a) Each restaurant, limited restaurant, on-premise banquet, resort spa, and club sublicensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer. With respect to on-premise banquet sublicenses, this list or menu need only be available to the host of a contracted banquet. With respect to limited restaurant sublicenses, the list or menu may only include wine, heavy beer, and beer.

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

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

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

R81-4E-13. Identification Badge.

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

R81-4E-14. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a resort license, the proprietor may, at the proprietor's discretion, allow members of the private group to bring onto the resort premises, their own alcoholic beverages under the following circumstances:

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

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

(3) This section does not apply to private banquet events conducted under the on-premise banquet sublicense.

R81-4E-15. Resort Spa Sublicense.

(1) Definitions.

(a) "Resort spa" means a facility within the boundary of a resort building that provides professionally administered personal care treatments such as, but not limited to, massages, facials, hair care, and nail care. Treatment providers must be licensed under Title 58, Division of Professional Licensing Act. The resort spa also must hold a license to conduct business as a spa or similar operation under local licensing laws.

(2) Application. Pursuant to 32B-5-203 and 32B-8-204 and -302, a resort spa sublicense is not required to file a separate application from the application for the resort license unless the resort spa sublicense is being sought after the resort license has already been granted. If a resort licensee seeks to add a resort spa sublicense after its resort license is granted, the application shall comply with 32B-8-302(2), and this rule.

(3) Minors in Lounge or Bar Areas.

(a) Pursuant to 32B-8-304(5), a minor may be on the premises of a resort spa if accompanied by a person 21 years of age or older, but may not be admitted into, use, or be on the premises of any lounge or bar area of a resort spa.

(b) "Lounge or bar area" includes:

(i) the bar structure as defined in 32B-1-102(7);

(ii) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or

(iii) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret or night club.

(c) A minor who is otherwise permitted to be on the premises of a resort spa may momentarily pass through the resort spa's lounge or bar area en route to those areas of the resort spa where the minor is permitted to be. However, no minor shall remain or be seated in the resort spa's bar or

lounge area.

R81-4E-16. Applicability of Rules.

(1) 32B-8-402 requires that a person operating under a resort sublicense comply with the operational restrictions of Title 32B for the type of license applicable to the sublicense, except where otherwise provided. For example, a club sublicensee must comply with the operational restrictions found in 32B-5-301 to -310 and 32B-6-406 that are applicable to a club licensee.

(2) This rule requires that a person operating under a resort sublicense comply with the operational restrictions found in any commission rule for the type of license applicable to the sublicense, except where otherwise provided.

KEY: alcoholic beverages

April 30, 2012	**32-1-607**
Notice of Continuation January 8, 2015	**32B-2-202**
	32B-5
	32B-8

R156. Commerce, Occupational and Professional Licensing.
R156-17b. Pharmacy Practice Act Rule.
R156-17b-101. Title.

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

R156-17b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 17b, as used in Title 58, Chapters 1 and 17b or this rule:

(1) "Accredited by ASHP" means a program that:

(a) was accredited by the ASHP on the day on which the applicant for licensure completed the program; or

(b) was in ASHP candidate status on the day on which the applicant for licensure completed the program.

(2) "ACPE" means the American Council on Pharmaceutical Education or Accreditation Council for Pharmacy Education.

(3) "Analytical laboratory":

(a) means a facility in possession of prescription drugs for the purpose of analysis; and

(b) does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis if the prescription drugs are pre-diluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in-vitro diagnostic use.

(4) "ASHP" means the American Society of Health System Pharmacists.

(5) "Authorized distributor of record" means a pharmaceutical wholesaler with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drugs. An ongoing relationship is deemed to exist between such pharmaceutical wholesaler and a manufacturer, as defined in Section 1504 of the Internal Revenue Code, when the pharmaceutical wholesaler has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship, and the pharmaceutical wholesaler is listed on the manufacturer's current list of authorized distributors of record.

(6) "Authorized personnel" means any person who is a part of the pharmacy staff who participates in the operational processes of the pharmacy and contributes to the natural flow of pharmaceutical care.

(7) "Centralized Prescription Filling" means the filling by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order.

(8) "Centralized Prescription Processing" means the processing by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order or to perform processing functions such as dispensing, drug utilization review (DUR), claims adjudication, refill authorizations, and therapeutic interventions.

(9) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of the prescription drugs to a group of chain pharmacies that have the same common ownership and control.

(10) "Co-licensed partner or product" means an instance where two or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with FDA's implementation of the Prescription Drug Marketing Act.

(11) "Cooperative pharmacy warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization (GPO) or pharmacy buying cooperative and distributes those drugs exclusively to its members.

(12) "Counterfeit prescription drug" has the meaning given that term in 21 USC 321(g)(2), including any amendments thereto.

(13) "Counterfeiting" means engaging in activities that create a counterfeit prescription drug.

(14) "Dispense", as defined in Subsection 58-17b-102(22), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

(15) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including any component part or accessory, which is required under Federal law to bear the label, "Caution: Federal or State law requires dispensing by or on the order of a physician."

(16) "Drop shipment" means the sale of a prescription drug to a pharmaceutical wholesaler by the manufacturer of the drug; by the manufacturer's co-licensed product partner, third party logistics provider, or exclusive distributor; or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities; whereby:

(a) the pharmaceutical wholesale distributor takes title to but not physical possession of such prescription drug;

(b) the pharmaceutical wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense to administer such drug; and

(c) the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer; from the co-licensed product partner, third party logistics provider, or exclusive distributor; or from an authorized distributor of record that purchases the product directly from the manufacturer or from one of these entities.

(17) "Drug therapy management" means the review of a drug therapy regimen of a patient by one or more pharmacists for the purpose of evaluating and rendering advice to one or more practitioners regarding adjustment of the regimen.

(18) "Drugs", as used in this rule, means drugs or devices.

(19) "Durable medical equipment" or "DME" means equipment that:

(a) can withstand repeated use;

(b) is primarily and customarily used to serve a medical purpose;

(c) generally is not useful to a person in the absence of an illness or injury;

(d) is suitable for use in a health care facility or in the home; and

(e) may include devices and medical supplies.

(20) "Entities under common administrative control" means an entity holds the power, actual as well as legal to influence the management, direction, or functioning of a business or organization.

(21) "Entities under common ownership" means entity assets are held indivisibly rather than in the names of individual members.

(22) "ExCPT", as used in this rule, means the Exam for the Certification of Pharmacy Technicians.

(23) "FDA" means the United States Food and Drug Administration and any successor agency.

(24) "High-risk, medium-risk, and low-risk drugs" refers to the risk to a patient's health from compounding sterile preparations, as referred to in USP-NF Chapter 797, for details of determining risk level.

(25) "Hospice facility pharmacy" means a pharmacy that supplies drugs to patients in a licensed healthcare facility for terminal patients.

(26) "Hospital clinic pharmacy" means a pharmacy that is located in an outpatient treatment area where a pharmacist or pharmacy intern is compounding, admixing, or dispensing prescription drugs, and where:

(a) prescription drugs or devices are under the control of the pharmacist, or the facility for administration to patients of that facility;

(b) prescription drugs or devices are dispensed by the pharmacist or pharmacy intern; or

(c) prescription drugs are administered in accordance with the order of a practitioner by an employee or agent of the facility.

(27) "Legend drug" or "prescription drug" means any drug or device that has been determined to be unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(a) "Caution: federal law prohibits dispensing without prescription";

(b) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(c) "Rx only".

(28) "Maintenance medications" means medications the patient takes on an ongoing basis.

(29) "Manufacturer's exclusive distributor" means an entity that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the drug's sale or disposition. Such manufacturer's exclusive distributor shall be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(30) "Medical supplies" means items for medical use that are suitable for use in a health care facility or in the home and that are disposable or semi-disposable and are non-reusable.

(31) "MPJE" means the Multistate Jurisprudence Examination.

(32) "NABP" means the National Association of Boards of Pharmacy.

(33) "NAPLEX" means North American Pharmacy Licensing Examination.

(34) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (16), or via intracompany transfer from a manufacturer; or from the manufacturer's co-licensed partner, third-party logistics provider, or the exclusive distributor to:

(a) a pharmacy or other designated persons authorized under this chapter to dispense or administer prescription drugs to a patient;

(b) a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control;

(c) a cooperative pharmacy warehouse to a pharmacy that is a member of the pharmacy buying cooperative or GPO to a patient;

(d) an authorized distributor of record, and then to either a pharmacy or other designated persons authorized under this chapter to dispense or administer such drug for use by a patient;

(e) an authorized distributor of record, and then to a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control; or

(f) an authorized distributor of record to another authorized distributor of record to a licensed pharmaceutical facility or a licensed healthcare practitioner authorized under this chapter to dispense or administer such drug for use by a patient.

(35) "Other health care facilities" means any entity as defined in Utah Code Subsection 26-21-2(13)(a) or Utah Administrative Code R432-1-3(55).

(36) "Parenteral" means a method of drug delivery injected into body tissues but not via the gastrointestinal tract.

(37) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug.

(38) "PIC", as used in this rule, means the pharmacist-in-charge.

(39) "Prepackaged" or "Prepackaging" means the act of transferring a drug, manually or by use of an automated pharmacy system, from a manufacturer's or distributor's original container to another container in advance of receiving a prescription drug order or for a patient's immediate need for dispensing by a pharmacy or practitioner authorized to dispense in the establishment in which the prepackaging occurred.

(40) "Prescription files" means all hard-copy and electronic prescriptions that includes pharmacist notes or technician notes, clarifications or information written or attached that is pertinent to the prescription.

(41) "PTCB" means the Pharmacy Technician Certification Board.

(42) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-17b-309.

(43) "Refill" means to fill again.

(44) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing the product to a patient.

(45) "Research facility" means a facility in which research takes place that has policies and procedures describing such research.

(46) "Reverse distributor" means a person or company that retrieves unusable or outdated drugs from a pharmacy or pharmacist for the purpose of removing those drugs from stock and destroying them.

(47) "Sterile products preparation facility" means any facility, or portion of the facility, that compounds sterile products using aseptic technique.

(48) "Supervisor" means a licensed pharmacist in good standing with the Division.

(49) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other similar services on behalf of a manufacturer, but does not take title to the prescription drug or have any authoritative control over the prescription drug's sale. Such third party logistics provider shall be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(50) "Unauthorized personnel" means any person who is not participating in the operational processes of the pharmacy who in some way would interrupt the natural flow of pharmaceutical care.

(51) "Unit dose" means the ordered amount of a drug in a dosage form prepared for a one-time administration to an individual and indicates the name, strength, lot number and beyond use date for the drug.

(52) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 17b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-17b-502.

(53) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 37-NF 32), 2014 edition, which is

official from May 1, 2014 through Supplement 1, dated August 1, 2014, which is hereby adopted and incorporated by reference.

(54) "Wholesaler" means a wholesale distributor who supplies or distributes drugs or medical devices that are restricted by federal law to sales based on the order of a physician to a person other than the consumer or patient.

(55) "Wholesale distribution" means the distribution of drugs to persons other than consumers or patients, but does not include:

(a) intracompany sales or transfers;

(b) the sale, purchase, distribution, trade, or other transfer of a prescription drug for emergency medical reasons, as defined under 21 CFR 203.3(m), including any amendments thereto;

(c) the sale, purchase, or trade of a drug pursuant to a prescription;

(d) the distribution of drug samples;

(e) the return or transfer of prescription drugs to the original manufacturer, original wholesale distributor, reverse distributor, or a third party returns processor;

(f) the sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record during a time period for which there is documentation from the manufacturer that the manufacturer is able to supply a prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;

(g) the sale, purchase or exchange of blood or blood components for transfusions;

(h) the sale, transfer, merger or consolidation of all or part of the business of a pharmacy;

(i) delivery of a prescription drug by a common carrier; or

(j) other transactions excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc), including any amendments thereto.

R156-17b-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 17b.

R156-17b-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.

R156-17b-105. Licensure - Administrative Inspection.

In accordance with Subsection 58-17b-103(3)(f), the procedure for disposing of any drugs or devices seized by the Division during an administrative inspection will be handled as follows:

(1) Any legal drugs or devices found and temporarily seized by the Division that are found to be in compliance with this chapter will be returned to the PIC of the pharmacy involved at the conclusion of any investigative or adjudicative proceedings and appeals.

(2) Any drugs or devices that are temporarily seized by the Division that are found to be unlawfully possessed, adulterated, misbranded, outdated, or otherwise in violation of this rule shall be destroyed by Division personnel at the conclusion of any investigative or adjudicative proceedings and appeals. The destruction of any seized controlled substance drugs will be witnessed by two Division individuals. A controlled substance destruction form will be completed and retained by the Division.

(3) An investigator may, upon determination that the violations observed are of a nature that pose an imminent peril to the public health, safety and welfare, recommend to the Division Director to issue an emergency licensure action, such as cease and desist.

(4) In accordance with Subsections 58-17b-103(1) and 58-17b-601(1), a secure email address must be established by the PIC and responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC and responsible party shall cause the Division's Licensing Bureau to be notified on the applicable form prescribed by the Division of the secure email address or any change thereof within seven days of any email address change. Only one email address shall be used for each pharmacy.

R156-17b-302. Pharmacy Licensure Classifications - Pharmacist-in-Charge Requirements.

In accordance with Subsection 58-17b-302(4), the classification of pharmacies holding licenses are clarified as:

(1) Class A pharmacy includes all retail operations located in Utah and requires a PIC.

(2) Class B pharmacy includes an institutional pharmacy that provides services to a target population unique to the needs of the healthcare services required by the patient. All Class B pharmacies require a PIC except for pharmaceutical administration facilities and methadone clinics. Examples of Class B pharmacies include:

(a) closed door;

(b) hospital clinic pharmacy;

(c) methadone clinics;

(d) nuclear;

(e) branch;

(f) hospice facility pharmacy;

(g) veterinarian pharmaceutical facility;

(h) pharmaceutical administration facility; and

(i) sterile product preparation facility.

(j) A retail pharmacy that prepares sterile products does not require a separate license as a Class B pharmacy.

(3) Class C pharmacy includes pharmacies located in Utah that are involved in:

(a) manufacturing;

(b) producing;

(c) wholesaling;

(d) distributing; and

(e) reverse distributing.

(4) Class D pharmacy includes pharmacies located outside the State of Utah. Class D pharmacies require a PIC licensed in the state where the pharmacy is located and include out-of-state mail order pharmacies. Facilities that have multiple locations must have licenses for each facility and every component part of a facility.

(5) Class E pharmacy includes those pharmacies that do not require a PIC and include:

(a) analytical laboratory;

(b) animal control;

(c) durable medical equipment provider;

(d) human clinical investigational drug research facility; and

(e) medical gas provider.

(6) All pharmacy licenses will be converted to the appropriate classification by the Division as identified in Section 58-17b-302.

(7) Each Class A and each Class B pharmacy required to have a PIC shall have one PIC who is employed on a full-time basis as defined by the employer, who acts as a PIC for one pharmacy. However, the PIC may be the PIC of more than one Class A or Class B pharmacy, if the additional Class A or Class B pharmacies are not open to provide pharmacy services simultaneously.

(8) The PIC shall comply with the provisions of Section R156-17b-603.

R156-17b-303a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsections 58-17b-303(2) and 58-17b-304(7)(b), the credentialing agency recognized to provide certification and evaluate equivalency of a foreign educated pharmacy graduate is the Foreign Pharmacy Graduate Examination Committee (FPGEC) of the National Association of Boards of Pharmacy Foundation.

(2) In accordance with Subsection 58-17b-304(7), an applicant for a pharmacy intern license shall demonstrate that he meets one of the following education criteria:

(a) current admission in a College of Pharmacy accredited by the ACPE by written verification from the Dean of the College;

(b) a graduate degree from a school or college of pharmacy which is accredited by the ACPE; or

(c) a graduate degree from a foreign pharmacy school as established by a certificate of equivalency from an approved credentialing agency defined in Subsection (1).

(3) In accordance with Subsection 58-17b-305(1)(f), a pharmacy technician shall complete a training program that is:

(a) accredited by ASHP; or

(b) conducted by:

(i) the National Pharmacy Technician Association;

(ii) Pharmacy Technicians University; or

(iii) a branch of the Armed Forces of the United States, and

(c) meets the following standards:

(i) completion of at least 180 hours of directly supervised practical training in a licensed pharmacy as determined appropriate by a licensed pharmacist in good standing; and

(ii) written protocols and guidelines for the teaching pharmacist outlining the utilization and supervision of pharmacy technicians in training that address:

(A) the specific manner in which supervision will be completed; and

(B) an evaluative procedure to verify the accuracy and completeness of all acts, tasks and functions performed by the pharmacy technician in training.

(4) An individual shall complete a pharmacy technician training program and successfully pass the required examinations as listed in Subsection R156-17b-303c(4) within two years from the date of the first day of the training program, unless otherwise approved by the Division in collaboration with the Board.

(a) An individual who fails to apply for and obtain a pharmacy technician license within the two-year time frame or within six months after completion of a pharmacy technician training program, whichever comes first:

(i) is no longer eligible for employment as a technician-in-training and shall work in the pharmacy only as supportive personnel; and

(ii) shall repeat a pharmacy technician training program in its entirety if the individual pursues licensure as a pharmacy technician.

(5)(a) Pharmacy technician training programs that received Division approval on or before April 30, 2014 are exempt from satisfying standards established in Subsection R156-17b-303a(3) for students enrolled on or before December 31, 2018.

(b) A student in a program described in Subsection (5)(a) shall comply with the program completion deadline and testing requirements in Subsection (4), except that the license application shall be submitted to the Division no later than December 31, 2021.

(c) A program in ASHP candidate status shall notify a student prior to enrollment that if the program is denied accreditation status while the student is enrolled in the program, the student will be required to complete education in another program with no assurance of how many credits will transfer to the new program.

(d) A program in ASHP candidate status that is denied accreditation shall immediately notify the Division, enrolled students and student practice sites, of the denial. The notice shall instruct each student and practice site that:

(i) the program no longer satisfies the pharmacy technician license education requirement in the State of Utah; and

(ii) enrollment in a different program meeting requirements established in Subsection R156-17b-303a(3) is necessary for the student to complete training and to satisfy the pharmacy technician license education requirement in the State of Utah.

(6) An applicant for licensure as a pharmacy technician is deemed to have met the qualifications for licensure in Subsection 58-17b-305(1)(f) and 58-17b-305(1)(g) if the applicant:

(a) is currently licensed and in good standing in another state and has not had any adverse action taken on that license;

(b) has engaged in the practice as a pharmacy technician for a minimum of 1,000 hours in that state within the past two years or equivalent experience as approved by the Division in collaboration with the Board; and

(c) has passed and maintained current PTCB or ExCPT certification.

R156-17b-303b. Licensure - Pharmacist - Pharmacy Internship Standards.

(1) In accordance with Subsection 58-17b-303(1)(g), the standards are established as one of the following for the pharmacy internship required for licensure as a pharmacist:

(a) For graduates of all U.S. pharmacy schools:

(i) At least 1,740 hours of practice supervised by a pharmacy preceptor shall be obtained in Utah or another state or territory of the United States, or a combination of both according to the Accreditation Council for Pharmacy Education (ACPE), Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree Guidelines Version 2.0 Effective February 14, 2011, which is hereby incorporated by reference.

(ii) Introductory pharmacy practice experiences (IPPE) shall account for not less than 300 hours over the first three professional years.

(iii) A minimum of 150 hours shall be balanced between community pharmacy and institutional health system settings.

(iv) Advanced pharmacy practice experiences (APPE) shall include at least 1,440 hours (i.e., 36 weeks) during the last academic year and after all IPPE requirements are completed.

(v) Required experiences shall:

(A) include primary, acute, chronic, and preventive care among patients of all ages; and

(B) develop pharmacist-delivered patient care competencies in the community pharmacy, hospital or health-system pharmacy, ambulatory care, inpatient/acute care, and general medicine settings.

(vi) Internship hours completed in another state or territory of the United States shall be accepted based on the approval of the hours by the pharmacy board in the jurisdiction where the hours were obtained.

(vii) Evidence of completed internship hours shall be documented to the Division by the pharmacy intern at the time application is made for a Utah pharmacist license.

(viii) Pharmacy interns participating in internships may be credited no more than 50 hours per week of internship experience.

(ix) No credit will be awarded for didactic experience.

(x) If a pharmacy intern is suspended or dismissed from an approved College of Pharmacy, the intern shall notify the Division within 15 days of the suspension or dismissal.

(xi) If a pharmacy intern ceases to meet all requirements for intern licensure, the pharmacy intern shall surrender the pharmacy intern license to the Division within 60 days unless an extension is requested and granted by the Division in collaboration with the Board.

(b) For graduates of all foreign pharmacy schools, at least 1,440 hours of supervised pharmacy practice in the United States.

R156-17b-303c. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-17b-303(1)(h), the examinations that shall be successfully passed by an applicant for licensure as a pharmacist are:

(a) the NAPLEX with a passing score as established by NABP; and

(b) the Multistate Pharmacy Jurisprudence Examination(MPJE) with a minimum passing score as established by NABP.

(2) An individual who has failed either examination twice shall meet with the Board to request an additional authorization to test. The Division, in collaboration with the Board, may require additional training as a condition for approval of an authorization to retest.

(3) In accordance with Subsection 58-17b-303(3)(j), an applicant applying by endorsement is required to pass the MPJE.

(4) Applicants taking the NAPLEX or MPJE examination shall pass the exams within six months from the date of the Division's approval for the applicant to take the exam. If the applicant does not pass the required exam within six months, the pending license application shall be denied.

(5) In accordance with Subsection 58-17b-305(1)(g), an applicant applying for licensure as a pharmacy technician shall pass the PTCB or ExCPT with a passing score as established by the certifying body. The certificate shall exhibit a valid date and that the certification is active.

(6) A graduate of a foreign pharmacy school shall obtain a passing score on the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination.

R156-17b-303d. Qualifications for Licensure - Meet with the Board.

In accordance with Subsections 58-1-202(1)(d) and 58-1-301(3), an applicant for licensure under Title 58, Chapter 17b may be required to meet with the Board of Pharmacy for the purpose of evaluating the applicant's qualifications for licensure.

R156-17b-304. Temporary Licensure.

(1) In accordance with Subsection 58-1-303(1), the Division may issue a temporary pharmacist license to a person who meets all qualifications for licensure as a pharmacist except for the passing of the required examination, if the applicant:

(a) is a graduate of an ACPE accredited pharmacy school within two months immediately preceding application for licensure or enrolled in the second year of a pharmacy graduate residency program;

(b) submit a complete application for licensure as a pharmacist except the passing of the NAPLEX and MJPE examinations;

(c) submits evidence of having secured employment conditioned upon issuance of the temporary license, and the employment is under the direct, on-site supervision of a pharmacist with an active, non-temporary license that may or may not include a controlled substance license; and

(d) has registered to take the required licensure examinations.

(2) A temporary pharmacist license issued under Subsection (1) expires the earlier of:

(a) six months from the date of issuance;

(b) the date upon which the Division receives notice from the examination agency that the individual has failed either examination twice; or

(c) the date upon which the Division issues the individual full licensure.

(3) An individual who has failed either examination twice shall meet with the Board to request an additional authorization to test. The Division, in collaboration with the Board, may require additional training as a condition for approval of an authorization to retest.

(4) A pharmacist temporary license issued in accordance with this section cannot be renewed or extended.

R156-17b-305. Licensure - Pharmacist by Endorsement.

(1) In accordance with Subsections 58-17b-303(3) and 58-1-301(3), an applicant for licensure as a pharmacist by endorsement shall apply through the "Licensure Transfer Program" administered by NABP.

(2) An applicant for licensure as a pharmacist by endorsement does not need to provide evidence of intern hours if that applicant has:

(a) lawfully practiced as a licensed pharmacist a minimum of 2,000 hours in the four years immediately preceding application in Utah;

(b) obtained sufficient continuing education credits required to maintain a license to practice pharmacy in the state of practice; and

(c) not had a pharmacist license suspended, revoked, canceled, surrendered, or otherwise restricted for any reason in any state for ten years prior to application in Utah, unless otherwise approved by the Division in collaboration with the Board.

R156-17b-307. Qualifications for Licensure - Criminal Background Checks.

(1) An applicant for licensure as a pharmacy shall document to the satisfaction of the Division the owners and management of the pharmacy and the facility in which the pharmacy is located.

(2) The following individuals associated with an applicant for licensure as a pharmacy shall be subject to the criminal background check requirements set forth in Section 58-17b-307:

(a) the PIC;

(b) the PIC's immediate supervisor;

(c) the senior person in charge of the facility in which the pharmacy is located;

(d) others associated with management of the pharmacy or the facility in which the pharmacy is located as determined necessary by the Division in order to protect public health, safety and welfare; and

(e) owners of the pharmacy or the facility in which the pharmacy is located as determined necessary by the Division in order to protect public health, safety and welfare.

R156-17b-308. 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 17b is established by rule in

Section R156-1-308a.

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

(3) An intern license may be extended upon the request of the licensee and approval by the Division under the following conditions:

(a) the intern applied to the Division for a pharmacist license and to sit for the NAPLEX and MJPE examinations within three calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission; or

(b) the intern lacks the required number of internship hours for licensure.

R156-17b-309. Continuing Education.

(1) In accordance with Section 58-17b-310 and Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a requirement for continuing education as a condition for renewal or reinstatement of a pharmacist or pharmacy technician license issued under Title 58, Chapter 17b.

(2) Requirements shall consist of the following number of qualified continuing education hours in each preceding renewal period:

(a) 30 hours for a pharmacist; and

(b) 20 hours for a pharmacy technician.

(3) The required number of hours of qualified continuing professional education for an individual who first becomes licensed during the two year renewal cycle 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) Qualified continuing professional education hours shall consist of the following:

(a) for pharmacists:

(i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses, presented by an institution, individual, organization, association, corporation or agency that has been approved by ACPE;

(ii) programs approved by health-related continuing education approval organizations provided the continuing education is nationally recognized by a healthcare accrediting agency and the education is related to the practice of pharmacy;

(iii) programs of certification by qualified individuals, such as certified diabetes educator credentials, board certification in advanced therapeutic disease management or other certification as approved by the Division in consultation with the Board; and

(iv) training or educational presentations offered by the Division.

(b) for pharmacy technicians:

(i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses, presented by an institution, individual, organization, association, corporation or agency that has been approved by ACPE;

(ii) programs approved by health-related continuing education approval organizations provided the continuing education is nationally recognized by a healthcare accrediting agency and the education is related to the practice of pharmacy; and

(iii) educational meetings that meet ACPE continuing education criteria sponsored by the Utah Pharmacist Association, the Utah Society of Health-System Pharmacists or other professional organization or association; and

(iv) training or educational presentations offered by the Division.

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

(a) Pharmacists:

(i) a minimum of 12 hours shall be obtained through attendance at live or technology enabled participation lectures, seminars or workshops;

(ii) a minimum of 15 hours shall be in drug therapy or patient management; and

(iii) a minimum of one hour shall be in pharmacy law or ethics.

(b) Pharmacy Technicians:

(i) a minimum of eight hours shall be obtained through attendance at live or technology enabled participation at lectures, seminars or workshops; and

(ii) a minimum of one hour shall be in pharmacy law or ethics.

(iii) documentation of current PTCB or ExCPT certification will count as meeting the requirement for continuing education.

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

R156-17b-310. Exemption from Licensure - Dispensing of Cosmetic, Injectable Weight Loss, or Cancer Drug Treatment Regimen Drugs.

(1) A cosmetic drug that can be dispensed by a prescribing practitioner or optometrist in accordance with Subsection 58-17b-309 is limited to Latisse.

(2) An injectable weight loss drug that can be dispensed by a prescribing practitioner in accordance with Subsection 58-17b-309 is limited to human chorionic gonadotropin.

(3) A cancer drug treatment regimen that can be dispensed by a prescribing practitioner or an individual employed by the prescribing practitioner in accordance with Subsection 58-17b-309.5(1) and (2) means a prescription drug used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient.

(a) A prescribing practitioner who chooses to dispense prescription medications shall disclose to the patient that the cancer drug treatment regimen may be obtained from a pharmacy unaffiliated with the prescribing practitioner and offer to the patient the opportunity to consult with a pharmacist of the patient's choosing if the patient desires patient counseling.

(b) Practitioners are required to document this interaction by keeping a signature log of all patients who have received this written information. These records are required to be kept for a period of five years and shall be readily available for inspection.

(4) A prescribing practitioner who chooses to dispense prescription medications shall meet the standards set forth in R156-17b-603 through R156-17b-605 and R156-17b-609 through R156-17b-611; however, a prescribing practitioner is not required to employ a pharmacist in charge.

(5) In accordance with Subsections 58-17b-309(4)(c) and 58-17b-309.5(2)(b)(viii), a prescribing practitioner or optometrist who chooses to dispense a cosmetic drug, a prescribing practitioner who chooses to dispense an injectable weight loss drug, as listed in Subsections (1) and (2), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient to the prescribing practitioner's or optometrist's patients shall have a label securely affixed to the container

indicating the following minimum information:

(a) the name, address and telephone number of the prescribing practitioner or optometrist prescribing and dispensing the drug;

(b) the serial number of the prescription as assigned by the dispensing prescribing practitioner or optometrist;

(c) the filling date of the prescription or its last dispensing date;

(d) the name of the patient;

(e) the directions for use and cautionary statements, if any, which are contained in the prescription order or are needed;

(f) the trade, generic or chemical name, amount dispensed and the strength of dosage form; and

(g) the beyond use date.

(6) A prescribing practitioner or optometrist who chooses to dispense a cosmetic drug, or a prescribing practitioner who chooses to dispense an injectable weight loss drug, as listed in Subsections (1) and (2), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient shall keep inventory records for each drug dispensed pursuant to R156-17b-605 and a prescription dispensing medication profile for each patient receiving a drug dispensed by the prescribing practitioner or optometrist pursuant to R156-17b-609. Those records shall be made available to the Division upon request by the Division.

(a) The general requirements for an inventory of drugs dispensed by a prescribing practitioner, the prescribing practitioner's employee, or optometrist include:

(i) the prescribing practitioner or optometrist shall be responsible for taking all required inventories, but may delegate the performance of taking the inventory to another person;

(ii) the inventory records shall be maintained for a period of five years and be readily available for inspection;

(iii) the inventory records shall be filed separately from all other records;

(iv) the person taking the inventory and the prescribing practitioner or optometrist shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the prescribing practitioner or optometrist and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(v) the initial inventory shall be completed within three working days of the date on which the prescribing practitioner or optometrist begins to dispense a drug under Sections 58-17b-309 and 58-17b-309.5; and

(vi) the annual inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs.

(b) A prescription dispensing medication profile shall be maintained for every patient receiving a drug that is dispensed by a prescribing practitioner or optometrist in accordance with Sections 58-17b-309 and 58-17b-309.5 for a period of at least one year from the date of the most recent prescription fill or refill. The medication profile shall be kept as part of the patient's medical record and include, as a minimum, the following information:

(i) full name of the patient, address, telephone number, date of birth or age, and gender;

(ii) patient history where significant, including known allergies and drug reactions; and

(iii) a list of drugs being dispensed including:

(A) name of prescription drug;

(B) strength of prescription drug;

(C) quantity dispensed;

(D) prescription drug lot number and name of manufacturer;

(E) date of filling or refilling;

(F) charge for the prescription drug as dispensed to the patient;

(G) any additional comments relevant to the patient's drug use; and

(H) documentation that patient counseling was provided in accordance with Subsection (7).

(7) A prescribing practitioner or optometrist who is dispensing a cosmetic drug or injectable weight loss drug listed in Subsections (1) and (2) in accordance with Subsection 58-17b-309(4)(c), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient in accordance with Section 58-17b-309.5, shall include the following elements when providing patient counseling:

(a) the name and description of the prescription drug;

(b) the dosage form, dose, route of administration and duration of drug therapy;

(c) intended use of the drug and expected action;

(d) special directions and precautions for preparation, administration and use by the patient;

(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescription refill information;

(i) action to be taken in the event of a missed dose;

(j) prescribing practitioner or optometrist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and

(k) the date after which the prescription should not be taken or used, or the beyond use date.

(8) In accordance with Subsection 58-17b-309(4)(c), the medication storage standards that shall be maintained by a prescribing practitioner or optometrist who dispenses a drug under Subsections (1) and (2), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient in accordance with Section 58-17b-309.5, provides that the storage space shall be:

(a) kept in an area that is well lighted, well ventilated, clean and sanitary;

(b) equipped to permit the orderly storage of prescription drugs in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the drug inventory;

(c) equipped with a security system to permit detection of entry at all times when the prescribing practitioner's or optometrist's office or clinic is closed;

(d) at a temperature which is maintained within a range compatible with the proper storage of drugs; and

(e) securely locked with only the prescribing practitioner or optometrist having access when the prescribing practitioner's or optometrist's office or clinic is closed.

(9) In accordance with Subsections 58-17b-309(5) and 58-17b-309.5(1)(b), if a cosmetic drug or a weight loss drug listed in Subsections (1) and (2), or a drug used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient requires reconstitution or compounding to prepare the drug for administration, the prescribing practitioner or optometrist shall follow the USP-NF 797

standards for sterile compounding.

(10) In accordance with Subsection 58-17b-309(5), factors that shall be considered by licensing boards when determining if a drug may be dispensed by a prescribing practitioner, the prescribing practitioner's employee or optometrist, include whether:

(a)(i) the drug has FDA approval;

(ii)(A) is prescribed and dispensed for the conditions or indication for which the drug was approved to treat; or

(B) the prescribing practitioner or optometrist takes full responsibility for prescribing and dispensing a drug for off-label use;

(b) the drug has been approved for self administration by the FDA;

(c) the stability of the drug is adequate for the supply being dispensed; and

(d) the drug can be safely dispensed by a prescribing practitioner or optometrist.

(11) Standards for reporting to the Utah Controlled Substance Database shall be the same standards as set forth in the Utah Controlled Substance Database Act, Title 58, Chapter 37f, and the Utah Controlled Substance Database Act Rule, R156-37f.

R156-17b-401. Disciplinary Proceedings.

(1) An individual licensed as a pharmacy intern who is currently under disciplinary action and qualifies for licensure as a pharmacist may be issued a pharmacist license under the same restrictions as the pharmacy intern license.

(2) A pharmacist, pharmacy intern or pharmacy technician whose license or registration is suspended under Subsection 58-17b-701(6) may petition the Division at any time that he can demonstrate the ability to resume competent practice.

R156-17b-402. Administrative Penalties.

In accordance with Subsection 58-17b-401(6) and Sections 58-17b-501 and 58-17b-502, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(1) preventing or refusing to permit any authorized agent of the Division to conduct an inspection, in violation of Subsection 58-17b-501(1):

initial offense: $500 - $2,000

subsequent offense(s): $5,000

(2) failing to deliver the license or permit or certificate to the Division upon demand, in violation Subsection 58-17b-501(2):

initial offense: $100 - $1,000

subsequent offense(s): $500 - $2,000

(3) using the title pharmacist, druggist, pharmacy intern, pharmacy technician or any other term having a similar meaning or any term having similar meaning when not licensed to do so, in violation of Subsection 58-17b-501(3)(a):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(4) conducting or transacting business under a name which contains as part of that name the words drugstore, pharmacy, drugs, medicine store, medicines, drug shop, apothecary, prescriptions or any other term having a similar meaning or in any manner advertising otherwise describing or referring to the place of the conducted business or profession when not licensed to do so, in violation of Subsection 58-17b-501(3)(b):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(5) buying, selling, causing to be sold, or offering for sale any drug or device which bears the inscription sample, not for resale, investigational purposes, or experimental use only or other similar words inspection, in violation of Subsection 58-17b-501(4):

initial offense: $1,000 - $5,000

subsequent offense(s): $10,000

(6) using to the licensee's own advantage or revealing to anyone other than the Division, Board or its authorized representatives, any information acquired under the authority of this chapter concerning any method or process which is a trade secret, in violation of Subsection 58-17b-501(5):

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(7) illegally procuring or attempting to procure any drug for the licensee or to have someone else procure or attempt to procure a drug, in violation of Subsection 58-17b-501(6):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(8) filling, refilling or advertising the filling or refilling of prescription drugs when not licensed do to so, in violation of Subsection 58-17b-501(7):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(9) requiring any employed pharmacist, pharmacy intern, pharmacy technician or authorized supportive personnel to engage in any conduct in violation of this chapter, in violation of Subsection 58-17b-501(8):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(10) being in possession of a drug for an unlawful purpose, in violation of Subsection 58-17b-501(9):

initial offense: $500 - $1,000

subsequent offense(s): $1,500 - $5,000

(11) dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who is known or should be known as attempting to obtain drugs by fraud or misrepresentation, in violation of Subsection 58-17b-501(10):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(12) selling, dispensing or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure, in violation of Subsection 58-17b-501(11):

initial offense: $1,000 - $5,000

subsequent offense(s): $10,000

(13) using a prescription drug or controlled substance for the licensee that was not lawfully prescribed for the licensee by a practitioner, in violation of Subsection 58-17b-501(12):

initial offense: $100 - $500

subsequent offense(s): $1,000 - $2,5000

(14) willfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter, in violation of Subsection 58-17b-502(1):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(15) paying rebates to practitioners or any other health care provider, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party, in violation of Subsection 58-17b-502(2):

initial offense:$2,500 - $5,000

subsequent offense(s):$5,500 - $10,000

(16) misbranding or adulteration of any drug or device or the sale, distribution or dispensing of any outdated, misbranded, or adulterated drugs or devices, in violation of Subsection 58-17b-502(3):

initial offense: $1,000 - $5,000

subsequent offense(s): $10,000

(17) engaging in the sale or purchase of drugs that are samples or packages bearing the inscription "sample" or "not for resale" or similar words or phrases, in violation of Subsection 58-17b-502(4):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(18) accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503, in violation of Subsection 58-17b-502(5):

initial offense: $1,000 - $5,000

subsequent offense(s): $10,000

(19) engaging in an act in violation of this chapter committed by a person for any form of compensation if the act is incidental to the person's professional activities, including the activities of a pharmacist, pharmacy intern, or pharmacy technician, in violation of Subsection 58-17b-502(6):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(20) violating Federal Title II, PL 91, Controlled Substances Act or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act, in violation of Subsection 58-17b-502(7):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(21) requiring or permitting pharmacy interns or technicians to engage in activities outside the scope of practice for their respective license classifications, or beyond their scopes of training and ability, in violation of Subsection 58-17b-502(8):

initial offense: $100 - $500

subsequent offense(s): $500 - $1,000

(22) administering without appropriate training, guidelines, lawful order, or in conflict with a practitioner's written guidelines or protocol for administering, in violation of Subsection 58-17b-502(9):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(23) disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law, in violation of Subsection 58-17b-502(10):

initial offense: $100 - $500

subsequent offense(s): $500 - $1,000

(24) engaging in the practice of pharmacy without a licensed pharmacist designated as the PIC, in violation of Subsection 58-17b-502(11):

initial offense: $100 - $500

subsequent offense(s): $2,000 - $10,000

(25) failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court, in violation of Subsection 58-17b-502(12):

initial offense: $100 - $500

subsequent offense(s): $500 - $1,000

(26) preparing a prescription drug, including compounding a prescription drug, for sale to another pharmacist or pharmaceutical facility, in violation of Subsection 58-17b-502(13):

initial offense: $100 - $500

subsequent offense(s): $500 - $1,000

(27) preparing a prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner, in violation of Subsection 58-17b-502(14):

initial offense: $500 - $1,000

subsequent offense(s): $2,500 - $5,000

(28) violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994, in violation of Subsection R156-17b-502(1):

initial offense: $250 - $500

subsequent offense(s): $2,000 - $10,000

(29) failing to comply with USP-NF Chapter 795 guidelines, in violation of Subsection R156-17b-502(2):

initial offense: $250 - $500

subsequent offense(s): $500 - $750

(30) failing to comply with USP-NF Chapter 797 guidelines, in violation of Subsection R156-17b-502(2):

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(31) failing to comply with the continuing education requirements set forth in this rule, in violation of Subsection R156-17b-502(3):

initial offense: $100 - $500

subsequent offense(s): $500 - $1,000

(32) failing to provide the Division with a current mailing address within 10 days following any change of address, in violation of Subsection R156-17b-502(4):

initial offense: $50 - $100

subsequent offense(s): $200 - $300

(33) defaulting on a student loan, in violation of Subsection R156-17b-502(5):

initial offense: $100 - $200

subsequent offense(s): $200 - $500

(34) failing to abide by all applicable federal and state law regarding the practice of pharmacy, in violation of Subsection R156-17b-502(6):

initial offense: $500 - $1,000

subsequent offense(s): $2,000 - $10,000

(35) failing to comply with administrative inspections, in violation of Subsection R156-17b-502(7):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(36) failing to return a self-inspection report according to the deadline established by the Division, or providing false information on a self-inspection report, in violation of Subsection R156-17b-502(8):

initial offense: $100 - $250

subsequent offense(s): $300 - $500

(37) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division, in violation of Subsection R156-17b-502(9):

initial violation: $50 - $100

failure to comply within determined time: $250 - $500

subsequent violations: $250 - $500

failure to comply within established time: $750 - $1,000

(38) abandoning a pharmacy and/or leaving drugs accessible to the public, in violation of Subsection R156-17b-502(10):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(39) failing to identify license classification when communicating by any means, in violation of Subsection R156-17b-502(11):

initial offense: $100 - $500

subsequent offense(s): $500 - $1,000

(40) failing to maintain an appropriate ratio of personnel, in violation of Subsection R156-17b-502(12):

Pharmacist initial offense: $100 - $250

Pharmacist subsequent offense(s): $500 - $2,500

Pharmacy initial offense: $250 - $1,000

Pharmacy subsequent offense(s): $500 - $5,000

(41) allowing any unauthorized persons in the pharmacy, in violation of Subsection R156-17b-502(13):

Pharmacist initial offense: $50 - $100

Pharmacist subsequent offense(s): $250 - $500

Pharmacy initial offense: $250 - $500

Pharmacy subsequent offense(s): $1,000 - $2,000

(42) failing to offer to counsel any person receiving a prescription medication, in violation of Subsection R156-17b-502(14):

Pharmacy personnel initial offense: $500 - $2,500

Pharmacy personnel subsequent offense(s): $5,000 - $10,000

Pharmacy: $2,000 per occurrence

(43) failing to pay an administrative fine within the time designated by the Division, in violation of Subsection R156-17b-502(15):

Double the original penalty amount up to $10,000

(44) failing to comply with the PIC standards as established in Section R156-17b-603, in violation of Subsection R156-17b-502(16):

initial offense: $500 - $2,000

subsequent offense(s) $2,000 - $10,000

(45) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3), in violation of Subsection R156-17b-502(17):

initial offense: $500 - $2,500

subsequent offense: $5,000 - $10,000

(46) dispensing a medication that has been discontinued by the FDA, in violation of Subsection R156-17b-502(18):

initial offense: $100 - $500

subsequent offense: $200 - $1,000

(47) failing to keep or report accurate records of training hours, in violation of Subsection R156-17b-502(19):

initial offense: $100 - $500

subsequent offense: $200 - $1,000

(48) failing to provide PIC information to the Division within 30 days of a change in PIC, in violation of Subsection R156-17b-502(20):

initial offense: $100 - $500

subsequent offense: $200 - $1,000

(49) requiring a pharmacy, PIC, or any other pharmacist to operate a pharmacy with unsafe personnel ratio, in violation of Subsection R156-17b-502(21):

initial offense: $500 - $2,000

subsequent offense: $2,000 - $10,000

(50) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts, in violation of Subsection R156-17b-502(22):

Pharmacist initial offense: $100 - $300

Pharmacist subsequent offense(s): $500 - $1,000

Pharmacy initial offense: $250 - $500

Pharmacy subsequent offense(s): $500 - $1,250

(51) practicing or attempting to practice as a pharmacist, pharmacist intern, or pharmacy technician or operating a pharmacy without a license, in violation of Subsection 58-1-501(1)(a):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(52) impersonating a licensee or practicing under a false name, in violation of Subsection 58-1-501(1)(b):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(53) knowingly employing an unlicensed person, in violation of Subsection 58-1-501(1)(c):

initial offense: $500 - $1,000

subsequent offense(s): $1,000 - $5,000

(54) knowingly permitting the use of a license by another person, in violation of Subsection 58-1-501(1)(d):

initial offense: $500 - $1,000

subsequent offense(s): $1,000 - $5,000

(55) obtaining a passing score, applying for or obtaining a license or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):

initial offense: $100 - $2,000

subsequent offense(s): $2,000 - $10,000

(56) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure, in violation of Subsection 58-1-501(1)(f)(i)(A)and 58-1-501(2)(m)(i):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(57) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure without obtaining information sufficient to establish a diagnosis, identify underlying conditions and contraindications to treatment in a situation other than an emergency or an on-call cross coverage situation, in violation of Subsection 58-1-501(1)(f)(i)(B)and 58-1-501(2)(m)(ii):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(58) violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy, in violation of Subsection 58-1-501(2)(a):

initial offense: $100 - $2,000

subsequent offense(s): $2,000 - $10,000

(59) violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard, in violation of Subsection 58-1-501(2)(b):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(60) engaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime, in violation of Subsection 58-1-501(2)(c):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(61) engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority, that if the conduct had occurred in this state, would constitute grounds for denial of licensure or disciplinary action, in violation of Subsection 58-1-501(2)(d):

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(62) engaging in conduct, including the use of intoxicants, drugs, or similar chemicals, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern or pharmacy technician, in violation of Subsection 58-1-501(2)(e):

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(63) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician when physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(64) practicing or attempting to practice as a pharmacist, pharmacy intern, or pharmacy technician through gross incompetence, gross negligence or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2)(g):

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(65) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician by any form of action or communication which is false, misleading, deceptive or fraudulent, in violation of Subsection 58-1-501(2)(h):

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(66) practicing or attempting to practice as a pharmacist,

pharmacy intern or pharmacy technician beyond the individual's scope of competency, abilities or education, in violation of Subsection 58-1-501(2)(i):
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(67) practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the scope of licensure, in violation of Subsection 58-1-501(2)(j):
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(68) verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice, in violation of Subsection 58-1-501(2)(k):
initial offense: $100 - $1,000
subsequent offense(s): $500 - $2,000
(69) acting as a supervisor without meeting the qualification requirements for that position as defined by statute or rule, in violation of Subsection 58-1-501(2)(l):
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(70) violating a provision of Section 58-1-501.5, in violation of Subsection 58-1-501(2)(n):
initial offense: $500 - $2,000
subsequent offense(s): $2,000 - $10,000
(71) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct, in violation of Subsection R156-1-501(1):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(72) practicing a regulated occupation or profession in, through, or with a limited liability company that has omitted the words, "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company, in violation of Subsection R156-1-501 (2):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(73) practicing a regulated occupation or profession in, through, or with a limited partnership that has omitted the words, "limited partnership," "limited," or the abbreviation "L.P." or "L.td." in the commercial use of the name of the limited partnership, in violation of Subsection R156-1-501(3):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(74) practicing a regulated occupation or profession in, through, or with a professional corporation that has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation, in violation of Subsection R156-1-501(4):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(75) using a capitalized DBA (doing-business-as name) that has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing, in violation of Subsection R156-1-501(5):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(76) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain," May 2004, established by the Federation of State Medical Boards of the United States, Inc., which is hereby adopted and incorporated by reference, in violation of R156-1-501(6):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(77) engaging in prohibited acts as defined in Section 58-37-8, in violation of Section 58-37-8:
initial offense: $1,000 - $5,000
subsequent offense(s) $5,000 - $10,000
(78) self-prescribing or self-administering by a licensee of any Schedule II or Schedule III controlled substance which is not prescribed by another practitioner having authority to prescribe the drug, in violation of Subsection R156-37-502(1)(a):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(79) prescribing or administering a controlled substance for a condition that the licensee is not licensed or competent to treat, in violation of Subsection R156-37-502(1)(b):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(80) violating any federal or state law relating to controlled substances, in violation of Subsection R156-37-502(2):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(81) failing to deliver to the Division all controlled substance certificates issued by the Division, to the Division, upon an action which revokes, suspends, or limits the license, in violation of R156-37-502(3):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(82) failing to maintain controls over controlled substances which would be considered by a prudent licensee to be effective against diversion, theft, or shortage of controlled substances, in violation of Subsection R156-37-502(4):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(83) being unable to account for shortages of controlled substances in any controlled substances inventory for which the licensee has responsibility, in violation of Subsection R156-37-502(5):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(84) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law, in violation of Subsection R156-37-502(6):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(85) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records, in violation of Subsection R156-37-502(7):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(86) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so, in violation of Subsection R156-37-502(8):
initial offense: $500 - $2,000
subsequent offense(s): $2,500 - $10,000
(87) any other conduct which constitutes unprofessional or unlawful conduct:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000

R156-17b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violating any provision of the American Pharmaceutical Association (APhA) Code of Ethics for Pharmacists, October 27, 1994, which is hereby incorporated by reference;

(2) failing to comply with the USP-NF Chapters 795 and 797;

(3) failing to comply with the continuing education requirements set forth in these rules;

(4) failing to provide the Division with a current mailing address within a 10 business day period of time following any change of address;

(5) defaulting on a student loan;

(6) failing to abide by all applicable federal and state law regarding the practice of pharmacy;

(7) failing to comply with administrative inspections;

(8) failing to return according to the deadline established by the Division, or providing false information on a self-inspection report;

(9) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division;

(10) abandoning a pharmacy or leaving prescription drugs accessible to the public;

(11) failing to identify licensure classification when communicating by any means;

(12) practicing pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-606(1)(d) or pharmacist to pharmacy technician ratio as established by Subsection R156-17b-601(3);

(13) allowing any unauthorized persons in the pharmacy;

(14) failing to offer to counsel any person receiving a prescription medication;

(15) failing to pay an administrative fine that has been assessed in the time designated by the Division;

(16) failing to comply with the PIC standards as established in Section R156-17b-603;

(17) failing to adhere to institutional policies and procedures related to technician checking of medications when technician checking is utilized;

(18) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3);

(19) dispensing medication that has been discontinued by the FDA;

(20) failing to keep or report accurate records of training hours;

(21) failing to provide PIC information to the Division within 30 days of a change in PIC;

(22) requiring a pharmacy, PIC, or any other pharmacist to operate the pharmacy or allow operation of the pharmacy with a ratio of supervising pharmacist to pharmacy technician/pharmacy intern/support personnel which, under the circumstances of the particular practice setting, results in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;

(23) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts; and

(24) effective November 30, 2014, failing to comply with prescription container label standards established in USP-NF Chapter 17.

R156-17b-601. Operating Standards - Pharmacy Technician.

In accordance with Subsection 58-17b-102(53), practice as a licensed pharmacy technician is defined as follows:

(1) The pharmacy technician may perform any task associated with the physical preparation and processing of prescription and medication orders including:

(a) receiving written prescriptions;

(b) taking refill orders;

(c) entering and retrieving information into and from a database or patient profile;

(d) preparing labels;

(e) retrieving medications from inventory;

(f) counting and pouring into containers;

(g) placing medications into patient storage containers;

(h) affixing labels;

(i) compounding;

(j) counseling for over-the-counter drugs and dietary supplements under the direction of the supervising pharmacist as referenced in Subsection 58-17b-102(53);

(k) accepting new prescription drug orders left on voicemail for a pharmacist to review;

(l) performing checks of certain medications prepared for distribution filled or prepared by another technician within a Class B hospital pharmacy, such as medications prepared for distribution to an automated dispensing cabinet, cart fill, crash cart medication tray, or unit dosing from a prepared stock bottle, in accordance with the following operating standards:

(i) technicians authorized by a hospital to check medications shall have at least one year of experience working as a pharmacy technician and at least six months experience at the hospital where the technician is authorized to check medications;

(ii) technicians shall only check steps in the medication distribution process that do not require the professional judgment of a pharmacist and that are supported by sufficient automation or technology to ensure accuracy (e.g. barcode scanning, drug identification automation, checklists, visual aids);

(iii) hospitals that authorize technicians to check medications shall have a training program and ongoing competency assessment that is documented and retrievable for the duration of each technician's employment and at least three years beyond employment, and shall maintain a list of technicians on staff that are allowed to check medications;

(iv) hospitals that authorize technicians to check medications shall have a medication error reporting system in place and shall be able to produce documentation of its use;

(v) a supervising pharmacist shall be immediately available during all times that a pharmacy technician is checking medications;

(vi) hospitals that authorize technicians to check medications shall have comprehensive policies and procedures that guide technician checking that include the following:

(A) process for technician training and ongoing competency assessment and documentation;

(B) process for supervising technicians who check medications;

(C) list of medications, or types of medications that may or may not be checked by a technician;

(D) description of the automation or technology that will be utilized by the institution to augment the technician check;

(E) process for maintaining a permanent log of the unique initials or identification codes which identify each technician responsible for checked medications by name; and

(F) description of processes used to track and respond to medication errors; and

(m) additional tasks not requiring the judgment of a pharmacist.

(2) The pharmacy technician shall not receive new prescriptions or medication orders as described in Subsection

58-17b-102(53)(b)(iv), clarify prescriptions or medication orders nor perform drug utilization reviews. A new prescription, as used in Subsection 58-17b-102(53)(b)(iv), does not include authorization of a refill of a legend drug.

(3) Pharmacy technicians shall have general supervision by a pharmacist in accordance with Subsection R156-17b-603(2)(s).

(4) No more than one pharmacy technician-in-training per shift shall practice in a pharmacy. A pharmacy technician-in-training shall practice only under the direct supervision of a pharmacist.

R156-17b-602. Operating Standards - Pharmacy Intern.

A pharmacy intern may provide services including the practice of pharmacy under the supervision of an approved preceptor, as defined in Subsection 58-17b-102(48), provided the pharmacy intern met the criteria as established in Subsection R156-17b-306.

R156-17b-603. Operating Standards - Pharmacist-in-charge.

(1) The PIC shall have the responsibility to oversee the operation of the pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs, durable medical equipment and medical supplies. The PIC shall be personally in full and actual charge of the pharmacy.

(2) In accordance with Subsections 58-17b-103(1) and 58-17b-601(1), a secure email address shall be established by the PIC or responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC or responsible party shall notify the Division of the pharmacy's secure email address initially as follows:

(a) at the September 30, 2013 renewal for all licensees; and

(b) thereafter, on the initial application for licensure.

(3) The duties of the PIC shall include:

(a) assuring that pharmacists and pharmacy interns dispense drugs or devices, including:

(i) packaging, preparation, compounding and labeling; and

(ii) ensuring that drugs are dispensed safely and accurately as prescribed;

(b) assuring that pharmacy personnel deliver drugs to the patient or the patient's agent, including ensuring that drugs are delivered safely and accurately as prescribed;

(c) assuring that a pharmacist, pharmacy intern or pharmacy technician communicates to the patient or the patient's agent information about the prescription drug or device or non-prescription products;

(d) assuring that a pharmacist or pharmacy intern communicates to the patient or the patient's agent, at their request, information concerning any prescription drugs dispensed to the patient by the pharmacist or pharmacy intern;

(e) assuring that a reasonable effort is made to obtain, record and maintain patient medication records;

(f) education and training of pharmacy technicians;

(g) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the pharmacy;

(h) disposal and distribution of drugs from the pharmacy;

(i) bulk compounding of drugs;

(j) storage of all materials, including drugs, chemicals and biologicals;

(k) maintenance of records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and regulations;

(l) establishment and maintenance of effective controls against theft or diversion of prescription drugs and records for such drugs;

(m) if records are kept on a data processing system, the maintenance of records stored in that system shall be in compliance with pharmacy requirements;

(n) legal operation of the pharmacy including meeting all inspection and other requirements of all state and federal laws, rules and regulations governing the practice of pharmacy;

(o) assuring that any automated pharmacy system is in good working order and accurately dispenses the correct strength, dosage form and quantity of the drug prescribed while maintaining appropriate record keeping and security safeguards;

(p) implementation of an ongoing quality assurance program that monitors performance of the automated pharmacy system, which is evidenced by written policies and procedures developed for pharmaceutical care;

(q) assuring that all relevant information is submitted to the Controlled Substance Database in the appropriate format and in a timely manner;

(r) assuring that all personnel working in the pharmacy have the appropriate licensure;

(s) assuring that no pharmacy or pharmacist operates the pharmacy or allows operation of the pharmacy with a ratio of pharmacist to pharmacy technician/pharmacy intern/support personnel which, under the circumstances of the particular practice setting, results in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;

(t) assuring that the PIC assigned to the pharmacy is recorded with the Division and that the Division is notified of a change in PIC within 30 days of the change; and

(u) assuring with regard to the secure email address used for self-audits and pharmacy alerts that:

(i) the pharmacy uses a single email address; and

(ii) the pharmacy notifies the Division, on the form prescribed, of any change in the email address within seven calendar days of the change.

R156-17b-604. Operating Standards - Closing a Pharmacy.

At least 14 days prior to the closing of a pharmacy, the PIC shall comply with the following:

(1) If the pharmacy is registered to possess controlled substances, send a written notification to the appropriate regional office of the Drug Enforcement Administration (DEA) containing the following information:

(a) the name, address and DEA registration number of the pharmacy;

(b) the anticipated date of closing;

(c) the name, address and DEA registration number of the pharmacy acquiring the controlled substances; and

(d) the date on which the transfer of controlled substances will occur.

(2) If the pharmacy dispenses prescription drug orders, post a closing notice sign in a conspicuous place in the front of the prescription department and at all public entrance doors to the pharmacy. Such closing notice shall contain the following information:

(a) the date of closing; and

(b) the name, address and telephone number of the pharmacy acquiring the prescription drug orders, including refill information and patient medication records of the pharmacy.

(3) On the date of closing, the PIC shall remove all prescription drugs from the pharmacy by one or a combination of the following methods:

(a) return prescription drugs to manufacturer or supplier for credit or disposal; or

(b) transfer, sell or give away prescription drugs to a person who is legally entitled to possess drugs, such as a hospital or another pharmacy.

(4) If the pharmacy dispenses prescription drug orders:

(a) transfer the prescription drug order files, including refill information and patient medication records, to a licensed pharmacy within a reasonable distance of the closing pharmacy; and

(b) move all signs or notify the landlord or owner of the property that it is unlawful to use the word "pharmacy", or any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead or tend to mislead the public that a pharmacy is located at this address.

(5) Within 10 days of the closing of the pharmacy, the PIC shall forward to the Division a written notice of the closing that includes the following information:

(a) the actual date of closing;

(b) the license issued to the pharmacy;

(c) a statement attesting:

(i) that an inventory as specified in Subsection R156-17b-605(5) has been conducted; and

(ii) the manner in which the legend drugs and controlled substances possessed by the pharmacy were transferred or disposed;

(d) if the pharmacy dispenses prescription drug orders, the name and address of the pharmacy to which the prescription drug orders, including refill information and patient medication records, were transferred.

(6) If the pharmacy is registered to possess controlled substances, a letter shall be sent to the appropriate DEA regional office explaining that the pharmacy has closed. The letter shall include the following items:

(a) DEA registration certificate;

(b) all unused DEA order forms (Form 222) with the word "VOID" written on the face of each order form; and

(c) copy #2 of any DEA order forms (Form 222) used to transfer Schedule II controlled substances from the closed pharmacy.

(7) If the pharmacy is closed suddenly due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy or other emergency circumstances and the PIC cannot provide notification 14 days prior to the closing, the PIC shall comply with the provisions of Subsection (1) as far in advance of the closing as allowed by the circumstances.

(8) If the PIC is not available to comply with the requirements of this section, the owner or legal representative shall be responsible for compliance with the provisions of this section.

R156-17b-605. Operating Standards - Inventory Requirements.

(1) All out of date legend drugs and controlled substances shall be removed from the inventory at regular intervals and in correlation to the beyond use date imprinted on the label.

(2) General requirements for inventory of a pharmacy shall include the following:

(a) the PIC shall be responsible for taking all required inventories, but may delegate the performance of the inventory to another person or persons;

(b) the inventory records shall be maintained for a period of five years and be readily available for inspection;

(c) the inventory records shall be filed separately from all other records;

(d) the inventory records shall be in a written, typewritten, or printed form and include all stocks of controlled substances on hand on the date of the inventory including any that are out of date drugs and drugs in automated pharmacy systems. An inventory taken by use of a verbal recording device shall be promptly transcribed;

(e) the inventory may be taken either as the opening of the business or the close of business on the inventory date;

(f) the person taking the inventory and the PIC shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the PIC and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(g) the person taking the inventory shall make an exact count or measure all controlled substances listed in Schedule I or II;

(h) the person taking the inventory shall make an estimated count or measure of all Schedule III, IV or V controlled substances, unless the container holds more than 1,000 tablets or capsules in which case an exact count of the contents shall be made;

(i) the inventory of Schedule I and II controlled substances shall be listed separately from the inventory of Schedule III, IV and V controlled substances;

(j) if the pharmacy maintains a perpetual inventory of any of the drugs required to be inventories, the perpetual inventory shall be reconciled on the date of the inventory.

(3) Requirements for taking the initial controlled substances inventory shall include the following:

(a) all pharmacies having any stock of controlled substances shall take an inventory on the opening day of business. Such inventory shall include all controlled substances including any out-of-date drugs and drugs in automated pharmacy systems;

(b) in the event a pharmacy commences business with no controlled substances on hand, the pharmacy shall record this fact as the initial inventory. An inventory reporting no Schedule I and II controlled substances shall be listed separately from an inventory reporting no Schedule III, IV, and V controlled substances;

(c) the initial inventory shall serve as the pharmacy's inventory until the next completed inventory as specified in Subsection (4) of this section; and

(d) when combining two pharmacies, each pharmacy shall:

(i) conduct a separate closing pharmacy inventory of controlled substances on the date of closure; and

(ii) conduct a combined opening inventory of controlled substances for the new pharmacy prior to opening.

(4) Requirement for annual controlled substances inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs and drugs in automated pharmacy systems.

(5) Requirements for change of ownership shall include the following:

(a) a pharmacy that changes ownership shall take an inventory of all legend drugs and controlled substances including out-of-date drugs and drugs in automated pharmacy systems on the date of the change of ownership;

(b) such inventory shall constitute, for the purpose of this section, the closing inventory for the seller and the initial inventory for the buyer; and

(c) transfer of Schedule I and II controlled substances shall require the use of official DEA order forms (Form 222).

(6) Requirement for taking inventory when closing a pharmacy includes the PIC, owner, or the legal representative of a pharmacy that ceases to operate as a pharmacy shall forward to the Division, within ten days of cessation of

operation, a statement attesting that an inventory has been conducted, the date of closing and a statement attesting the manner by which legend drugs and controlled substances possessed by the pharmacy were transferred or disposed.

(7) All pharmacies shall maintain a perpetual inventory of all Schedule II controlled substances which shall be reconciled according to facility policy.

R156-17b-606. Operating Standards - Approved Preceptor.

In accordance with Subsection 58-17b-601(1), the operating standards for a pharmacist acting as a preceptor include:

(1) meeting the following criteria:

(a) hold a Utah pharmacist license that is active and in good standing;

(b) document engaging in active practice as a licensed pharmacist for not less than two years in any jurisdiction;

(c) not be under any sanction which, when considered by the Division and Board, would be of such a nature that the best interests of the intern and the public would not be served;

(d) provide direct, on-site supervision to:

(i) no more than two pharmacy interns during a working shift except as provided in Subsection (ii);

(ii) up to five pharmacy interns at public-health outreach programs such as informational health fairs, chronic disease state screening and education programs, and immunization clinics, provided:

(A) the totality of the circumstances are safe and appropriate according to generally recognized industry standards of practice; and

(B) the preceptor has obtained written approval from the pharmacy interns' schools of pharmacy for the intern's participation; and

(e) refer to the intern training guidelines as outlined in the Pharmacy Coordinating Council of Utah Internship Competencies, October 12, 2004, as information about a range of best practices for training interns;

(2) maintaining adequate records to document the number of internship hours completed by the intern and evaluating the quality of the intern's performance during the internship;

(3) completing the preceptor section of a Utah Pharmacy Intern Experience Affidavit found in the application packet at the conclusion of the preceptor/intern relationship regardless of the time or circumstances under which that relationship is concluded; and

(4) being responsible for the intern's actions related to the practice of pharmacy while practicing as a pharmacy intern under supervision.

R156-17b-607. Operating Standards - Supportive Personnel.

(1) In accordance with Subsection 58-17b-102(66)(a), supportive personnel may assist in any tasks not related to drug preparation or processing including:

(a) stock ordering and restocking;

(b) cashiering;

(c) billing;

(d) filing;

(e) receiving a written prescription and delivering it to the pharmacist, pharmacy intern or pharmacy technician;

(f) housekeeping; and

(g) delivering a pre-filled prescription to a patient.

(2) Supportive personnel shall not enter information into a patient profile or accept verbal refill information.

(3) In accordance with Subsection 58-17b-102(66)(b), the supervision of supportive personnel is defined as follows:

(a) all supportive personnel shall be under the supervision of a licensed pharmacist; and

(b) the licensed pharmacist shall be present in the area where the person being supervised is performing services and shall be immediately available to assist the person being supervised in the services being performed except for the delivery of prefilled prescriptions as provided in Subsection (1)(g) above.

(4) In accordance with Subsection 58-17b-601(1), a pharmacist, pharmacy intern or pharmacy technician whose license has been revoked or is suspended shall not be allowed to provide any support services in a pharmacy.

R156-17b-608. Common Carrier Delivery.

A pharmacy that employs the United States Postal Service or other common carrier to deliver a filled prescription directly to a patient shall, under the direction of the pharmacist-in-charge or other responsible employee:

(1) use adequate storage or shipping containers and shipping processes to ensure drug stability and potency. The shipping processes shall include the use of appropriate packaging material and devices, according to the recommendations of the manufacturer or the United States Pharmacopeia Chapter 1079, in order to ensure that the drug is kept at appropriate storage temperatures throughout the delivery process to maintain the integrity of the medication;

(2) use shipping containers that are sealed in a manner to detect evidence of opening or tampering;

(3) develop and implement policies and procedures to ensure accountability, safe delivery, and compliance with temperature requirements. The policies and procedures shall address when drugs do not arrive at their destination in a timely manner or when there is evidence that the integrity of a drug was compromised during shipment. In these instances, the pharmacy shall make provisions for the replacement of the drugs;

(4) provide for an electronic, telephonic, or written communication mechanism for a pharmacist, or a pharmacy intern working under the direct supervision of a pharmacist, to offer counseling to the patient as defined in Section 58-17b-613, including documentation of such counseling; and

(5) provide information to the patient indicating what the patient should do if the integrity of the packaging or drug was compromised during shipment.

R156-17b-609. Operating Standards - Medication Profile System.

In accordance with Subsections 58-17b-601(1) and 58-17b-604(1), the following operating standards shall apply with respect to medication profile systems:

(1) Patient profiles, once established, shall be maintained by a pharmacist in a pharmacy dispensing to patients on a recurring basis for a minimum of one year from the date of the most recent prescription filled or refilled; except that a hospital pharmacy may delete the patient profile for an inpatient upon discharge if a record of prescriptions is maintained as a part of the hospital record.

(2) Information to be included in the profile shall be determined by a responsible pharmacist at the pharmaceutical facility but shall include as a minimum:

(a) full name of the patient, address, telephone number, date of birth or age and gender;

(b) patient history where significant, including known allergies and drug reactions, and a list of prescription drugs obtained by the patient at the pharmacy including:

(i) name of prescription drug;

(ii) strength of prescription drug;

(iii) quantity dispensed;

(iv) date of filling or refilling;

(v) charge for the prescription drug as dispensed to the

patient; and

(c) any additional comments relevant to the patient's drug use.

(3) Patient medication profile information shall be recorded by a pharmacist, pharmacy intern or pharmacy technician.

R156-17b-610. Operating Standards - Patient Counseling.

In accordance with Subsection 58-17b-601(1), guidelines for providing patient counseling established in Section 58-17b-613 include the following:

(1) Counseling shall be offered orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits oral communication.

(2) A pharmacy facility shall orally offer to counsel but shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such counseling.

(3) Based upon the pharmacist's or pharmacy intern's professional judgment, patient counseling may be discussed to include the following elements:

(a) the name and description of the prescription drug;

(b) the dosage form, dose, route of administration and duration of drug therapy;

(c) intended use of the drug, when known, and expected action;

(d) special directions and precautions for preparation, administration and use by the patient;

(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescription refill information;

(i) action to be taken in the event of a missed dose;

(j) pharmacist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and

(k) the date after which the prescription should not be taken or used, or the beyond use date.

(4) The offer to counsel shall be documented and said documentation shall be available to the Division. These records shall be maintained for a period of five years and be available for inspection within 7-10 business days.

(5) Only a pharmacist or pharmacy intern may orally provide counseling to a patient or patient's agent and answer questions concerning prescription drugs.

(6) If a prescription drug order is delivered to the patient or the patient's agent at the patient's or other designated location, the following is applicable:

(a) the information specified in Subsection (1) of this section shall be delivered with the dispensed prescription in writing;

(b) if prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container, the telephone number of the pharmacy and the statement "Written information about this prescription has been provided for you. Please read this information before you take this medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions."; and

(c) written information provided in Subsection (8)(b) of this section shall be in the form of patient information leaflets similar to USP-NF patient information monographs or equivalent information.

(7) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the patient's drugs.

R156-17b-611. Operating Standards - Drug Therapy Management.

(1) In accordance with Subsections 58-17b-102(17) and 58-17b-601(1), decisions involving drug therapy management shall be made in the best interest of the patient. Drug therapy management may include:

(a) implementing, modifying and managing drug therapy according to the terms of the Collaborative Pharmacy Practice Agreement;

(b) collecting and reviewing patient histories;

(c) obtaining and checking vital signs, including pulse, temperature, blood pressure and respiration;

(d) ordering and evaluating the results of laboratory tests directly applicable to the drug therapy, when performed in accordance with approved protocols applicable to the practice setting; and

(e) such other patient care services as may be allowed by rule.

(2) For the purpose of promoting therapeutic appropriateness, a pharmacist shall at the time of dispensing a prescription, or a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant conditions, situations or items, such as:

(a) inappropriate drug utilization;

(b) therapeutic duplication;

(c) drug-disease contraindications;

(d) drug-drug interactions;

(e) incorrect drug dosage or duration of drug treatment;

(f) drug-allergy interactions; and

(g) clinical abuse or misuse.

(3) Upon identifying any clinically significant conditions, situations or items listed in Subsection (2) above, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner.

R156-17b-612. Operating Standards - Prescriptions.

In accordance with Subsection 58-17b-601(1), the following shall apply to prescriptions:

(1) Prescription orders for controlled substances (including prescription transfers) shall be handled according to the rules of the Federal Drug Enforcement Administration.

(2) A prescription issued by an authorized licensed practitioner, if verbally communicated by an agent of that practitioner upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist or pharmacy intern.

(3) A prescription issued by a licensed prescribing practitioner, if electronically communicated by an agent of that practitioner, upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist, pharmacy intern and pharmacy technician.

(4) In accordance with Sections 58-17b-609 and 58-17b-611, prescription files, including refill information, shall be maintained for a minimum of five years and shall be immediately retrievable in written or electronic format.

(5) Prescriptions for legend drugs having a remaining authorization for refill may be transferred by the pharmacist or pharmacy intern at the pharmacy holding the prescription to a pharmacist or pharmacy intern at another pharmacy upon the authorization of the patient to whom the prescription was issued or electronically as authorized under Subsection R156-17b-613(9). The transferring pharmacist or pharmacy intern and receiving pharmacist or pharmacy intern shall act diligently to ensure that the total number of authorized refills is not exceeded. The following additional terms apply to such

a transfer:

(a) the transfer shall be communicated directly between pharmacists or pharmacy interns or as authorized under Subsection R156-17b-613(9);

(b) both the original and the transferred prescription drug orders shall be maintained for a period of five years from the date of the last refill;

(c) the pharmacist or pharmacy intern transferring the prescription drug order shall void the prescription electronically or write void/transfer on the face of the invalidated prescription manually;

(d) the pharmacist or pharmacy intern receiving the transferred prescription drug order shall:

(i) indicate on the prescription record that the prescription was transferred electronically or manually; and

(ii) record on the transferred prescription drug order the following information:

(A) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(B) original prescription number and the number of refills authorized on the original prescription drug order;

(C) number of valid refills remaining and the date of last refill, if applicable;

(D) the name and address of the pharmacy and the name of the pharmacist or pharmacy intern to which such prescription is transferred; and

(E) the name of the pharmacist or pharmacy intern transferring the prescription drug order information;

(e) the data processing system shall have a mechanism to prohibit the transfer or refilling of legend drugs or controlled substance prescription drug orders which have been previously transferred; and

(f) a pharmacist or pharmacy intern may not refuse to transfer original prescription information to another pharmacist or pharmacy intern who is acting on behalf of a patient and who is making a request for this information as specified in Subsection (12) of this section.

(6) Prescriptions for terminal patients in licensed hospices, home health agencies or nursing homes may be partially filled if the patient has a medical diagnosis documenting a terminal illness and may not need the full prescription amount.

(7) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order;

(8) If there are no refill instructions on the original prescription drug order, or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills.

(9) Refills of prescription drug orders for legend drugs may not be refilled after one year from the date of issuance of the original prescription drug order without obtaining authorization from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(10) Refills of prescription drug orders for controlled substances shall be done in accordance with Subsection 58-37-6(7)(f).

(11) A pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(a) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(b) either:

(i) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(ii) the pharmacist is unable to contact the practitioner after a reasonable effort, the effort should be documented and said documentation should be available to the Division;

(c) the quantity of prescription drug dispensed does not exceed a 72-hour supply, unless the packaging is in a greater quantity;

(d) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills;

(e) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(f) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection; and

(g) the pharmacist affixes a label to the dispensing container as specified in Section 58-17b-602.

(12) If the prescription was originally filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(a) the patient has the prescription container label, receipt or other documentation from the other pharmacy which contains the essential information;

(b) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(c) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of (a) and (b) of this subsection; and

(d) the pharmacist complies with the requirements of Subsections (11)(c) through (g) of this section.

(13) The address specified in Subsection 58-17b-602(1)(b) shall be a physical address, not a post office box.

(14) In accordance with Subsection 58-37-6(7)(e), a prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance unless:

(a) the person who writes the prescription is licensed to prescribe Schedule I controlled substances; and

(b) the prescribed controlled substance is to be used in research.

(15) Effective November 30, 2014, prescription container labels shall comply with standards established in USP-NF Chapter 17.

R156-17b-613. Operating Standards - Issuing Prescription Orders by Electronic Means.

In accordance with Subsections 58-17b-102(27) through (28), 58-17b-602(1), R156-82, and R156-1, prescription orders may be issued by electronic means of communication according to the following standards:

(1) Prescription orders for Schedule II - V controlled substances received by electronic means of communication shall be handled according to Part 1304.04 of Section 21 of the CFR.

(2) Prescription orders for non-controlled substances received by electronic means of communication may be dispensed by a pharmacist or pharmacy intern only if all of the following conditions are satisfied:

(a) all electronically transmitted prescription orders shall include the following:

(i) all information that is required to be contained in a prescription order pursuant to Section 58-17b-602;

(ii) the time and date of the transmission, and if a facsimile transmission, the electronically encoded date, time and fax number of the sender; and

(iii) the name of the pharmacy intended to receive the

transmission;

(b) the prescription order shall be transmitted under the direct supervision of the prescribing practitioner or his designated agent;

(c) the pharmacist shall exercise professional judgment regarding the accuracy and authenticity of the transmitted prescription. Practitioners or their agents transmitting medication orders using electronic equipment are to provide voice verification when requested by the pharmacist receiving the medication order. The pharmacist is responsible for assuring that each electronically transferred prescription order is valid and shall authenticate a prescription order issued by a prescribing practitioner which has been transmitted to the dispensing pharmacy before filling it, whenever there is a question;

(d) a practitioner may authorize an agent to electronically transmit a prescription provided that the identifying information of the transmitting agent is included on the transmission. The practitioner's electronic signature, or other secure method of validation, shall be provided with the electronic prescription; and

(e) an electronically transmitted prescription order that meets the requirements above shall be deemed to be the original prescription.

(3) This section does not apply to the use of electronic equipment to transmit prescription orders within inpatient medical facilities.

(4) No agreement between a prescribing practitioner and a pharmacy shall require that prescription orders be transmitted by electronic means from the prescribing practitioner to that pharmacy only.

(5) The pharmacist shall retain a printed copy of an electronic prescription, or a record of an electronic prescription that is readily retrievable and printable, for a minimum of five years. The printed copy shall be of non-fading legibility.

(6) Wholesalers, distributors, manufacturers, pharmacists and pharmacies shall not supply electronic equipment to any prescriber for transmitting prescription orders.

(7) An electronically transmitted prescription order shall be transmitted to the pharmacy of the patient's choice.

(8) Prescription orders electronically transmitted to the pharmacy by the patient shall not be filled or dispensed.

(9) A prescription order for a legend drug or controlled substance in Schedule III through V may be transferred up to the maximum refills permitted by law or by the prescriber by electronic transmission providing the pharmacies share a real-time, on-line database provided that:

(a) the information required to be on the transferred prescription has the same information as described in Subsection R156-17b-612(5)(a) through (f); and

(b) pharmacists, pharmacy interns or pharmacy technicians electronically accessing the same prescription drug order records may electronically transfer prescription information if the data processing system has a mechanism to send a message to the transferring pharmacy containing the following information:

(i) the fact that the prescription drug order was transferred;

(ii) the unique identification number of the prescription drug order transferred;

(iii) the name of the pharmacy to which it was transferred; and

(iv) the date and time of the transfer.

R156-17b-614a. Operating Standards - General Operating Standards, Class A and B Pharmacy.

(1) In accordance with Subsection 58-17b-601(1), the following operating standards apply to all Class A and Class B pharmacies, which may be supplemented by additional standards defined in this rule applicable to specific types of Class A and B pharmacies. The general operating standards include:

(a) shall be well lighted, well ventilated, clean and sanitary;

(b) the dispensing area, if any, shall have a sink with hot and cold culinary water separate and apart from any restroom facilities. This does not apply to clean rooms where sterile products are prepared. Clean rooms should not have sinks or floor drains that expose the area to an open sewer. All required equipment shall be clean and in good operating condition;

(c) be equipped to permit the orderly storage of prescription drugs and durable medical equipment in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) be stocked with the quality and quantity of product necessary for the facility to meet its scope of practice in a manner consistent with the public health, safety and welfare; and

(f) be equipped with a security system to:

(i) permit detection of entry at all times when the facility is closed; and

(ii) provide notice of unauthorized entry to an individual who is able to respond quickly and reasonably assess the entry and resolve the matter.

(2) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and freezer shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration or freezing.

(3) Facilities engaged in simple, moderate or complex non-sterile or any level of sterile compounding activities shall be required to maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable and sterility. The following requirements shall be met:

(a) shall follow USP-NF Chapter 795, compounding of non-sterile preparations, and USP-NF Chapter 797 if compounding sterile preparations;

(b) may compound in anticipation of receiving prescriptions in limited amounts;

(c) bulk active ingredients shall:

(i) be procured from a facility registered with the federal Food and Drug Administration; and

(ii) not be listed on the federal Food and Drug Administration list of drug products withdrawn or removed from the market for reasons of safety or effectiveness;

(d) a master worksheet sheet shall be developed and approved by a pharmacist for each batch of sterile or non-sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master worksheet sheet shall be used as the preparation worksheet sheet from which each batch is prepared and on which all documentation for that batch occurs. The master worksheet sheet shall contain at a minimum:

(i) the formula;

(ii) the components;

(iii) the compounding directions;

(iv) a sample label;

(v) evaluation and testing requirements;

(vi) sterilization methods, if applicable;

(vii) specific equipment used during preparation such as

specific compounding device; and

(viii) storage requirements;

(e) a preparation worksheet sheet for each batch of sterile or non-sterile pharmaceuticals shall document the following:

(i) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(ii) manufacturer lot number for each component;

(iii) component manufacturer or suitable identifying number;

(iv) container specifications (e.g. syringe, pump cassette);

(v) unique lot or control number assigned to batch;

(vi) beyond use date of batch prepared products;

(vii) date of preparation;

(viii) name, initials or electronic signature of the person or persons involved in the preparation;

(ix) names, initials or electronic signature of the responsible pharmacist;

(x) end-product evaluation and testing specifications, if applicable; and

(xi) comparison of actual yield to anticipated yield, when appropriate;

(f) the label of each batch prepared of sterile or non-sterile pharmaceuticals shall bear at a minimum:

(i) the unique lot number assigned to the batch;

(ii) all solution and ingredient names, amounts, strengths and concentrations, when applicable;

(iii) quantity;

(iv) beyond use date and time, when applicable;

(v) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and

(vi) device-specific instructions, where appropriate;

(g) the beyond use date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing;

(i) sources of drug stability information shall include the following:

(A) references can be found in Trissel's "Handbook on Injectable Drugs", 17th Edition, October 31, 2012;

(B) manufacturer recommendations; and

(C) reliable, published research;

(ii) when interpreting published drug stability information, the pharmacist shall consider all aspects of the final sterile product being prepared such as drug reservoir, drug concentration and storage conditions; and

(iii) methods for establishing beyond use dates shall be documented; and

(h) there shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities that follows the USP-NF Chapters 795 and 797 standards.

(4) The facility shall have current and retrievable editions of the following reference publications in print or electronic format and readily available and retrievable to facility personnel:

(a) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act'

(b) R156-1, General Rule of the Division of Occupational and Professional Licensing;

(c) Title 58, Chapter 17b, Pharmacy Practice Act;

(d) R156-17b, Utah Pharmacy Practice Act Rule;

(e) Title 58, Chapter 37, Utah Controlled Substances Act;

(f) R156-37, Utah Controlled Substances Act Rule;

(g) Title 58, Chapter 37f, Controlled Substance Database Act;

(h) R156-37f, Controlled Substance Database Act Rule;

(i) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USP DI Drug Reference Guides;

(j) current FDA Approved Drug Products (orange book); and

(k) any other general drug references necessary to permit practice dictated by the usual and ordinary scope of practice to be conducted within that facility.

(5) The facility shall post the license of the facility and the license or a copy of the license of each pharmacist, pharmacy intern and pharmacy technician who is employed in the facility, but may not post the license of any pharmacist, pharmacy intern or pharmacy technician not actually employed in the facility.

(6) Facilities shall have a counseling area to allow for confidential patient counseling, where applicable.

(7) If the pharmacy is located within a larger facility such as a grocery or department store, and a licensed Utah pharmacist is not immediately available in the facility, the pharmacy shall not remain open to pharmacy patients and shall be locked in such a way as to bar entry to the public or any non-pharmacy personnel. All pharmacies located within a larger facility shall be locked and enclosed in such a way as to bar entry by the public or any non-pharmacy personnel when the pharmacy is closed.

(8) Only a licensed Utah pharmacist or authorized pharmacy personnel shall have access to the pharmacy when the pharmacy is closed.

(9) The facility or parent company shall maintain a permanent log of the initials or identification codes which identify each dispensing pharmacist by name. The initials or identification code shall be unique to ensure that each pharmacist can be identified; therefore identical initials or identification codes shall not be used.

(10) The pharmacy facility shall maintain copy 3 of DEA order form (Form 222) which has been properly dated, initialed and filed and all copies of each unaccepted or defective order form and any attached statements or other documents.

(11) If applicable, a hard copy of the power of attorney authorizing a pharmacist to sign DEA order forms (Form 222) shall be available to the Division whenever necessary.

(12) Pharmacists or other responsible individuals shall verify that controlled substances are listed on the suppliers' invoices and were actually received by clearly recording their initials and the actual date of receipt of the controlled substances.

(13) The pharmacy facility shall maintain a record of suppliers' credit memos for controlled substances.

(14) A copy of inventories required under Section R156-17b-605 shall be made available to the Division when requested.

(15) The pharmacy facility shall maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.

(16) If the pharmacy includes a drop/false ceiling, the pharmacy's perimeter walls shall extend to the hard deck, or other measures shall be taken to prevent unauthorized entry into the pharmacy.

R156-17b-614b. Operating Standards - Class B pharmacy designated as a Branch Pharmacy.

In accordance with Subsections 58-17b-102(8) and 58-1-301(3), the qualifications for designation as a branch pharmacy include the following:

(1) The Division, in collaboration with the Board, shall approve the location of each branch pharmacy. The following

shall be considered in granting such designation:

(a) the distance between or from nearby alternative pharmacies and all other factors affecting access of persons in the area to alternative pharmacy resources;

(b) the availability at the location of qualified persons to staff the pharmacy, including the physician, physician assistant or advanced practice registered nurse;

(c) the availability and willingness of a parent pharmacy and supervising pharmacist to assume responsibility for the branch pharmacy;

(d) the availability of satisfactory physical facilities in which the branch pharmacy may operate; and

(e) the totality of conditions and circumstances which surround the request for designation.

(2) A branch pharmacy shall be licensed as a pharmacy branch of an existing Class A or B pharmacy licensed by the Division.

(3) The application for designation of a branch pharmacy shall be submitted by the licensed parent pharmacy seeking such designation. In the event that more than one licensed pharmacy makes application for designation of a branch pharmacy location at a previously undesignated location, the Division in collaboration with the Board shall review all applications for designation of the branch pharmacy and, if the location is approved, shall approve for licensure the applicant determined best able to serve the public interest as identified in Subsection (1).

(4) The application shall include the following:

(a) complete identifying information concerning the applying parent pharmacy;

(b) complete identifying information concerning the designated supervising pharmacist employed at the parent pharmacy;

(c) address and description of the facility in which the branch pharmacy is to be located;

(d) specific formulary to be stocked indicating with respect to each prescription drug, the name, the dosage strength and dosage units in which the drug will be prepackaged;

(e) complete identifying information concerning each person located at the branch pharmacy who will dispense prescription drugs in accordance with the approved protocol; and

(f) protocols under which the branch pharmacy will operate and its relationship with the parent pharmacy to include the following:

(i) the conditions under which prescription drugs will be stored, used and accounted for;

(ii) the method by which the drugs will be transported from parent pharmacy to the branch pharmacy and accounted for by the branch pharmacy; and

(iii) a description of how records will be kept with respect to:

(A) formulary;

(B) changes in formulary;

(C) record of drugs sent by the parent pharmacy;

(D) record of drugs received by the branch pharmacy;

(E) record of drugs dispensed;

(F) periodic inventories; and

(G) any other record contributing to an effective audit trail with respect to prescription drugs provided to the branch pharmacy.

R156-17b-614c. Operating Standards - Class B - Pharmaceutical Administration Facility.

In accordance with Subsections 58-17b-102(44) and 58-17b-601(1), the following applies with respect to prescription drugs which are held, stored or otherwise under the control of a pharmaceutical administration facility for administration to patients:

(1) The licensed pharmacist shall provide consultation on all aspects of pharmacy services in the facility; establish a system of records of receipt and disposition of all controlled substances in sufficient detail to enable an accurate reconciliation; and determine that drug records are in order and that an account of all controlled substances is maintained and periodically reconciled.

(2) Authorized destruction of all prescription drugs shall be witnessed by the medical or nursing director or a designated physician, registered nurse or other licensed person employed in the facility and the consulting pharmacist or licensed pharmacy technician and must be in compliance with DEA regulations.

(3) Prescriptions for patients in the facility can be verbally requested by a licensed prescribing practitioner and may be entered as the prescribing practitioner's order; but the practitioner must personally sign the order in the facility record within 72 hours if a Schedule II controlled substance and within 30 days if any other prescription drug. The prescribing practitioner's verbal order may be copied and forwarded to a pharmacy for dispensing and may serve as the pharmacy's record of the prescription order.

(4) Prescriptions for controlled substances for patients in Class B pharmaceutical administration facilities shall be dispensed according to Title 58, Chapter 37, Utah Controlled Substances Act, and R156-37, Utah Controlled Substances Act Rules.

(5) Requirements for emergency drug kits shall include:

(a) an emergency drug kit may be used by pharmaceutical administration facilities. The emergency drug kit shall be considered to be a physical extension of the pharmacy supplying the emergency drug kit and shall at all times remain under the ownership of that pharmacy;

(b) the contents and quantity of drugs and supplies in the emergency drug kit shall be determined by the Medical Director or Director of Nursing of the pharmaceutical administration facility and the consulting pharmacist of the supplying pharmacy;

(c) a copy of the approved list of contents shall be conspicuously posted on or near the kit;

(d) the emergency kit shall be used only for bona fide emergencies and only when medications cannot be obtained from a pharmacy in a timely manner;

(e) records documenting the receipt and removal of drugs in the emergency kit shall be maintained by the facility and the pharmacy;

(f) the pharmacy shall be responsible for ensuring proper storage, security and accountability of the emergency kit and shall ensure that:

(i) the emergency kit is stored in a locked area and is locked itself; and

(ii) emergency kit drugs are accessible only to licensed physicians, physician assistants and nurses employed by the facility;

(g) the contents of the emergency kit, the approved list of contents and all related records shall be made freely available and open for inspection to appropriate representatives of the Division and the Utah Department of Health.

R156-17b-614d. Operating Standards - Class B - Nuclear Pharmacy.

In accordance with Subsection 58-17b-601(1), the operating standards for a Class B pharmacy designated as a nuclear pharmacy shall have the following:

(1) A nuclear pharmacy shall have the following:

(a) have applied for or possess a current Utah Radioactive Materials License; and

(b) adequate space and equipment commensurate with the scope of services required and provided.

(2) Nuclear pharmacies shall only dispense radiopharmaceuticals that comply with acceptable standards of quality assurance.

(3) Nuclear pharmacies shall maintain a library commensurate with the level of radiopharmaceutical service to be provided.

(4) A licensed Utah pharmacist shall be immediately available on the premises at all times when the facility is open or available to engage in the practice of pharmacy.

(5) In addition to Utah licensure, the pharmacist shall have classroom and laboratory training and experience as required by the Utah Radiation Control Rules.

(6) This rule does not prohibit:

(a) a licensed pharmacy intern or technician from acting under the direct supervision of an approved preceptor who meets the requirements to supervise a nuclear pharmacy; or

(b) a Utah Radioactive Materials license from possessing and using radiopharmaceuticals for medical use.

(7) A hospital nuclear medicine department or an office of a physician/surgeon, osteopathic physician/surgeon, veterinarian, pediatric physician or dentist that has a current Utah Radioactive Materials License does not require licensure as a Class B pharmacy.

(8) A nuclear pharmacy preparing sterile compounds must follow the USP-NF Chapter 797 Compound for sterile preparations.

(9) A nuclear pharmacy preparing medications for a specific person shall be licensed as a Class B - nuclear pharmacy if located in Utah, and as a Class D pharmacy if located outside of Utah.

R156-17b-614e. Class B - Dispensing Drugs from an Emergency Department and Upon Discharge from a Rural Hospital Pharmacy.

The "Guidelines for Hospital Pharmacies and Emergency Department Treatment" document, adopted May 21, 2012, by the Division in collaboration with the Utah State Board of Pharmacy, as posted on the Division website, is the guideline or standard to be utilized by rural hospital emergency departments dispensing a short course of necessary medications to patients when a pharmacy is not open to fill their prescriptions.

R156-17b-615. Operating Standards - Class C Pharmacy - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer in Utah.

In accordance with Subsections 58-17b-102(44) and 58-17b-601(1), the operating standards for Class C pharmacies designated as pharmaceutical wholesaler/distributor and pharmaceutical manufacturer licensees includes the following:

(1) Every pharmaceutical wholesaler or manufacturer that engages in the wholesale distribution and manufacturing of drugs or medical devices located in this state shall be licensed by the Division. A separate license shall be obtained for each separate location engaged in the distribution or manufacturing of prescription drugs. Business names cannot be identical to the name used by another unrelated wholesaler licensed to purchase drugs and devices in Utah.

(2) Manufacturers distributing only their own FDA-approved prescription drugs or co-licensed product shall satisfy this requirement by registering their establishment with the Federal Food and Drug Administration pursuant to 21 CFR Part 207 and submitting the information required by 21 CFR Part 205, including any amendments thereto, to the Division.

(3) An applicant for licensure as a pharmaceutical wholesale distributor shall provide the following minimum information:

(a) All trade or business names used by the licensee (including "doing business as" and "formerly known as");

(b) Name of the owner and operator of the license as follows:

(i) if a person, the name, business address, social security number and date of birth;

(ii) if a partnership, the name, business address, and social security number and date of birth of each partner, and the partnership's federal employer identification number;

(iii) if a corporation, the name, business address, social security number and date of birth, and title of each corporate officer and director, the corporate names, the name of the state of incorporation, federal employer identification number, and the name of the parent company, if any, but if a publicly traded corporation, the social security number and date of birth for each corporate officer shall not be required;

(iv) if a sole proprietorship, the full name, business address, social security number and date of birth of the sole proprietor and the name and federal employer identification number of the business entity;

(v) if a limited liability company, the name of each member, social security number of each member, the name of each manager, the name of the limited liability company and federal employer identification number, and the name of the state in which the limited liability company was organized; and

(c) any other relevant information required by the Division.

(4) The licensed facility need not be under the supervision of a licensed pharmacist, but shall be under the supervision of a designated representative who meets the following criteria:

(a) is at least 21 years of age;

(b) has been employed full time for at least three years in a pharmacy or with a pharmaceutical wholesaler in a capacity related to the dispensing and distribution of, and recordkeeping related to prescription drugs;

(c) is employed by the applicant full time in a managerial level position;

(d) is actively involved in and aware of the actual daily operation of the pharmaceutical wholesale distribution;

(e) is physically present at the facility during regular business hours, except when the absence of the designated representative is authorized, including but not limited to, sick leave and vacation leave; and

(f) is serving in the capacity of a designated representative for only one licensee at a time.

(5) The licensee shall provide the name, business address, and telephone number of a person to serve as the designated representative for each facility of the pharmaceutical wholesaler that engages in the distribution of drugs or devices.

(6) Each facility that engages in pharmaceutical wholesale distribution and manufacturing facilities shall undergo an inspection by the Division for the purposes of inspecting the pharmaceutical wholesale distribution or manufacturing operation prior to initial licensure and periodically thereafter with a schedule to be determined by the Division.

(7) All pharmaceutical wholesalers and manufacturer shall publicly display or have readily available all licenses and the most recent inspection report administered by the Division.

(8) All Class C pharmacies shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) have storage areas designed to provide adequate lighting, ventilation, sanitation, space, equipment and security

conditions;

(c) have the ability to control temperature and humidity within tolerances required by all prescription drugs and prescription drug precursors handled or used in the distribution or manufacturing activities of the applicant or licensee;

(d) provide for a quarantine area for storage of prescription drugs and prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated, opened or unsealed containers that have once been appropriately sealed or closed or in any other way unsuitable for use or entry into distribution or manufacturing;

(e) be maintained in a clean and orderly condition; and

(f) be free from infestation by insects, rodents, birds or vermin of any kind.

(9) Each facility used for wholesale drug distribution or manufacturing of prescription drugs shall:

(a) be secure from unauthorized entry;

(b) limit access from the outside to a minimum in conformance with local building codes, life and safety codes and control access to persons to ensure unauthorized entry is not made;

(c) limit entry into areas where prescription drugs, prescription drug precursors, or prescription drug devices are held to authorized persons who have a need to be in those areas;

(d) be well lighted on the outside perimeter;

(e) be equipped with an alarm system to permit detection of entry and notification of appropriate authorities at all times when the facility is not occupied for the purpose of engaging in distribution or manufacturing of prescription drugs; and

(f) be equipped with security measures, systems and procedures necessary to provide reasonable security against theft and diversion of prescription drugs or alteration or tampering with computers and records pertaining to prescription drugs or prescription drug precursors.

(10) Each facility shall provide the storage of prescription drugs, prescription drug precursors, and prescription drug devices in accordance with the following:

(a) all prescription drugs and prescription drug precursors shall be stored at appropriate temperature, humidity and other conditions in accordance with labeling of such prescription drugs or prescription drug precursors or with requirements in the USP-NF;

(b) if no storage requirements are established for a specific prescription drug, prescription drug precursor, or prescription drug devices, the products shall be held in a condition of controlled temperature and humidity as defined in the USP-NF to ensure that its identity, strength, quality and purity are not adversely affected; and

(c) there shall be established a system of manual, electromechanical or electronic recording of temperature and humidity in the areas in which prescription drugs, prescription drug precursors, and prescription drug devices are held to permit review of the record and ensure that the products have not been subjected to conditions which are outside of established limits.

(11) Each person who is engaged in pharmaceutical wholesale distribution of prescription drugs for human use that leave, or have ever left, the normal distribution channel shall, before each pharmaceutical wholesale distribution of such drug, provide a pedigree to the person who receives such drug. A retail pharmacy or pharmacy warehouse shall comply with the requirements of this section only if the pharmacy engages in pharmaceutical wholesale distribution of prescription drugs. The pedigree shall:

(a) include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, through acquisition and sale by any pharmaceutical wholesaler, until sale to a pharmacy or other person dispensing or administering the prescription drug. At a minimum, the necessary chain of distribution information shall include:

(i) name, address, telephone number, and if available, the email address of each owner of the prescription drug, and each pharmaceutical wholesaler of the prescription drug;

(ii) name and address of each location from which the product was shipped, if different from the owner's;

(iii) transaction dates;

(iv) name of the prescription drug;

(v) dosage form and strength of the prescription drug;

(vi) size of the container;

(vii) number of containers;

(viii) lot number of the prescription drug;

(ix) name of the manufacturer of the finished dose form; and

(x) National Drug Code (NDC) number.

(b) be maintained by the purchaser and the pharmaceutical wholesaler for five years from the date of sale or transfer and be available for inspection or use upon a request of an authorized officer of the law.

(12) Each facility shall comply with the following requirements:

(a) in general, each person who is engaged in pharmaceutical wholesale distribution of prescription drugs shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of the prescription drugs. These records shall include pedigrees for all prescription drugs that leave the normal distribution channel;

(b) upon receipt, each outside shipping container containing prescription drugs, prescription drug precursors, or prescription drug devices shall be visibly examined for identity and to prevent the acceptance of prescription drugs, prescription drug precursors, or prescription drug devices that are contaminated, reveal damage to the containers or are otherwise unfit for distribution:

(i) prescription drugs, prescription drug precursors, or prescription drug devices that are outdated, damaged, deteriorated, misbranded, adulterated or in any other way unfit for distribution or use in manufacturing shall be quarantined and physically separated from other prescription drugs, prescription drug precursors or prescription drug devices until they are appropriately destroyed or returned to their supplier; and

(ii) any prescription drug or prescription drug precursor whose immediate sealed or outer secondary sealed container has been opened or in any other way breached shall be identified as such and shall be quarantined and physically separated from other prescription drugs and prescription drug precursors until they are appropriately destroyed or returned to their supplier;

(c) each outgoing shipment shall be carefully inspected for identity of the prescription drug products or devices and to ensure that there is no delivery of prescription drugs or devices that have been damaged in storage or held under improper conditions:

(i) if the conditions or circumstances surrounding the return of any prescription drug or prescription drug precursor cast any doubt on the product's safety, identity, strength, quality or purity, then the drug shall be appropriately destroyed or returned to the supplier, unless examination, testing or other investigation proves that the product meets appropriate and applicable standards related to the product's safety, identity, strength, quality and purity;

(ii) returns of expired, damaged, recalled, or otherwise non-saleable prescription drugs shall be distributed by the

receiving pharmaceutical wholesale distributor only to the original manufacturer or a third party returns processor that is licensed as a pharmaceutical wholesale distributor under this chapter;

(iii) returns or exchanges of prescription drugs (saleable or otherwise), including any redistribution by a receiving pharmaceutical wholesaler, shall not be subject to the pedigree requirements, so long as they are exempt from the pedigree requirement under the FDA's Prescription Drug Marketing Act guidance or regulations; and

(d) licensee under this Act and pharmacies or other persons authorized by law to dispense or administer prescription drugs for use by a patient shall be accountable for administering their returns process and ensuring that all aspects of their operation are secure and do not permit the entry of adulterated and counterfeit prescription drugs.

(13) A manufacturer or pharmaceutical wholesaler shall furnish prescription drugs only to a person licensed by the Division or to another appropriate state licensing authority to possess, dispense or administer such drugs for use by a patient.

(14) Prescription drugs furnished by a manufacturer or pharmaceutical wholesaler shall be delivered only to the business address of a person described in Subsections R156-17b-102(16)(c) and R156-17b-615(13), or to the premises listed on the license, or to an authorized person or agent of the licensee at the premises of the manufacturer or pharmaceutical wholesaler if the identity and authority of the authorized agent is properly established.

(15) Each facility shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription drug precursors and shall make inventories of prescription drugs and prescription drug precursors and required records available for inspection by authorized representatives of the federal, state and local law enforcement agencies in accordance with the following:

(a) there shall be a record of the source of the prescription drugs or prescription drug precursors to include the name and principal address of the seller or transferor and the address of the location from which the drugs were shipped;

(b) there shall be a record of the identity and quantity of the prescription drug or prescription drug precursor received, manufactured, distributed or shipped or otherwise disposed of by specific product and strength;

(c) there shall be a record of the dates of receipt and distribution or other disposal of any product;

(d) there shall be a record of the identity of persons to whom distribution is made to include name and principal address of the receiver and the address of the location to which the products were shipped;

(e) inventories of prescription drugs and prescription drug precursors shall be made available during regular business hours to authorized representatives of federal, state and local law enforcement authorities;

(f) required records shall be made available for inspection during regular business hours to authorized representatives of federal, state and local law enforcement authorities and such records shall be maintained for a period of two years following disposition of the products; and

(g) records that are maintained on site or immediately retrievable from computer or other electronic means shall be made readily available for authorized inspection during the retention period; or if records are stored at another location, they shall be made available within two working days after request by an authorized law enforcement authority during the two year period of retention.

(16) Each facility shall establish, maintain and adhere to written policies and procedures which shall be followed for the receipt, security, storage, inventory, manufacturing, distribution or other disposal of prescription drugs or prescription drug precursors, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, the policies shall include the following:

(a) a procedure whereby the oldest approved stock of a prescription drug or precursor product is distributed or used first with a provision for deviation from the requirement if such deviation is temporary and appropriate;

(b) a procedure to be followed for handling recalls and withdrawals of prescription drugs adequate to deal with recalls and withdrawals due to:

(i) any action initiated at the request of the FDA or other federal, state or local law enforcement or other authorized administrative or regulatory agency;

(ii) any voluntary action to remove defective or potentially defective drugs from the market; or

(iii) any action undertaken to promote public health, safety or welfare by replacement of existing product with an improved product or new package design;

(c) a procedure to prepare for, protect against or handle any crisis that affects security or operation of any facility in the event of strike, fire, flood or other natural disaster or other situations of local, state or national emergency;

(d) a procedure to ensure that any outdated prescription drugs or prescription drug precursors shall be segregated from other drugs or precursors and either returned to the manufacturer, other appropriate party or appropriately destroyed;

(e) a procedure for providing for documentation of the disposition of outdated, adulterated or otherwise unsafe prescription drugs or prescription drug precursors and the maintenance of that documentation available for inspection by authorized federal, state or local authorities for a period of five years after disposition of the product;

(f) a procedure for identifying, investigating and reporting significant drug inventory discrepancies (involving counterfeit drugs suspected of being counterfeit, contraband, or suspect of being contraband) and reporting of such discrepancies within three (3) business days to the Division and/or appropriate federal or state agency upon discovery of such discrepancies; and

(g) a procedure for reporting criminal or suspected criminal activities involving the inventory of drugs and devices to the Division, FDA and if applicable, Drug Enforcement Administration (DEA), within three (3) business days.

(17) Each facility shall establish, maintain and make available for inspection by authorized federal, state and local law enforcement authorities, lists of all officers, directors, managers and other persons in charge which lists shall include a description of their duties and a summary of their background and qualifications.

(18) Each facility shall comply with laws including:

(a) operating within applicable federal, state and local laws and regulations;

(b) permitting the state licensing authority and authorized federal, state and local law enforcement officials, upon presentation of proper credentials, to enter and inspect their premises and delivery vehicles and to audit their records and written operating policies and procedures, at reasonable times and in a reasonable manner, to the extent authorized by law; and

(c) obtaining a controlled substance license from the Division and registering with the Drug Enforcement Administration (DEA) if they engage in distribution or

manufacturing of controlled substances and shall comply with all federal, state and local regulations applicable to the distribution or manufacturing of controlled substances.

(19) Each facility shall be subject to and shall abide by applicable federal, state and local laws that relate to the salvaging or reprocessing of prescription drug products.

(20) A person who is engaged in the wholesale distribution or manufacturing of prescription drugs but does not have a facility located within Utah in which prescription drugs are located, stored, distributed or manufactured is exempt from Utah licensure as a Class C pharmacy, if said person is currently licensed and in good standing in each state of the United States in which that person has a facility engaged in distribution or manufacturing of prescription drugs entered into interstate commerce.

(21) No facility located at the same address shall be dually licensed as both a Class C pharmacy and any other classification of Class A or B pharmacy. Nothing within this section prevents a facility from obtaining licensure for a secondary address which operates separate and apart from any other facility upon obtaining proper licensure.

R156-17b-616. Operating Standards - Class D Pharmacy - Out of State Mail Order Pharmacies.

(1) In accordance with Subsections 58-1-301(3) and 58-17b-306(2), an application for licensure as a Class D pharmacy shall include:

(a) a pharmacy care protocol that includes the operating standards established in Subsections R156-17b-610(1) and (8) and R156-17b-612(1) through (4);

(b) a copy of the pharmacist's license for the PIC; and

(c) a copy of the most recent state inspection or NABP inspection completed as part of the NABP Verified Pharmacy Program (VPP) showing the status of compliance with the laws and regulations for physical facility, records and operations.

(2) An out of state mail order pharmacy that compounds must follow the USP-NF Chapter 795 Compounding of non-sterile preparations and Chapter 797 Compounding of sterile preparations.

R156-17b-617a. Class E Pharmacy Operating Standards - General Provisions.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), Class E pharmacies shall have a written pharmacy care protocol which includes:

(a) the identity of the supervisor or director;

(b) a detailed plan of care;

(c) the identity of the drugs that will be purchased, stored, used and accounted for; and

(d) the identity of any licensed healthcare provider associated with the operation.

(2) A Class E pharmacy preparing sterile compounds must follow the USP-NF Chapter 797 Compounding for sterile preparations.

R156-17b-617b. Class E Pharmacy Operating Standards - Analytical Laboratory.

In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an analytical laboratory shall:

(1) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(2) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(3) maintain a list of drugs that will be purchased, stored, used and accounted for;

(4) maintain a list of licensed healthcare providers associated with the operation of the business;

(5) possess prescription drugs for the purpose of analysis; and

(6) take measures to prevent the theft or loss of controlled substances.

R156-17b-617c. Class E Pharmacy Operating Standards - - Animal Control.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an animal control facility shall:

(a) maintain for immediate retrieval a perpetual inventory of all drugs including controlled substances that are purchased, stored, processed and administered;

(b) maintain for immediate retrieval a current list of authorized employees and their training with regards to the handling and use of legend drugs and/or controlled substances in relation to euthanasia or immobilization of animals;

(c) maintain, for immediate retrieval documentation of all required materials pertaining to legitimate animal scientific drug research, guidance policy and other relevant documentation from the agency's Institutional Review Board, if applicable;

(d) maintain stocks of legend drugs and controlled substances to the smallest quantity needed for efficient operation to conduct animal euthanasia or immobilization purposes;

(e) maintain all legend drugs and controlled substances in an area within a building having perimeter security which limits access during working hours, provides adequate security after working hours, and has the following security controls:

(i) a permanently secured safe or steel cabinet substantially constructed with self-closing and self-locking doors employing either multiple position combination or key lock type locking mechanisms; and

(ii) requisite key control, combination limitations, and change procedures;

(f) have a responsible party who is the only person authorized to purchase and reconcile legend drugs and controlled substances and is responsible for the inventory of the animal control facility pharmacy;

(g) ensure that only defined and approved individuals pursuant to the written facility protocol have access to legend drugs and controlled substances; and

(h) develop and maintain written policies and procedures for immediate retrieval which include the following:

(i) the type of activity conducted with regards to legend drugs and/or controlled substances;

(ii) how medications are purchased, inventoried, prepared and used in relation to euthanasia or immobilization of animals;

(iii) the type, form and quantity of legend drugs and/or controlled substances handled;

(iv) the type of safe or equally secure enclosures or other storage system used for the storage and retrieval of legend drugs and/or controlled substances;

(v) security measures in place to protect against theft or loss of legend drugs and controlled substances;

(vi) adequate supervision of employees having access to manufacturing and storage areas;

(vii) maintenance of records documenting the initial and ongoing training of authorized employees with regard to all applicable protocols;

(viii) maintenance of records documenting all approved and trained authorized employees who may have access to the legend drugs and controlled substances; and

(ix) procedures for allowing the presence of business guests, visitors, maintenance personnel, and non-employee service personnel.

(2) In accordance with Section 58-37-6 and Subsection R156-37-305(1), individuals employed by an agency of the State or any of its political subdivisions who are specifically authorized in writing by their employer to possess specified controlled substances in specified reasonable and necessary quantities for the purpose of euthanasia or immobilization upon animals, shall be exempt from having a controlled substance license if the employing agency or jurisdiction has obtained a controlled substance license and a DEA registration number, and uses the controlled substances according to a written protocol in performing animal euthanasia or immobilization.

R156-17b-617d. Class E Pharmacy Operating Standards- Durable Medical Equipment.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), durable medical equipment facility shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) be equipped to permit the orderly storage of durable medical equipment in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) maintain prescription forms and records for a period of five years;

(f) be locked and enclosed in such as way as to bar entry by the public or any non-personnel when the facility is closed; and

(g) post the license of the facility in full view of the public.

(2) A licensed practitioner who administers durable medical equipment to a patient or animal is not engaging in the practice of pharmacy, and does not require a license as a Class E pharmacy.

R156-17b-617e. Class E Pharmacy Operating Standards - Human Clinical Investigational Drug Research Facility.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), a human clinical investigational drug research facility licensed as a Class E Pharmacy shall, in addition to the requirements contained in Subsection R156-17b-617a, conduct operations in accordance with the operating standards set forth in 21 CFR Part 312, April 1, 2012 edition, which are hereby incorporated by reference.

(2) In accordance with Subsections 58-37-6(2)(b) and (3)(a)(i), persons licensed to conduct research with controlled substances in Schedules I-V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license.

(3) In accordance with Subsection 58-37-6(2), the following persons are not required to obtain a license and may lawfully possess controlled substances included in Schedules II-V:

(a) an agent or employee acting in the usual course of the person's business or employment, and

(b) an ultimate user, or any person who possesses any controlled substance pursuant to a lawful order of a practitioner.

(4) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, dispenses, conducts research with, or performs laboratory analysis upon controlled substances.

R156-17b-617f. Class E Pharmacy Operating Standards - Medical Gas Provider.

In accordance with Section 58-17b-302 and Subsection 58-17b 601(1), a medical gas facility shall:

(a) develop standard operating policy and procedures manual;

(b) conduct training and maintain evidence of employee training programs and completion certificates;

(c) maintain documentation and records of all transactions to include:

(i) batch production records

(ii) certificates of analysis

(iii) dates of calibration of gauges;

(d) provide adequate space for orderly placement of equipment and finished product;

(e) maintain gas tanks securely;

(f) designate return and quarantine areas for separation of products;

(g) label all products;

(h) fill cylinders without using adapters; and

(i) comply with all FDA standards and requirements.

R156-17b-618. Change in Ownership or Location.

(1) In accordance with Section 58-17b-614, except for changes in ownership caused by a change in the stockholders in corporations which are publicly listed and whose stock is publicly traded, a licensed pharmaceutical facility shall make application for a new license and receive approval from the Division no later than ten business days prior to any of the following proposed changes:

(a) location or address, except for a reassignment of a new address by the United States Postal Service that does not involve any change of location;

(b) name, except for a doing-business-as (DBA) name change that is properly registered with the Division of Corporations and filed with the Division of Occupational and Professional Licensing; or

(c) ownership.

(2) Upon approval of the change in location, name, or ownership, and the issuance of a new license, the original license shall be surrendered to the Division.

(b) Upon approval of the name change, the original licenses shall be surrendered to the Division.

R156-17b-619. Operating Standards - Third Party Payors.

Reserved.

R156-17b-620. Operating Standards - Automated Pharmacy System.

In accordance with Section 58-17b-621, automated pharmacy systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Division and licensed health care facilities where legally permissible and shall comply with the following provisions:

(1) Documentation as to type of equipment, serial numbers, content, policies and procedures and location shall be maintained on site in the pharmacy for review upon request of the Division. Such documentation shall include:

(a) name and address of the pharmacy or licensed health care facility where the automated pharmacy system is being used;

(b) manufacturer's name and model;

(c) description of how the device is used;

(d) quality assurance procedures to determine continued appropriate use of the automated device; and

(e) policies and procedures for system operation, safety, security, accuracy, patient confidentiality, access and malfunction.

(2) Automated pharmacy systems should be used only in settings where there is an established program of pharmaceutical care that ensures that before dispensing, or removal from an automated storage and distribution device, a pharmacist reviews all prescription or medication orders unless a licensed independent practitioner controls the ordering, preparation and administration of the medication; or in urgent situations when the resulting delay would harm the patient including situations in which the patient experiences a sudden change in clinical status.

(3) All policies and procedures must be maintained in the pharmacy responsible for the system and, if the system is not located within the facility where the pharmacy is located, at the location where the system is being used.

(4) Automated pharmacy systems shall have:

(a) adequate security systems and procedures to:

(i) prevent unauthorized access;

(ii) comply with federal and state regulations; and

(iii) prevent the illegal use or disclosure of protected health information;

(b) written policies and procedures in place prior to installation to ensure safety, accuracy, security, training of personnel, and patient confidentiality and to define access and limits to access to equipment and medications.

(5) Records and electronic data kept by automated pharmacy systems shall meet the following requirements:

(a) all events involving the contents of the automated pharmacy system must be recorded electronically;

(b) records must be maintained by the pharmacy for a period of five years and must be readily available to the Division. Such records shall include:

(i) identity of system accessed;

(ii) identify of the individual accessing the system;

(iii) type of transaction;

(iv) name, strength, dosage form and quantity of the drug accessed;

(v) name of the patient for whom the drug was ordered; and

(vi) such additional information as the PIC may deem necessary.

(6) Access to and limits on access to the automated pharmacy system must be defined by policy and procedures and must comply with state and federal regulations.

(7) The PIC or pharmacist designee shall have the sole responsibility to:

(a) assign, discontinue or change access to the system;

(b) ensure that access to the medications comply with state and federal regulations; and

(c) ensure that the automated pharmacy system is filled and stocked accurately and in accordance with established written policies and procedures.

(8) The filling and stocking of all medications in the automated pharmacy system shall be accomplished by qualified licensed healthcare personnel under the supervision of a licensed pharmacist.

(9) A record of medications filled and stocked into an automated pharmacy system shall be maintained for a period of five years and shall include the identification of the persons filling, stocking and checking for accuracy.

(10) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws and regulations.

(11) All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.

(12) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, all in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system remain unused and must be secured and accounted for.

(13) The automated pharmacy system shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system are wasted or discarded and must be secured.

R156-17b-621. Operating Standards - Pharmacist Administration - Training.

(1) In accordance with Subsection 58-17b-502(9), appropriate training for the administration of a prescription drug includes:

(a) current Basic Life Support (BLS) certification; and

(b) successful completion of a training program which includes at a minimum:

(i) didactic and practical training for administering injectable drugs;

(ii) the current Advisory Committee on Immunization Practices (ACIP) of the United States Center for Disease Control and Prevention guidelines for the administration of immunizations; and

(iii) the management of an anaphylactic reaction.

(2) Sources for the appropriate training include:

(a) ACPE approved programs; and

(b) curriculum-based programs from an ACPE accredited college of pharmacy, state or local health department programs and other Board recognized providers.

(3) Training is to be supplemented by documentation of two hours of continuing education related to the area of practice in each preceding renewal period.

(4) The "Vaccine Administration Protocol: Standing Order to Administer Immunizations and Emergency Medications", adopted March 27, 2012, by the Division in collaboration with the Utah State Board of Pharmacy, as posted on the Division website, is the guideline or standard for pharmacist administration of vaccines and emergency medications.

KEY: pharmacists, licensing, pharmacies

August 21, 2014	**58-17b-101**
Notice of Continuation January 5, 2015	**58-17b-601(1)**
	58-37-1
	58-1-106(1)(a)
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-31b. Nurse Practice Act Rule.
R156-31b-101. Title.

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

R156-31b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in this rule:

(1) "Accreditation" means full approval of a nurse prelicensing course of education by one of the following accrediting bodies:

(a) the ACEN;

(b) the CCNE; or

(c) the COA.

(2) "ACEN" means the Accreditation Commission for Education in Nursing, Inc.

(3) "Administering" means the direct application of a prescription drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient or research subject by another person.

(4) "APRN" means advanced practice registered nurse.

(5) "APRN-CRNA" means advanced practice registered nurse with registered nurse anesthetist certification.

(6) "Approved continuing education" means:

(a) continuing education that has been approved by a nationally or internationally recognized approver of professional continuing education for health-related industries;

(b) nursing education courses offered by an approved education program as defined in Subsection R156-31b-102(7);

(c) health-related coursework taken from an educational institution accredited by a regional or national institutional accrediting body recognized by the U.S. Department of Education; and

(d) training or educational presentations offered by the Division.

(7) "Approved education program" means any nursing education program that meets the standards established in Section 58-31b-601 or Section R156-31b-602.

(8) "CCNE" means the Commission on Collegiate Nursing Education.

(9) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(10) "COA" means the Council on Accreditation of Nurse Anesthesia Education Programs.

(11) "Comprehensive nursing assessment" means:

(a) conducting extensive initial and ongoing data collection:

(i) for individuals, families, groups or communities; and

(ii) addressing anticipated changes in patient conditions as well as emergent changes in patient health status;

(b) recognizing alterations to previous patient conditions;

(c) synthesizing the biological, psychological, spiritual, and social aspects of the patient's condition;

(d) evaluating the impact of nursing care; and

(e) using data generated from the assessments conducted pursuant to this Subsection (a) through (d) to:

(i) make independent decisions regarding patient health care needs;

(ii) plan nursing interventions;

(iii) evaluate any possible need for different interventions; and

(iv) evaluate any possible need to communicate and consult with other health team members.

(12) "Contact hour" in the context of continuing education means 60 minutes, which may include a 10-minute break.

(13) "Delegate" means:

(a) to transfer to another nurse the authority to perform a selected nursing task in a selected situation;

(b) in the course of practice of an APRN who specializes in psychiatric mental health nursing, to transfer to any individual licensed as a mental health therapist selected psychiatric APRN supervisory clinical experiences within generally-accepted industry standards; or

(c) to transfer to an unlicensed person the authority to perform a task that, according to generally-accepted industry standards or law, does not require a nursing assessment as defined in Sections R156-31b-102(11) and (17).

(14) "Delegatee" means one or more persons assigned by a delegator to act on the delegator's behalf.

(15) "Delegator" means a person who assigns to another the authority to perform a task on behalf of the person.

(16)(a) "Disruptive behavior" means conduct, whether verbal or physical, that:

(i) is demeaning, outrageous, or malicious;

(ii) occurs during the process of delivering patient care; and

(iii) places a patient at risk.

(b) "Disruptive behavior" does not include criticism that is offered in good faith with the aim of improving patient care.

(17) "Focused nursing assessment" means an appraisal of a patient's status and situation at hand, including:

(a) verification and evaluation of orders; and

(b) assessment of:

(i) the patient's nursing care needs;

(ii) the complexity and frequency of the required nursing care;

(iii) the stability of the patient; and

(iv) the availability and accessibility of resources, including appropriate equipment, adequate supplies, and other appropriate health care personnel to meet the patient's nursing care needs.

(18) "Foreign nurse education program" means any program that originates or occurs outside of the United States.

(19) "Individualized healthcare plan" or "IHP" means a written document that outlines the provision of student healthcare services intended to achieve specific student outcomes.

(20) "Licensure by equivalency" applies only to the licensed practical nurse and may be warranted if the person seeking licensure:

(a) has, within the two-year period preceding the date of application, successfully completed course work in a registered nurse program that meets the criteria established in Sections 58-31b-601 and R156-31b-602; or

(b)(i) is currently enrolled in a fully accredited registered nurse education program; and

(ii) has completed course work that is certified by the education program provider as being equivalent to the course work of an ACEN-accredited practical nursing program.

(21) "LPN" means licensed practical nurse.

(22) "MAC" means medication aide certified.

(23) "Medication" means any prescription or nonprescription drug as defined in Subsections 58-17b-102(24), (37) or (61) of the Pharmacy Practice Act.

(24) "NLNAC" means the National League for Nursing Accrediting Commission, which as of May 6, 2013, became known as the Accreditation Commission for Education in Nursing, Inc. or ACEN.

(25) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(26) "Non-approved education program" means any

nurse prelicensing course of study that does not meet the criteria of Section 58-31b-601, including a foreign nurse education program.

(27) "Nurse" means:

(a) an individual licensed under Title 58, Chapter 31b as:

(i) a licensed practical nurse;

(ii) a registered nurse;

(iii) an advanced practice registered nurse; or

(iv) an advanced practice registered nurse-certified registered nurse anesthetist; or

(b) a certified nurse midwife licensed under Title 58, Chapter 44a.

(28) "Other specified health care professionals," as used in Subsection 58-31b-102(15), means an individual, in addition to a registered nurse or a licensed physician, who is permitted to direct the tasks of a licensed practical nurse, and includes:

(a) an advanced practice registered nurse;

(b) a certified nurse midwife;

(c) a chiropractic physician;

(d) a dentist;

(e) an osteopathic physician;

(f) a physician assistant;

(g) a podiatric physician;

(h) an optometrist;

(i) a naturopathic physician; or

(j) a mental health therapist as defined in Subsection 58-60-102(5).

(29) "Patient" means one or more individuals:

(a) who receive medical and/or nursing care; and

(b) to whom a licensee owes a duty of care.

(30) "Patient surrogate" means an individual who has legal authority to act on behalf of a patient when the patient is unable to act or make decisions unaided, including:

(a) a parent;

(b) a foster parent;

(c) a legal guardian; or

(d) a person legally designated as the patient's attorney-in-fact.

(31) "Psychiatric mental health nursing specialty" means an expertise in psychiatric mental health, whether as a nurse specialist or APRN.

(32) "Practitioner" means a person authorized by law to prescribe treatment, medication, or medical devices.

(33) "RN" means a registered nurse.

(34) "School" means any private or public institution of primary or secondary education, including a charter school, pre-school, kindergarten, or special education program.

(35) "Supervision" is as defined in Subsection R156-1-102a(4).

(36) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b is further defined in Section R156-31b-502.

R156-31b-103. Authority -- Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the to administer Title 58, Chapter 31b.

R156-31b-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.

R156-31b-201. Board of Nursing -- Membership.

In accordance with Subsection 58-31b-201(1), the Board membership shall comprise:

(1) one licensed practical nurse;

(2) two advanced practice registered nurses, at least one of whom is an APRN-CRNA;

(3) four RNs;

(4) two additional members licensed either as RNs or APRNs who are actively involved in nursing education; and

(5) two public members.

R156-31b-202. Advisory Peer Education Committee Created -- Membership - Duties.

(1) In accordance with Subsection 58-1-203(1)(f), there is created the Advisory Peer Education Committee.

(2) The duties and responsibilities of the Advisory Peer Education Committee are to:

(a) review applications for approval of nursing education programs;

(b) monitor a nursing education program that is approved for a limited time under Section R156-31b-602 as it progresses toward accreditation; and

(c) advise the Division as to nursing education issues.

(3) The composition of the Advisory Peer Education Committee shall be:

(a) seven RNs or APRNs actively involved in nursing education, including at least one representative from public, private, and proprietary nursing programs; and

(b) any member of the Board who wishes to serve on the committee.

R156-31b-301. License Classifications -- Professional Upgrade.

Upon issuance by the Division of an increased scope of practice license:

(1) the increased licensure supersedes the lesser license;

(2) the lesser license is automatically expired; and

(3) the licensee shall immediately destroy any print or physical copy of the lesser license.

R156-31b-301a. LPN License -- Education, Examination, and Experience Requirements.

(1) An applicant who has never obtained a license in any state or country shall:

(a) demonstrate that the applicant:

(i) has successfully completed an LPN prelicensing education program that meets the requirements of Section 58-31b-601;

(ii) has successfully completed an LPN prelicensing education program that is equivalent to an approved program under Section 58-31b-601; or

(iii)(A) is enrolled in an RN prelicensing education program that meets the requirements of Section 58-31b-601; and

(B) has completed coursework that is equivalent to the coursework of an ACEN-accredited practical nurse program;

(b) pass the LPN NCLEX examination pursuant to Section R156-31b-301e; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(2) An applicant who holds a current LPN license issued by another country or by a state that does not participate in the interstate compact shall:

(a) demonstrate that the license issued by the other jurisdiction is active and in good standing as of the date of application;

(b) demonstrate that the LPN prelicensing education completed by the applicant:

(i) is equivalent to LPN prelicensing education approved in Utah as of the date of the applicant's graduation; and

(ii) if a foreign education program, meets all requirements outlined in Section R156-31b-301d;

(c) pass the LPN NCLEX examination pursuant to Section R156-31b-301e; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(3) An applicant who holds a current LPN license in an interstate compact state shall apply for a license within 90 days of establishing residency in Utah.

(4) An applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:

(a) if the applicant has not practiced as a nurse for up to five years, document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

(b) if the applicant has not practiced as a nurse for more than five years but less than eight years:

(i) pass the LPN NCLEX examination within 60 days following the date of application; or

(ii) successfully complete an approved re-entry program;

(c) if the applicant has not practiced as a nurse for more than eight years but less than 10 years:

(i) successfully complete an approved re-entry program; and

(ii) pass the LPN NCLEX examination within 60 days following the date of application; or

(d) if the applicant has not practiced as a nurse for 10 years or more, comply with this Subsection (1).

(5) An applicant who has been licensed in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (2)(b); and

(b) comply with this Subsection (4) as applicable; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301b. RN License -- Education, Examination, and Experience Requirements.

(1) An applicant who has never obtained a license in any state or country shall:

(a) demonstrate that the applicant has successfully completed an RN prelicensing education program that:

(i) meets the requirements of Section 58-31b-601; or

(ii) is equivalent to an approved program under Section 58-31b-601;

(b) pass the RN NCLEX examination pursuant to Section R156-31b-301e; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(2) An applicant who holds a current RN license issued by another country or by a state that does not participate in the interstate compact shall:

(a) demonstrate that the license issued by the other jurisdiction is current, active, and in good standing as of the date of application;

(b)(i) demonstrate that the applicant has graduated from an RN prelicensing education program; and

(ii) if a foreign education program, demonstrate that the program meets all requirements outlined in Section R156-31b-301d;

(c) pass the RN NCLEX examination pursuant to Section R156-31b-301e; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(3) An applicant who holds a current RN license in an interstate compact state shall apply for a license within 90 days of establishing residency in Utah.

(4) An applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:

(a) if the applicant has not practiced as a nurse for up to five years, document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

(b) if the applicant has not practiced as a nurse for more than five years but less than eight years:

(i) pass the RN NCLEX examination within 60 days following the date of application; or

(ii) successfully complete an approved re-entry program;

(c) if the applicant has not practiced as a nurse for more than eight years but less than 10 years:

(i) successfully complete an approved re-entry program; and

(ii) pass the RN NCLEX examination within 60 days following the date of application; or

(d) if the applicant has not practiced as a nurse for 10 years or more, comply with this Subsection (1).

(5) An applicant who has been licensed in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (2)(b);

(b) comply with this Subsection (4) as applicable; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301c. APRN License -- Education, Examination, and Experience Requirements.

(1) An applicant who is not currently and validly licensed as an APRN in any state or country shall:

(a) demonstrate that the applicant holds a current, active RN license in good standing;

(b) demonstrate that the applicant has successfully completed an APRN prelicensing education program that meets the requirements of Subsection 58-31b-601(1) and Subsection 58-31b-302(4)(e);

(c) pass a national certification examination consistent with the applicant's educational specialty, pursuant to Section R156-31b-301e, and administered by one of the following credentialing bodies:

(i) the American Nurses Credentialing Center Certification;

(ii) the Pediatric Nursing Certification Board;

(iii) the American Association of Nurse Practitioners;

(iv) the National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties;

(v) the American Midwifery Certification Board, Inc.; or

(vi) the Council on Certification of Nurse Anesthetists;

(d) if the applicant specializes in psychiatric mental health nursing, demonstrate that the requirements outlined in this Subsection (2) are met; and

(e) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(2) Requirements for APRN Specializing in Psychiatric Mental Health Nursing:

(a) In accordance with Subsection 58-31b-302(4)(g), the supervised clinical practice in mental health therapy and psychiatric and mental health nursing shall consist of a minimum of 4,000 hours of psychiatric mental health nursing education and clinical practice, including mental health therapy, as follows.

(i) 1,000 hours shall be credited for completion of clinical experience in an approved education program in psychiatric mental health nursing.

(ii) The remaining 3,000 hours shall:

(A) be completed after passing the applicable national certification examination and within five years of graduation from an accredited master's or doctoral level educational program;

(B) include a minimum of 1,000 hours of mental health therapy practice; and

(C) include at least 2,000 clinical practice hours that are

completed under the supervision of:

(I) an APRN specializing in psychiatric mental health nursing; or

(II) a licensed mental health therapist who is delegated by the supervising APRN to supervise selected clinical experiences under the general supervision of the supervising APRN; and

(D) unless otherwise approved by the Board and Division, be completed while the individual seeking licensure is under the supervision of an individual who meets the requirements of this Subsection (2)(c).

(b) An applicant who obtains all or part of the clinical practice hours outside of Utah may receive credit for that experience by demonstrating that the training completed is equivalent in all respects to the training required under this Subsection (2)(a).

(c)(i) An approved supervisor shall verify practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years.

(ii) Duties and responsibilities of a supervisor include:

(A) being independent from control by the supervisee such that the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(B) supervising not more than three supervisees unless otherwise approved by the Division in collaboration with the Board; and

(C) submitting appropriate documentation to the Division with respect to all work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

(3) An applicant who holds a current APRN license issued by another state or country shall:

(a) demonstrate that the license issued by the other state or country is current, active, and in good standing as of the date of application;

(b) demonstrate that the APRN prelicensing education completed by the applicant:

(i) if completed on or after January 1, 1987:

(A) is equivalent to APRN prelicensing education approved in Utah as of the date of the applicant's graduation; or

(B) constitutes a bachelor degree in nursing; and

(ii) if a foreign education program, meets all requirements outlined in Section R156-31b-301d;

(c) if the applicant specializes in psychiatric mental health nursing, demonstrate that the applicant has successfully engaged in active practice in psychiatric mental health nursing for not less than 4,000 hours in the three-year period immediately preceding the date of application; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(4) An applicant who has been licensed previously in Utah, but whose license has expired, lapsed, or been on inactive status, shall:

(a) demonstrate current certification in the individual's specialty area; and

(b) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(5) An applicant who has been licensed previously in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (3)(b);

(b) demonstrate that the applicant is currently certified in the individual's specialty area; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301d. Foreign Education Programs.

An applicant whose prelicensing education was completed through a foreign program that does not meet the requirements of Section 58-31b-601, shall demonstrate:

(1)(a) that all three components of the CGFNS certification process and the credentials evaluation service professional report have been completed so as to demonstrate that the courses completed are substantially equivalent to coursework of approved education programs as of the date of the applicant's graduation;

(b) that at least one of the following practice requirements has been met within the five-year period preceding the date of application:

(i) the applicant has practiced as a licensed nurse for a minimum of 960 hours in a state or territory of the United States;

(ii) the applicant has completed a Board-approved refresher course;

(iii) the applicant has obtained an advanced (master's or doctorate) nursing degree; or

(iv) the applicant has qualified for and obtained a license upgrade (LPN to RN or RN to APRN); and

(c) that the applicant has achieved a passing score on an approved English proficiency test prior to the date of application; or

(2)(a) that the applicant practiced as a licensed nurse for 6,000 hours in another state or territory of the United States during the five-year period immediately preceding the date of application; and

(b) that the applicant has achieved a passing score on an approved English proficiency test prior to the date of application.

R156-31b-301e. Examination Requirements.

(1)(a) An applicant for licensure as an LPN, RN, or APRN shall pass the applicable licensure or certification examination within five years of the applicant's date of graduation from the nurse education program, except as provided in Subsection (1)(b).

(b) An individual specializing in psychiatric mental health nursing shall complete the applicable certification examination prior to beginning the 3,000 hours of required psychiatric clinical and mental health therapy practice.

(c) An individual who does not pass the applicable licensure or certification examination pursuant to this Subsection (1)(a) or (b) as applicable shall complete another approved nursing education program before again attempting to pass the licensure or certification examination.

(2) An applicant for certification as an MAC shall pass the NCSBN Medication Aide Certification Examination (MACE) within one year of completing the approved training program.

(3) The examinations required under these rules are national examinations and cannot be challenged before the Division.

R156-31b-301f. Licensing Fees.

An applicant for licensure shall pay the applicable nonrefundable application fee before the application may be considered by the Division or Board.

R156-31b-301g. Criminal Background Checks.

A criminal background check conducted during the application process is considered current and acceptable for that specific application only.

R156-31b-303. LPN, RN, and APRN License Renewal - Professional Downgrade - Continuing Education.

(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 31b, is established by rule in Section R156-1-308a.

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

(3) Each applicant for renewal shall comply with the following continuing competency requirements:

(a) An LPN or RN shall complete one of the following during the two-year period immediately preceding the date of application for renewal:

(i) licensed practice for not less than 400 hours;

(ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education; or

(iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall comply with the following:

(i)(A) be currently certified or recertified in the licensee's specialty area of practice; or

(B) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice; and

(ii) if authorized to prescribe controlled substances, comply with Section R156-37-402 and Section 58-37-6.5.

(c) An MAC shall complete eight contact hours of approved continuing education related to medications or medication administration during the two-year period immediately preceding the application for renewal.

(4) A licensee who wishes to downgrade the license in conjunction with a renewal or reinstatement application shall:

(a) comply with the competency requirements of this Subsection (3)(a);

(b) pay all required fees, including any applicable late fees;

(c) submit a completed renewal or reinstatement form as applicable to the license desired; and

(d) complete and sign a license surrender document as provided by the Division.

(5) A licensee who obtained a license downgrade may apply for license upgrade by:

(i) submitting the appropriate application for licensure complete with all supporting documents as required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure;

(ii) meeting the continuing competency requirements of this Subsection (3); and

(iii) paying the established license fee for a new applicant for licensure.

R156-31b-309. APRN Intern License.

(1) An individual who has completed all requirements outlined in Subsection R156-31b-301c(1) except the certification examination requirement may apply for an APRN intern license.

(2) In accordance with Section 58-31b-306, and unless this Subsection (3) or (4) applies, an intern license expires the earlier of:

(a) 180 days from the date of issuance;

(b) 30 days after the Division receives notice pursuant to this Subsection (4) that the applicant has failed the specialty certification examination; or

(c) upon issuance of an APRN license.

(3) If an intern is applying for licensure as an APRN specializing in psychiatric mental health nursing, the intern license expires three years from the date of issuance.

(4) The Division in collaboration with the Board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

(5) It is the professional responsibility of an APRN intern:

(a) to inform the Division of examination results within ten calendar days of receipt; and

(b) to cause the examination agency to send the examination results directly to the Division.

R156-31b-402. Administrative Penalties.

In accordance with Sections 58-1-501, 58-31b-501, 58-31b-502, 58-31b-801 and R156-31b-502 and Subsection 58-31b-102(1), and unless otherwise ordered by the presiding officer, the following fine schedule shall apply to a nurse or MAC.

(1) Initial and second offenses.

(a) Using a protected title, name, or initials, if the user is not properly licensed under this chapter, in violation of Subsection 58-31b-501(1):

initial offense: $500 - $4,000

second offense: $4,000 - $8,000

(b) Using any name, title, or initials that would cause a reasonable person to believe the user is licensed or certified under this chapter if the user is not properly licensed or certified under this chapter, in violation of Subsection 58-31b-501(2):

initial offense: $500 - $4,000

second offense: $4,000 - $8,000

(c) Conducting a nursing education program in the state for the purpose of qualifying individuals to meet requirements for licensure under this chapter without the program having been approved under Section 58-31b-601 or Subsection R156-31b-602, in violation of Subsection 58-31b-501(3):

initial offense: $2,000 - $7,500

second offense: $7,500 - $9,500

(d) Practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in the practice of nursing, if the person is not licensed to do so or exempted from licensure under Utah Code 58-31b et seq. or restricted from doing so by a suspended, revoked, restricted, temporary, probationary, or inactive license, or in violation of restrictions that have been placed on a license, in violation of Subsection 58-1-501(1)(a):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(e) Impersonating another licensee, or practicing an occupation or profession under a false or assumed name, in violation of Subsection 58-1-501(1)(b):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(f) Knowingly employing a person to practice or engage in or attempt to practice or engage in the practice of nursing if the employee is not licensed to do so, in violation of Subsection 58-1-501(1)(c):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(g) Knowingly permitting the person's authority to engage in the practice of nursing to be used by another person, in violation of Subsection 58-1-501(1)(d):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(h) Obtaining a passing score on a licensure examination, applying for or obtaining a license, or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):

initial offense: $500 - $5,000

second offense: $5,000 - $10,000

(i) Issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device to a person located

in this state without prescriptive authority conferred by a license, or by an exception to licensure; or with prescriptive authority conferred by an exception or a multistate practice privilege, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions and to identify contraindications to the proposed treatment, in violation of Subsection 58-1-501(1)(f)(i):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(j) Violating or aiding or abetting any other person to violate any statute, rule, or order regulating the practice of nursing, in violation of Subsection 58-1-501(2)(a):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(k) Violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard applicable to the practice of nursing, in violation of Subsection 58-1-501(2)(b):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(l) Engaging in conduct that results in conviction or a plea of nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the practice of nursing, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the profession, in violation of Subsection 58-1-501(2)(c):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(m) Engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the profession of nursing if the conduct would, in the state of Utah, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401, in violation of Subsection 58-1-501(2)(d):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(n) Engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in practice of the nursing profession, in violation of Subsection 58-1-501(2)(e):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(o) Practicing or attempting to practice the profession of nursing despite being physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(p) Practicing or attempting to practice the profession of nursing through gross incompetence, gross negligence, or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2)(g):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(q) Practicing or attempting to practice the profession of nursing by any form of action or communication which is false, misleading, deceptive, or fraudulent, in violation of Subsection 58-1-501(2)(h):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(r) Practicing or attempting to practice the profession of nursing beyond the individual's scope of competency, abilities, or education, in violation of Subsection 58-1-501(2)(i):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(s) Practicing or attempting to practice the profession of nursing beyond the scope of licensure, in violation of Subsection 58-1-501(2)(j):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(t) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice in the profession of nursing or otherwise facilitated by the licensee's license, in violation of Subsection 58-1-501(2)(k):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(u) Acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or under these rules, in violation of Subsection 58-1-502(2)(l):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(v) Issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device without first obtaining information in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to the proposed treatment; or with prescriptive authority conferred by an exception issued under this title, or a multistate practice privilege recognized under this title, if the prescription was issued without first obtaining information, in the usual course of professional practice, that is sufficient to establish a diagnosis, to identify underlying conditions, and to identify contraindications to the proposed treatment, in violation of Subsection 58-1-501(2)(m):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(w) Failing to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know because of the licensee's or person with a certification's position, in violation of Subsection 58-31b-502(1):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(x) Failing to provide nursing service in a manner that demonstrates respect for the patient's human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, gender, or nature of the patient's health problem, in violation of Subsection 58-31b-502(2):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(y) Engaging in sexual relations with a patient, in violation of Subsection 58-31b-502(3):
initial offense: $4,000 - $8,000
second offense: $8,000 - $10,000
(z) Exploiting or using information about a patient or exploiting the professional relationship by use of knowledge of the patient obtained while practicing the occupation or profession, in violation of Subsection 58-31b-502(4):
initial offense: $2,000 - $5,000
second offense: $5,000 - $10,000
(aa) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug, in violation of Subsection 58-31b-502(5):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(bb) Unauthorized taking or personal use of nursing supplies from an employer, in violation of Subsection 58-31b-502(6):

initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(cc) Unauthorized taking or personal use of a patient's personal property, in violation of Subsection 58-31b-502(7):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(dd) Knowingly entering into any medical record any false or misleading information or altering a medical record in any way for the purpose of concealing an act, omission, or record of events, medical condition, or any circumstance related to the patient and the medical or nursing care provided, in violation of Subsection 58-31b-502(8):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(ee) Unlawful or inappropriate delegation of nursing care, in violation of Subsection 58-31b-502(9):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(ff) Failing to exercise appropriate supervision of persons providing patient care services under supervision of the licensed nurse, in violation of Subsection 58-31b-502(10):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(gg) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice as a nurse or MAC, in violation of Subsection 58-31b-502(11):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(hh) Failing to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report, in violation of Subsection 58-31b-502(12):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(ii) Breaching a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, in violation of Subsection 58-31b-502(13):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(jj) Failing to pay a penalty imposed by the Division, in violation of Subsection 58-31b-502(14): double the original penalty amount up to $20,000
(kk) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan, in violation of Subsection 58-31b-502(15):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(ll) Failing to confine practice within the limits of competency, in violation of Section 58-31b-801:
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(mm) Engaging in any other conduct which constitutes unprofessional or unlawful conduct, in violation of Subsection 58-1-501(1) or (2):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(nn) Engaging in a sexual relationship with a patient surrogate concurrent with the professional relationship, in violation of Subsection R156-31b-502(1)(e):
initial offense: $1,000 - $5,000
second offense: $5,000 - $10,000
(oo) Failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license, in violation of Subsection R156-31b-502(1)(a):
initial offense: $500 - $4,000
second offense: $4,000 - $8,000
(pp) Knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information, in violation of Subsection R156-31b-502(1)(b):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(qq) Engaging in practice in a disruptive manner, in violation of Subsection R156-31b-502(1)(f):
initial offense: $500 - $5,000
second offense: $5,000 - $10,000
(rr) Violating the term of an order governing a license, in violation of Subsection 58-1-501(2)(o):
initial offense: $250 - $4,000
second offense: $4,000 - $8,000
(2) Subsequent offenses. Sanctions for an offense subsequent to the second offense, shall be $10,000 or $2,000 per day.

R156-31b-502. Unprofessional Conduct.

(1) "Unprofessional conduct" includes:
(a) failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license;
(b) knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information;
(c) as to an RN or LPN, issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17b-620, or as may be otherwise legally permissible;
(d) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:
(i) that standards of nursing practice are established and carried out;
(ii) that safe and effective nursing care is provided to patients;
(iii) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients; or
(iv) that the nurses employed by the agency have the knowledge, skills, ability and current competence to carry out the requirements of their jobs;
(e) engaging in sexual contact with a patient surrogate concurrent with the nurse/patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:
(i) did not result in any form of abuse or exploitation of the surrogate or patient; and
(ii) did not adversely alter or affect in any way:
(A) the nurse's professional judgment in treating the patient;
(B) the nature of the nurse's relationship with the surrogate; or
(C) the nature of the nurse's relationship with the patient;
(f) engaging in disruptive behavior in the practice of nursing;
(g) prescribing to oneself any controlled substance drug, in violation of Subsection R156-37-501(1)(a); and
(h) violating any federal or state law relating to controlled substances, including self-administering any controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug, in violation of Section R156-37-502.
(2) In accordance with a prescribing practitioner's order and an IHP, a registered nurse who, in reliance on a school's policies or the delegation rule as provided in Sections R156-31b-701 and R156-31b-701a, delegates or trains an unlicensed assistive person to administer medications under Sections 53A-11-601, R156-31b-701 and R156-31b-701a, shall not be considered to have engaged in unprofessional conduct for inappropriate delegation.

R156-31b-602. Requirements for Limited-time Approval of Non-accredited Nursing Education Programs.

(1)(a) Pursuant to Subsection 58-31b-601(2), a nursing education program may, prior to obtaining an accreditation described in Subsection 58-31b-601(1), qualify for a limited time as an approved education program if the program provider demonstrates that application for accreditation has been made.

(b) If the program provider is seeking accreditation from the ACEN or CCNE, the limited-time approval shall expire after 12 months unless Subsection (2) applies.

(c) If the program provider is seeking accreditation from the COA, the limited-time approval shall expire at the end of the COA initial review process unless this Subsection (2) applies.

(2)(a) A program that is granted limited-time approval pursuant to this Subsection (1) shall retain that approval if, during the applicable time period outlined in Subsection (1):

(i) it achieves candidate status with the ACEN;

(ii) it achieves applicant status with the CCNE; or

(iii) it successfully completes the COA initial review process.

(b) A program that meets the qualifications described in this Subsection (2)(a) shall retain its limited-time approval until such time as the accrediting body makes a final determination on the program's application for accreditation.

(3) The provider of a program that receives limited-time approval pursuant to this Subsection (1) and (2) shall, pursuant to this Subsection (4), disclose to each student who enrolls:

(a) that program accreditation is pending;

(b) that any education completed prior to the accrediting body's final determination will satisfy, at least in part, state requirements for prelicensing education; and

(c) that, if the program fails to achieve accreditation, any student who has not yet graduated will be unable to complete a nurse prelicensing education program through the provider.

(4) The disclosure required by this Subsection (3) shall:

(a) be signed by each student who enrolls with the provider; and

(b) at a minimum, state the following: "The nursing program in which you are enrolling has not yet been accredited. The program is being reviewed by the (accrediting body). Any education you complete prior to a final determination by the (accrediting body) will satisfy associated state requirements for licensure. However, if the (accrediting body) ultimately determines that the program does not qualify for accreditation, you will need to transfer into a different program in order to complete your nurse prelicensing education. There is no guarantee that another institution will accept you as a transfer student. If you are accepted, there is no guarantee that the institution you attend will accept the education you have completed at (name of institution providing disclosure) for credit toward graduation."

R156-31b-603. Education Providers -- Requirements for Ongoing Communication with the Board.

An education program that has achieved limited-time approval of its program(s) shall provide to the Board:

(1) by December 31 of each calendar year, a copy of the program's annual report, as provided to the applicable program accrediting body; and

(2) within 30 days of receipt or submission, a copy of any correspondence between the program provider and the accrediting body.

R156-31b-609. Standards for Out-of-State Programs Providing Clinical Experiences in Utah.

A nursing education program provider located in another state that desires to use Utah health care facilities for clinical experiences for one or more students shall, prior to placing a student, meet with the Board and demonstrate to the satisfaction of the Board that the program:

(1) has been approved by the home state Board of Nursing;

(2) has been fully accredited by the ACEN, CCNE, or COA;

(3) has clinical faculty who:

(a) are employed by the nursing education program;

(b) meet the requirements to be a faculty member as established by the accrediting body and the home state's Board of Nursing;

(c) are licensed in good standing in Utah or a Compact state; and

(d) are affiliated with an institution of higher education; and

(4) has a plan for selection and supervision of:

(a) faculty or preceptor; and

(b) the clinical activity, including:

(i) location, and

(ii) date range.

R156-31b-701. Delegation of Nursing Tasks in a Non-school Setting.

In accordance with Subsection 58-31b-102(14)(g), the delegation of nursing tasks is further defined, clarified, or established as follows:

(1)(a) The delegator retains accountability for the appropriate delegation of tasks and for the nursing care of the patient.

(b) The delegator may not delegate to unlicensed assistive personnel, including a physician's medical assistant, any task requiring the specialized knowledge, judgment, or skill of a licensed nurse.

(c) Before determining which, if any, nursing tasks may be delegated, the delegator shall make a focused nursing assessment of the circumstances.

(d) A delegator may not delegate a task that is:

(i) outside the area of the delegator's responsibility;

(ii) outside the delegator's personal knowledge, skills, or ability; or

(iii) beyond the ability or competence of the delegatee to perform:

(A) as personally known by the delegator; and

(B) as evaluated according to generally accepted nursing practice standards of health, safety, and reasonable prudence.

(e) In delegating a nursing task, the delegator shall:

(i) provide instruction and direction necessary to allow the delegatee to safely perform the specific task;

(ii) provide ongoing appropriate supervision and evaluation of the delegatee who is performing the task;

(iii) explain the delegation to ensure that the delegatee understands which patient is to be treated, and according to what time frame;

(iv) instruct the delegatee how to intervene in any foreseeable risks that may be associated with the delegated task;

(v) if the delegated task is to be performed more than once, establish a system for ongoing monitoring of the delegatee; and

(vi)(A) evaluate the following factors to determine the degree of supervision required to ensure safe care:

(I) the stability and condition of the patient;

(II) the training, capability, and willingness of the delegatee to perform the delegated task;

(III) the nature of the task being delegated, including the complexity, irreversibility, predictability of outcome, and potential for harm inherent in the task;

(IV) the proximity and availability to the delegatee of the delegator or other qualified nurse during the time(s) when the task will be performed; and

(V) any immediate risk to the patient if the task is not carried out; and

(B) ensure that the delegator or another qualified nurse is readily available either in person or by telecommunication to:

(I) evaluate the patient's health status;

(II) evaluate the performance of the delegated task;

(III) determine whether goals are being met; and

(IV) determine the appropriateness of continuing delegation of the task.

(2) Nursing tasks that may be delegated shall meet the following criteria as applied to each specific patient situation:

(a) be considered routine care for the specific patient;

(b) pose little potential hazard for the patient;

(c) be generally expected to produce a predictable outcome for the patient;

(d) be administered according to a previously developed plan of care; and

(e) be limited to those tasks that do not inherently involve nursing judgment that cannot be separated from the procedure.

(3) If the nurse, upon review of the patient's condition, the complexity of the task, the ability of the proposed delegatee, and other criteria established in this Subsection, determines that the proposed delegatee cannot safely provide the requisite care, the nurse shall not delegate the task to such proposed delegatee.

(4) A delegatee may not:

(a) further delegate to another person any task delegated to the individual by the delegator; or

(b) expand the scope of the delegated task without the express permission of the delegator.

(5) Tasks that, according to the internal policies or practices of a medical facility, are required or allowed to be performed by an unlicensed person shall not be deemed to have been delegated by a licensee.

R156-31b-701a. Delegation of Tasks in a School Setting.

In addition to the delegation rule found in Section R156-31b-701, the delegation of tasks in a school setting is further defined, clarified, or established as follows:

(1) Before a registered nurse may delegate a task that is required to be performed within a school setting, the registered nurse shall:

(a) develop, in conjunction with the applicable student, parent(s) or parent surrogate(s), educator(s), and healthcare provider(s) an IHP; and

(b) ensure that the IHP is available to school personnel.

(2) Any task being delegated by a registered nurse shall be identified within the patient's current IHP.

(3)(a) A registered nurse shall personally train any unlicensed person who will be delegated the task of administering routine medication(s), as defined in Subsection 58-31b-102(17), to a student.

(b) The training required under this Subsection (3)(a) shall be performed at least annually.

(c) A registered nurse may not delegate to an unlicensed person the administration of any medication:

(i) with known, frequent side effects that can be life threatening;

(ii) that requires the student's vital signs or oxygen saturation to be monitored before, during or after administration of the drug;

(iii) that is being administered as a first dose:

(A) of a new medication; or

(B) after a dosage change; or

(iv) that requires nursing assessment or judgment prior to or immediately after administration.

(d) In addition to delegating other tasks pursuant to this rule, a registered nurse may delegate to an unlicensed person who has been properly trained regarding a diabetic student's IHP:

(i) the administration of a scheduled dose of insulin; and

(ii) the administration of glucagon in an emergency situation, as prescribed by the practitioner's order or specified in the IHP.

R156-31b-703a. Standards of Professional Accountability.

The following standards apply equally to the LPN, RN, and APRN licenses. In demonstrating professional accountability, a licensee shall:

(1) practice within the legal boundaries that apply to nursing;

(2) comply with all applicable statutes and rules;

(3) demonstrate honesty and integrity in nursing practice;

(4) base nursing decisions on nursing knowledge and skills, and the needs of patients;

(5) seek clarification of orders when needed;

(6) obtain orientation/training competency when encountering new equipment and technology or unfamiliar care situations;

(7) demonstrate attentiveness in delivering nursing care;

(8) implement patient care, including medication administration, properly and in a timely manner;

(9) document all care provided;

(10) communicate to other health team members relevant and timely patient information, including:

(a) patient status and progress;

(b) patient response or lack of response to therapies;

(c) significant changes in patient condition; and

(d) patient needs;

(11) take preventive measures to protect patient, others, and self;

(12) respect patients' rights, concerns, decisions, and dignity;

(13) promote a safe patient environment;

(14) maintain appropriate professional boundaries;

(15) contribute to the implementation of an integrated health care plan;

(16) respect patient property and the property of others;

(17) protect confidential information unless obligated by law to disclose the information;

(18) accept responsibility for individual nursing actions, competence, decisions, and behavior in the course of nursing practice; and

(19) maintain continued competence through ongoing learning and application of knowledge in each patient's interest.

R156-31b-703b. Scope of Nursing Practice Implementation.

(1) LPN. An LPN shall be expected to:

(a) conduct a focused nursing assessment;

(b) plan for and implement nursing care within limits of competency;

(c) conduct patient surveillance and monitoring;

(d) assist in identifying patient needs;

(e) assist in evaluating nursing care;

(f) participate in nursing management by:

(i) assigning appropriate nursing activities to other LPNs;

(ii) delegating care for stable patients to unlicensed assistive personnel in accordance with these rules and applicable statutes;

(iii) observing nursing measures and providing feedback to nursing managers; and

(iv) observing and communicating outcomes of delegated and assigned tasks; and

(g) serve as faculty in area(s) of competence.

(2) RN. An RN shall be expected to:

(a) interpret patient data, whether obtained through a focused nursing assessment or otherwise, to:

(i) complete a comprehensive nursing assessment; and

(ii) determine whether, and according to what timeframe, another medical professional, a patient's family member, or any other person should be apprised of a patient's nursing needs;

(b) detect faulty or missing patient information;

(c) apply nursing knowledge effectively in the synthesis of the biological, psychological, spiritual, and social aspects of the patient's condition;

(d) utilize broad and complete analyses to plan strategies of nursing care and nursing interventions that are integrated within each patient's overall health care plan or IHP;

(e) demonstrate appropriate decision making, critical thinking, and clinical judgment to make independent nursing decisions and to identify health care needs;

(f) correctly identify changes in each patient's health status;

(g) comprehend clinical implications of patient signs, symptoms, and changes as part of ongoing or emergent situations;

(h) critically evaluate the impact of nursing care, the patient's response to therapy, and the need for alternative interventions;

(i) intervene on behalf of a patient when problems are identified so as to revise a care plan as needed;

(j) appropriately advocate for patients by:

(i) respecting patients' rights, concerns, decisions, and dignity;

(ii) identifying patient needs;

(iii) attending to patient concerns or requests; and

(iv) promoting a safe and therapeutic environment by:

(A) providing appropriate monitoring and surveillance of the care environment;

(B) identifying unsafe care situations; and

(C) correcting problems or referring problems to appropriate management level when needed;

(k) communicate with other health team members regarding patient choices, concerns, and special needs, including:

(i) patient status and progress;

(ii) patient response or lack of response to therapies; and

(iii) significant changes in patient condition;

(l) demonstrate the ability to responsibly organize, manage, and supervise the practice of nursing by:

(i) delegating tasks in accordance with these rules and applicable statutes; and

(ii) matching patient needs with personnel qualifications, available resources, and appropriate supervision;

(m) teach and counsel patient families regarding an applicable health care regimen, including general information about health and medical conditions, specific procedures, wellness, and prevention;

(n) if acting as a chief administrative nurse:

(i) ensure that organizational policies, procedures, and standards of nursing practice are developed, kept current, and implemented to promote safe and effective nursing care;

(ii)(A) assess the knowledge, skills, and abilities of nursing staff and assistive personnel; and

(B) ensure all personnel are assigned to nursing positions appropriate to their determined competence and licensure/certification/registration level; and

(iii) ensure that thorough and accurate documentation of personnel records, staff development, quality assurance, and other aspects of the nursing organization are maintained;

(o) if employed by a department of health:

(i) implement standing orders and protocols; and

(ii) complete and provide to a patient prescriptions that have been prepared and signed by a physician in accordance with the provisions of Section 58-17b-620;

(p) serve as faculty in area(s) of competence; and

(q) perform any task within the scope of practice of an LPN.

(3) APRN.

(a) An APRN who chooses to change or expand from a primary focus of practice shall, at the request of the Division, document competency within that expanded practice based on education, experience, and certification. The burden to demonstrate competency rests upon the licensee.

(b) An individual licensed as an APRN may practice within the scope of practice of an RN and an LPN.

(c) An individual licensed in good standing in Utah as an APRN and residing in this state may practice as an RN in any Compact state.

R156-31b-801. Medication Aide Certified -- Formulary and Protocols.

In accordance with Subsection 58-31b-102(12)(b)(i), the formulary and protocols for an MAC to administer routine medications are as follows.

(1) Under the supervision of a licensed nurse, an MAC may:

(a) administer over-the-counter medication;

(b) administer prescription medications:

(i) if expressly instructed to do so by the supervising nurse; and

(ii) via approved routes as listed in Subsection 58-31b-102(17)(b);

(c) turn oxygen on and off at a predetermined, established flow rate;

(d) destroy medications per facility policy;

(e) assist a patient with self administration; and

(f) account for controlled substances with another MAC or nurse physically present.

(2) An MAC may not administer medication via the following routes:

(a) central lines;

(b) colostomy;

(c) intramuscular;

(d) subcutaneous;

(e) intrathecal;

(f) intravenous;

(g) nasogastric;

(h) nonmetered inhaler;

(i) intradermal;

(j) urethral;

(k) epidural;

(l) endotracheal; or

(m) gastronomy or jejunostomy tubes.

(3) An MAC may not administer the following kinds of medications:

(a) barium and other diagnostic contrast;

(b) chemotherapeutic agents except oral maintenance chemotherapy;

(c) medication pumps including client controlled analgesia; and

(d) nitroglycerin paste.

(4) An MAC may not:

(a) administer any medication that requires nursing assessment or judgment prior to administration, through

ongoing evaluation, or during follow-up;

(b) receive written or verbal patient orders from a licensed practitioner;

(c) transcribe orders from the medical record;

(d) conduct patient or resident assessments or evaluations;

(e) engage in patient or resident teaching activities regarding medications unless expressly instructed to do so by the supervising nurse;

(f) calculate drug doses, or administer any medication that requires a medication calculation to determine the appropriate dose;

(g) administer the first dose of a new medication or a dosage change, unless expressly instructed to do so by the supervising nurse; or

(h) account for controlled substances, unless assisted by another MAC or a nurse who is physically present.

(5) In accordance with Section R156-31b-701, a nurse may refuse to delegate to an MAC the administration of medications to a specific patient or in a specific situation.

(6)(a) A nurse practicing in a facility that is required to provide nursing services 24 hours per day shall not supervise more than two MACs per shift.

(b) A nurse providing nursing services in a facility that is not required to provide nursing services 24 hours per day may supervise as many as four MACs per shift.

R156-31b-802. Medication Aide Certified -- Approval of Training Programs.

In accordance with Subsection 58-31b-601(3), the minimum standards for an MAC training program to be approved by the Division in collaboration with the Board and the process to obtain approval are established as follows.

(1) All training programs shall be approved by the Division in collaboration with the Board and shall obtain approval prior to the program being implemented.

(2) Training programs may be offered by an educational institution, a health care facility, or a health care association.

(3) The program shall consist of at least:

(a) 60 clock hours of didactic (classroom) training that is consistent with the model curriculum set forth in Section R156-31b-803; and

(b) 40 hours of practical training within a long-term care facility.

(4) The classroom instructor shall:

(a)(i) have a current, active, LPN, RN, or APRN license in good standing or a multistate privilege to practice nursing in Utah; and

(ii) have at least one year of clinical experience; or

(b)(i) be an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nursing Assistant Registry; and

(ii) have at least one year of clinical experience.

(5)(a) The on-site practical training experience instructor shall meet the following criteria:

(i)(A) have a current, active, LPN, RN or APRN license in good standing or a multistate privilege to practice nursing in Utah; and

(B) have at least one year of clinical experience; or

(ii)(A) be an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nursing Assistant Registry; and

(B) have at least one year of clinical experience.

(b) The practical training instructor-to-student ratio shall be no greater than:

(i) 1:2 if the instructor is working with individual students to administer medications; or

(ii) 1:6 if the instructor is supervising students who are working one-on-one with medication nurses to administer medications in clinical facilities.

(c) The on-site practical training experience instructor shall be on site and available at all times if the student is not being directly supervised by a licensed nurse during the practical training experience.

(6) An entity seeking approval to provide an MAC training program shall:

(a) submit to the Division a complete application form prescribed by the Division;

(b) provide evidence of adequate and appropriate trainers and resources to provide the training program, including a well-stocked clinical skills lab or the equivalent;

(c) submit to the Division a copy of the proposed training curriculum and an attestation that the proposed curriculum is consistent with the model curriculum referenced in Section R156-31b-803;

(d) document minimal admission requirements, which shall include:

(i) an earned high school diploma, successful passage of the general educational development (GED) test, or equivalent education as approved by the Board;

(ii) current certification as a nursing aide, in good standing, from the Utah Nursing Assistant Registry;

(iii) at least 2,000 hours of experience completed:

(A) as a certified nurse aide working in a long-term care setting; and

(B) within the two-year period preceding the date of application to the training program: and

(iv) current cardiopulmonary resuscitation (CPR) certification.

R156-31b-803. Medication Aide Certified -- Model Curriculum.

A school that offers a medication aide certification program shall follow the "Medication Assistant-Certified (MA-C) Model Curriculum" adopted by the National Council of State Boards of Nursing's Delegate Assembly on August 9, 2007, which is hereby adopted and incorporated by reference.

KEY: licensing, nurses

January 22, 2015	**58-31b-101**
Notice of Continuation March 18, 2013	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-60a. Social Worker Licensing Act Rule.
R156-60a-101. Title.

This rule is known as the "Social Worker Licensing Act Rule".

R156-60a-102. Definitions.

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

(1) "ASWB" means the Association of Social Work Boards.

(2) "CSW" means a licensed certified social worker.

(3) "Clinical social work concentration and practicum", "clinical concentration and practicum" "case work", "group work", or "family treatment course sequence with a clinical practicum", "clinical practicum" or "practicum", as used in Subsections 58-60-205(1)(g) and (2)(d)(ii), means a track of professional education which is specifically established to prepare an individual to practice or engage in mental health therapy.

(4) "Human growth and development", as used in Subsection 58-60-205(4)(d)(iii)(A)(II), means a course at an accredited college or university that includes an emphasis on human growth and development across the lifespan, from conception to death.

(5) "LCSW" means a licensed clinical social worker.

(6) "Social welfare policy", as used in Subsection 58-60-205(4)(d)(iii)(A)(I), means a course at an accredited college or university that includes emphasis on the following:

(a) local, state, and federal social policy and how it impacts individuals, families, and communities; and

(b) the diverse needs of social welfare recipients.

(7) "Social work practice methods", as used in Subsection 58-60-205(4)(d)(iii)(A)(III), means a course at a program accredited by the Council for Social Work Education as defined in Subsection 58-60-202(5) that includes emphasis on the following:

(a) generalist social work practice at the individual, family, group, organization, and community levels;

(b) planned client change process and social work roles at various levels;

(c) application of key values and principles of the National Association of Social Workers (NASW) Code of Ethics and resolution of ethical dilemmas; and

(d) evaluation of programs and direct practice in the social work field.

(8) "SSW" means a licensed social service worker.

(9) "Supervised practice of mental health therapy by a clinical social worker", as used in Subsection 58-60-202(4)(a), means that the CSW is under the general supervision of an LCSW meeting the requirements of Sections R156-60a-302e and R156-60a-601.

R156-60a-103. Authority - Purpose.

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

R156-60a-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.

R156-60a-302a. Education Requirements for Licensure as an SSW.

In accordance with Subsection 58-60-205(4)(d)(ii), a master's degree qualifying an applicant for licensure as an SSW shall be in a field of social work, psychology, marriage and family therapy, or mental health counseling.

R156-60a-302b. Experience Requirements for Licensure as an SSW.

In accordance with Subsection 58-60-205(4)(d)(iii)(B), the 2,000 hours of supervised qualifying experience for licensure as an SSW shall be:

(1) performed as an employee of an agency providing social work services and activities;

(2) performed according to a written social work job description approved by the licensed mental health therapist supervisor; and

(3) completed over a duration of not less than one year.

R156-60a-302c. Training Requirements for Licensure as an LCSW.

(1) In accordance with Subsections 58-60-205(1)(e),(f) and (g), and 58-60-202(4)(a), the 4,000 hours of clinical social work and mental health therapy training qualifying an applicant for licensure as an LCSW shall:

(a) be obtained after completion of the education requirement set forth in Subsections 58-60-205(1)(d) and (g) and shall not include any clinical practicum hours obtained as part of the education program;

(b) be completed over a period of not less than two years;

(c) unless this Subsection (2) applies, be completed while the applicant is licensed as a CSW;

(d) be completed while the applicant is employed by a public or private agency engaged in mental health therapy;

(e) be completed under a program of general supervision by an LCSW meeting the requirements of Sections R156-60a-302e and R156-60a-601; and

(f) include the following training requirements:

(i) individual, family, and group therapy;

(ii) crisis intervention;

(iii) intermediate treatment; and

(iv) long term treatment.

(2) An applicant may apply to the Division for an LCSW license without complying with this Subsection (1)(c) if:

(a) the applicant qualifies for a license exemption under Subsection 58-1-307(1)(a); or

(b) the applicant completed training in another jurisdiction, which training is completed:

(i) while the applicant is licensed as the equivalent of a CSW; or

(ii) while the applicant is not required to be licensed while engaged in the practice of certified social work.

R156-60a-302d. Examination Requirements.

(1) In accordance with Subsection 58-60-205(1)(h), the examination requirements for licensure as an LCSW include passing the Clinical Examination of the ASWB or the Clinical Social Workers Examination of the State of California.

(2) In accordance with Subsection 58-60-205(2)(e), the examination requirements for licensure as a CSW shall include passing the Masters, Advanced Generalist, or Clinical Examination of the ASWB.

(3) In accordance with Subsection 58-60-205(4)(e), the examination requirements for licensure as an SSW shall include passing the Bachelors Examination of the ASWB.

(4) Applicants requesting additional time to complete any ASWB exam in accordance with Subsection 58-60-205(5) shall complete an ASWB application for special arrangements approved by the Division.

R156-60a-302e. Requirements to Become an LCSW Supervisor.

In accordance with Subsections 58-60-202(3)(c) and 58-60-205(1)(e) and (f), in order for an LCSW to supervise a CSW, the LCSW shall:

(1) be currently licensed in good standing as an LCSW; and

(2) have engaged in active practice as an LCSW, including mental health therapy, for a period of not less than two years prior to supervising a CSW.

R156-60a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308a(1).

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

R156-60a-304. Continuing Education.

(1) Required Hours. In accordance with Subsection 58-60-105(1) and Section 58-60-205.5, during each two year renewal cycle commencing on October 1 of each even numbered year:

(a) An LCSW shall be required to complete not fewer than 40 hours of continuing education. A minimum of three of the 40 hours shall be completed in ethics and/or law.

(b) An SSW shall be required to complete not fewer than 20 hours of continuing education of which a minimum of three contact hours shall be completed in ethics and/or law.

(c) The required number of hours of continuing education for an individual who first becomes licensed during the two year renewal cycle shall be decreased in a pro-rata amount.

(d) 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 not fewer than 50 minutes of education. Licensees shall only receive credit for lecturing or instructing the same course up to two times. Licensees shall receive one hour of continuing education for every one hour of time spent lecturing or instructing a continuing education course;

(b) Course Content and Type. A course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the course;

(i) The content of the course shall be relevant to the practice of social work and shall be completed in the form of any of the following course types:

(A) seminar;

(B) lecture;

(C) conference;

(D) training session;

(E) webinar;

(F) internet course;

(G) distance learning course;

(H) specialty certification; or

(I) lecturing or instructing of a continuing education course;

(ii) The following limits apply to the number of hours recognized in the following course types during a two year license renewal cycle:

(A) a maximum of ten hours for lecturing or instructing of continuing education courses meeting these requirements; and

(B) a maximum of 15 hours for online, distance learning, or home study courses that include examination and issuance of a completion certificate;

(c) Course Provider or Sponsor. The course shall be approved by, conducted by, or under the sponsorship of one of the following:

(i) a recognized accredited college or university;

(ii) a community mental health agency or a public agency that provides mental health services;

(iii) a professional association or society involved in the practice of social work; or

(iv) the Division of Occupational and Professional Licensing;

(d) Objectives. The learning objectives of the course shall be clearly stated in course material;

(e) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience;

(f) Documentation. Each licensee shall maintain adequate documentation as proof of compliance with this Section, such as a certificate of completion, school transcript, course description, or other course materials. The licensee shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due; and

(i) At a minimum, the documentation shall contain the following:

(A) date of the course;

(B) name of the course provider;

(C) name of the instructor;

(D) course title;

(E) number of hours of continuing education credit; and

(F) course objectives.

(3) Extra Hours of Continuing Education. If a licensee completes more than the required number of hours of continuing education during a two year renewal cycle specified in Subsection (1), 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.

R156-60a-308. Reinstatement of an LCSW License which has Expired Beyond Two Years.

In accordance with Subsection 58-1-308(6) and Section R156-1-308g, an applicant for reinstatement for licensure as an LCSW, whose license expired after two years following the expiration of that license, shall:

(1) upon request, meet with the Board to evaluate the applicant's ability to safely and competently practice clinical social work and mental health therapy;

(2) upon recommendation of the Board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of clinical social work and mental health therapy training as a CSW before qualifying for reinstatement of the LCSW license;

(3) pass the Clinical Examination of the ASWB if it is determined by the Board that examination or reexamination is necessary to demonstrate the applicant's ability to safely and competently practice clinical social work and mental health therapy; and

(4) complete a minimum of 40 hours of continuing education in subjects determined by the Board as necessary to ensure the applicant's ability to safely and competently practice clinical social work and mental health therapy.

R156-60a-309. Exemption from Licensure Clarified.

The exemption specified in Subsection 58-60-107(5) does not permit an individual to engage in the 4,000 hours of clinical social work and mental health therapy training without first becoming licensed as a CSW.

R156-60a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) using the abbreviated title of LCSW unless licensed as an LCSW;

(2) using the abbreviated title of CSW unless licensed as a CSW;

(3) using the abbreviated title of SSW unless licensed as an SSW;

(4) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60a-302c and R156-60a-601.

(5) engaging in the supervised practice of mental health therapy as a licensed CSW unless:

(a) the licensee has completed a clinical practicum as part of the Council on Social Work Education (CSWE) accredited master's degree program; and

(b) the scope of practice is otherwise within the licensee's competency, abilities and education;

(6) engaging in the supervised practice of mental health therapy when not in compliance with Section R156-60a-302c and Subsection R156-60a-601(7);

(7) engaging in or aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(8) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(9) failing to establish and maintain professional boundaries with a client or former client;

(10) engaging in dual or multiple relationships with a client or former client in which there is a risk of or potential harm to the client;

(11) engaging in sexual activities or sexual contact with a client with or without client consent;

(12) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services even when there is no risk of exploitation or potential harm to the client;

(13) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a personal relationship when there is a risk of exploitation or potential harm to the client;

(14) embracing, massaging, cuddling, caressing, or performing any other act of physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(15) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(16) failing to exercise professional discretion and impartial judgement required for the performance of professional activities, duties and functions;

(17) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(18) exploiting a client or former client for personal gain;

(19) exploiting a person who has a personal relationship with a client for personal gain;

(20) failing to maintain client records including records of assessment, treatment, progress notes and billing information for a period of not less than ten years from the documented termination of services to the client;

(21) failing to provide client records in a reasonable time upon written request of the client, or legal guardian;

(22) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client activities or records;

(23) failing to protect the confidences of other persons named or contained in the client records; and

(24) failing to abide by the provisions of the Code of Ethics of the National Association of Social Workers (NASW) as approved by the NASW 1996 Delegate Assembly and revised by the 2008 NASW Delegate Assembly, which is adopted and incorporated by reference.

R156-60a-601. Duties and Responsibilities of an LCSW Supervisor.

The duties and responsibilities of an LCSW supervisor are further established as follows:

(1) be professionally responsible for the acts and practices of the supervisee;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee or is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, rules, standards and ethics applicable to the practice of social work;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) supervise not more than three individuals who are lawfully engaged in mental health therapy training, unless otherwise approved by the Division in collaboration with the Board;

(9) not begin supervision of a CSW until having met the requirements of Section R156-60a-302e; and

(10) in accordance with Subsections 58-60-205(1)(e) and (f), submit to the Division on forms made available by the Division:

(a) documentation of the training hours completed by the CSW; and

(b) an evaluation of the CSW, with respect to the quality of the work performed and the competency of the CSW to practice clinical social work and mental health therapy.

R156-60a-602. Supervision - Scope of Practice - SSW.

In accordance with Subsections 58-60-202(2) and (6), supervision and scope of practice of an SSW is further defined as follows:

(1) general supervision of an SSW by a licensed mental health therapist is only required where mental health therapy services are provided; and

(2) the scope of practice of the SSW shall be in accordance with a written social work job description approved by the licensed mental health therapist supervisor, except that the SSW may not engage in the supervised or unsupervised practice of mental health therapy.

KEY: licensing, social workers

January 22, 2015	**58-60-201**
Notice of Continuation August 4, 2014	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-60d. Substance Use Disorder Counselor Act Rule.
R156-60d-101. Title.

This rule is known as the "Substance Use Disorder Counselor Act Rule."

R156-60d-102. Definitions.

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

(1) "Accredited institution of higher education that meet division standards", as used in Subsections 58-60-506(2)(a)(i) and (5)(a)(i), means an educational institution that has accreditation that is recognized by the Council for Higher Education Accreditation of the American Council on Education (CHEA).

(2) "ASAM" means the American Society of Addiction Medicine Patient Placement Criteria.

(3) "DSM-IV or 5" means the Diagnostic Statistical Manual of Mental Health Disorders published by the American Psychiatric Association.

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

(5) "ICRC" means the International Certification and Reciprocity Consortium.

(6) "Initial assessment" means the procedure of gathering psycho-social information, which may include the application of the Addiction Severity Index, in order to recommend a level of treatment and to assist the mental health therapist supervisor in the information collection process and may include a referral to an appropriate treatment program.

(7) "NAADAC" means the National Association of Alcohol and Drug Abuse Counselors.

(8) "Prerequisite courses, as used in Subsection 58-60-506(2)(a)(iii) and (5)(a)(iii) means courses completed before qualifying for licensure.

(9) "SASSI" means Substance Abuse Subtle Screening Inventory.

(10) "Screening", as used in Subsection 58-60-502(9)(b) and (10)(b), means a brief interview conducted in person or by telephone to determine if there is a potential substance abuse problem. If a potential problem is identified, the screening may include a referral for an initial assessment or a substance use disorder evaluation. The screening may also include a preliminary ASAM level recommendation in order to expedite the subsequent assessment and evaluation process. Screening instruments such as the SASSI may be included in the screening process.

(11) "Substance use disorder evaluation" means the process used to interpret information gathered from an initial assessment, other instruments as needed, and a face to face interview by a licensed mental health therapist in order to determine if an individual meets the DSM-IV or 5 criteria for substance abuse or dependence and is in need of treatment. If the need for treatment is determined, the substance use disorder evaluation process includes the determination of a DSM-IV or 5 diagnosis and the determination of an individualized treatment plan.

(12) "Substance use disorder education program", as used in Subsection 58-60-506(2)(b) and (5)(b), means college or university coursework at an accredited institution.

(13) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-60d-502.

R156-60d-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 60, Part 5.

R156-60d-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.

R156-60d-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-60-506(2)(a)(iii) and (5)(a)(iii), two prerequisite courses shall be completed at an accredited institution and shall cover the following subjects:

(a) human development across the lifespan; and

(b) general psychology.

(2) In accordance with Subsection 58-60-506(5)(a)(ii), completion of the equivalent of an associate's degree includes not less than 90 quarter or 60 semester credit hours of course work from accredited institutions of higher education that have accreditation recognized by the Council for Higher Education Accreditation of the American Council on Education (CHEA).

R156-60d-302b. Qualifications for Licensure - Experience Requirements.

(1) In accordance with Subsection 58-60-506(2)(c), the 4,000 hours of supervised experience in substance use disorder treatment required to qualify an applicant for the advanced substance use disorder counselor license shall be:

(a) supervised experience providing substance use disorder counseling services as defined in Subsection 58-60-502(9);

(b) supervised at a ratio of one hour of face to face direct supervision for every 40 hours of substance use disorder counseling supervision provided by a supervisor meeting qualifications established in Section 58-60-508; and

(c) completed only under the direct supervision of an advanced substance use disorder counselor or mental health therapist unless otherwise approved by the Division in collaboration with the Board.

(2) In accordance with Subsection 58-60-506(5)(c), the 2,000 hours of supervised experience in substance use disorder treatment required to qualify an applicant for the substance use disorder counselor license shall be:

(a) supervised experience providing substance use disorder counseling services as defined in Subsection 58-60-502(10);

(b) supervised at a ratio of one hour of face to face direct supervision for every 40 hours of substance use disorder counseling supervision provided by a supervisor meeting qualifications established in Section 58-60-508; and

(c) completed only when under the direct supervision of a substance use disorder counselor or mental health therapist unless otherwise approved by the Division in collaboration with the Board.

R156-60d-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-60-506(1)(e) and 58-60-115(5)(b), the examination required is:

(1) for licensure as a certified advanced substance use disorder counselor and an advanced substance use disorder counselor:

(a) the written NAADAC National Certification Exam Level II or MAC with a minimum criterion score set by NAADAC; or

(b) the written ICRC Advanced Alcohol and Drug

(AADC) Examination with a minimum criterion score as set by ICRC; and

(2) for licensure as a certified substance use disorder counselor or substance use disorder counselor:

(a) the written NAADAC National Certification Exam Levels I, II or MAC with a minimum criterion score set by NAADAC; or

(b) the written ICRC Alcohol and Drug Counselor (ADC) or Advanced Alcohol and Drug Counselor (AADC) Examination with a minimum criterion score as set by ICRC.

R156-60d-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 60, Part 5 is established by rule in Subsection R156-1-308a(1).

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

R156-60d-304. Continuing Education.

(1) In accordance with Section 58-60-105, there is created a continuing education requirement as a condition for renewal or reinstatement of a licensed advanced substance use disorder counselor, certified advanced substance use disorder counselor, licensed substance use disorder counselor, or a certified substance use disorder counselor issued under Title 58, Chapter 60, Part 5.

(2) Continuing education shall consist of 40 hours of education directly related to the licensee's professional practice. A licensed advanced substance use disorder counselor and licensed substance use disorder counselor shall complete the requirement during each two year license renewal cycle. A certified advanced substance use disorder counselor and a certified substance use disorder counselor shall complete the requirement during each two year period following the date of initial licensure. At least six of the 40 required hours must be in the area of professional ethics and responsibilities.

(3) The required number of hours of continuing education for a licensed advanced substance use disorder counselor or a licensed substance use disorder counselor who first becomes licensed during the two year renewal cycle shall be decreased in a pro rata amount equal to any part of that two year renewal cycle preceding the date on which that individual first became licensed.

(4) The standards for continuing education shall include:

(a) a clear statement of purpose and defined objective for the educational program directly related to the practice of a substance use disorder counselor;

(b) documented relevance to the licensee's professional practice;

(c) a competent, well-organized, and sequential presentation consistent with the stated purpose and objective of the program;

(d) preparation and presentation by individuals who are qualified by education, training, and experience; and

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

(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 50 minutes in formally established classroom courses, seminars, conferences, workshops, institutes, or in services;

(b) a maximum of ten hours per two year period may be recognized for teaching in a college or university, or teaching continuing education courses in the field of substance use disorder counseling; and

(c) a maximum of 15 hours per two year period may be recognized for distance learning, clinical readings or internet-based courses directly related to practice as a substance use disorder counselor.

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

(7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing education requirements established under this section may be excused from the requirement for a period of up to five years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-60d-307. License Reinstatement - Requirements.

In accordance with Section R156-1-308g, an applicant for reinstatement of a license after two years following expiration of that license shall demonstrate competency by:

(1) meeting with the Board upon request for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a substance use disorder counselor and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) passing the examination required in Section R156-60d-302c if it is determined necessary by the Board to demonstrate the applicant's ability to engage safely and competently in practice as a substance use disorder counselor; and

(3) completing at least 40 hours of continuing education in subjects determined by the Board as necessary to ensure the applicant's ability to engage safely and competently in practice as a substance use disorder counselor.

R156-60d-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violation of any provision of the NAADAC Code of Ethics: Teaching Tool, January 2011 edition, which is hereby incorporated by reference;

(2) acting as a supervisor without ensuring that the supervisee holds the requisite license;

(3) exercising undue influence over the clinical judgment of a supervisor over whom the licensee has administrative control;

(4) if licensed as a licensed advanced substance use disorder counselor or a licensed substance use disorder counselor, accepting the duties as a supervisor of a certified advanced substance use disorder counselor, certified advanced substance use disorder counselor intern, certified substance use disorder counselor, or a certified substance use disorder counselor intern who has any supervisory control over the licensed advanced substance use disorder counselor or licensed substance use disorder counselor; and

(5) directing one's mental health therapist supervisor to engage in a practice that would violate any statute, rule, or generally accepted professional or ethical standard of the supervisor's profession.

KEY: licensing, substance use disorder counselors
January 22, 2015 58-60-501
Notice of Continuation January 31, 2011 58-1-106(1)(a)
58-1-202(1)(a)

R162. Commerce, Real Estate.
R162-2e. Appraisal Management Company Administrative Rules.
R162-2e-101. Title.

This chapter is known as the "Appraisal Management Company Administrative Rules."

R162-2e-102. Definitions.

(1) "Affiliation" means a business association:

(a) between:

(i) two individuals registered, licensed, or certified under Section 61-2b; or

(ii) an individual registered, licensed, or certified under Section 61-2b and:

(A) an appraisal entity; or

(B) a government agency;

(b) for the purpose of providing an appraisal service; and

(c) regardless of whether an employment relationship exists between the parties.

(2) The acronym "AMC" stands for appraisal management company.

(3) As used in Subsection R162-2e-201(3)(c)(ii), "business day" means a day other than:

(a) a Saturday;

(b) a Sunday;

(c) a state or federal holiday; or

(d) any other day when the division is closed for business.

(4) "Client" is defined in Section 61-2e-102(10).

(5) "Competency statement" means a statement provided by the AMC to the appraiser that, at a minimum, requires the appraiser to attest that the appraiser:

(a) is competent according to USPAP standards;

(b) recognizes and agrees to comply with:

(i) laws and regulations that apply to the appraiser and to the assignment;

(ii) assignment conditions; and

(iii) the scope of work outlined by the client; and

(c) has access, either independently or through an affiliation pursuant to Subsection (1), to the records necessary to complete a credible appraisal, including:

(i) multiple listing service data; and

(ii) county records.

(6)(a) "Employee" means an individual:

(i) whose manner and means of work performance are subject to the right of control of, or are controlled by, another person; and

(ii) whose compensation for federal income tax purposes is reported, or is required to be reported, on a W-2 form issued by the controlling person.

(b) "Employee" does not include an independent contractor who performs duties other than at the discretion of, and subject to the supervision and instruction of, another person.

(c) For purposes of applying Subsection R162-2e-401(1)(g), an appraiser who completes an assignment is considered to be an employee of the AMC that offers the assignment if:

(i) this subsection (a) describes the employment relationship between the appraiser and the AMC; or

(ii) pursuant to this subsection (a), the appraiser is an employee of a company:

(A) that is wholly owned by the AMC; or

(B) in which the AMC owns a controlling interest.

(7) "Select" means:

(a) for purposes of composing the AMC appraiser panel, to review and evaluate the qualifications of an appraiser who applies to be included on the AMC's appraiser panel; and

(b) for purposes of assigning an appraisal activity to an appraiser:

(i) to choose from the AMC's appraiser panel an individual appraiser or appraisal entity to complete an assignment; or

(ii) to compile, from among the appraisers included in the AMC's appraiser panel, an electronic distribution list of appraisers to whom an assignment will be offered through e-mail.

(8) The acronym "USPAP" stands for Uniform Standards of Professional Appraisal Practice.

R162-2e-201. Registration Required - Qualification for Registration.

(1) The division may not register or renew the registration of an AMC that fails to:

(a) comply with any provision of Utah Code Title 61, Chapter 2e, "Appraisal Management Company Registration and Regulation Act";

(b) register with the Utah Division of Corporations and Commercial Code and provide to the division its certificate of existence;

(c) pursuant to this Subsection (4)(a), evidence having secured a surety bond that:

(i) is in the amount of $25,000; and

(ii) provides, throughout the full period of registration, for the division to make a claim:

(A) on behalf of an appraiser; and

(B) for unpaid fees as awarded to the appraiser in a final judgment entered by a court of competent jurisdiction; or

(d) comply with any provision of these rules.

(2) The division shall schedule a hearing before the board for an AMC that:

(a)(i) applies for registration or renewal of registration;

(ii) has a control person who discloses, or the division finds through its own research, an issue that might affect the control person's moral character; and

(iii) the division determines that the board should be aware of the issue; or

(b) fails to provide an adequate explanation for the AMC's:

(i) plan to ensure the use of licensed appraisers in good standing;

(ii) plan to ensure the integrity of the appraisal review process; or

(iii) plan for record keeping.

(3)(a) An AMC shall register with the division in the name of the legal entity under which it is registered with the Utah Division of Corporations and Commercial Code and conducts the business of appraisal management in Utah and in other states.

(b) An AMC shall notify the division of a dba, trade name, or assumed business name under which the registered legal entity operates in Utah:

(i) at the time of registration; or

(ii) if applicable, immediately upon beginning to operate under such dba, trade name, or assumed business name.

(c) If an AMC changes its registered name, a dba, a trade name, or an assumed business name, the AMC shall notify the division:

(i) in writing; and

(ii) within ten business days of making the change.

(4)(a) The deadline by which an AMC shall demonstrate that the entity has obtained a surety bond pursuant to Subsection (1)(c) is as follows:

(i) For an AMC that applies for registration on or after October 1, 2012, the bond shall be obtained as a condition for initial registration.

(ii) For an AMC that obtained its initial registration

prior to January 1 2011 and applies for renewal on or after October 1, 2012, the bond shall be obtained as a condition of the 2012 renewal.

(iii) For an AMC that is not described by this Subsection (4)(a)(i) or (ii), the deadline for obtaining the surety bond shall be January 1, 2013.

(b) Failure to comply with an applicable deadline as outlined in this Subsection (4)(a) shall result in the automatic suspension of an AMC's registration until such time as the AMC provides evidence to the division that it is in compliance with the surety bond requirement.

(c) If an AMC's surety bond lapses or is cancelled during the period of registration, the division shall:

(i) allow the AMC 30 days in which to comply with the surety bond requirement; and

(ii) if the AMC fails to obtain or reinstate a surety bond within 30 days, immediately and automatically suspend the AMC's registration until such time as the AMC provides evidence to the division that it is in compliance with the surety bond requirement.

R162-2e-201a. Claims Against an AMC Bond.

(1) To bring a claim against a bond that is held by an AMC pursuant to Section 61-2e-204(2)(c) and Subsection R162-2e-201(1)(c), an appraiser shall:

(a) demonstrate that a court of competent jurisdiction has awarded the appraiser a final judgment against the AMC for the fee(s) claimed;

(b) demonstrate that the appraiser earned the fee(s) claimed and that the AMC has had a reasonable period of time in which to tender payment; and

(c) submit a complaint to the division alleging nonpayment of fee(s):

(i) after a reasonable period of time for payment has passed; and

(ii) no later than 30 days after obtaining a judgment as required under this Subsection (1)(a).

(2) In evaluating whether an AMC has had a reasonable period of time in which to tender payment, the division shall consider the following:

(a) if a payment deadline is specified in the contract that applies to the assignment for which the appraiser claims an unpaid fee, whether the payment deadline has passed; or

(b) if the applicable contract is silent as to a period for payment, whether at least 90 days have passed since the date on which the appraiser submitted a report that complied with the assignment, including all scope of work requirements, as determined by the division in its sole discretion.

R162-2e-301. Use of Licensed or Certified Appraisers.

Beginning upon registration with the division and continuing biennially thereafter, an AMC shall provide to the division a statement signed by its designated controlling person that explains the AMC's system for verifying that:

(1) an appraiser who is added to the panel is licensed or certified; and

(2) an appraiser who is assigned to complete a real estate appraisal remains licensed or certified in good standing.

R162-2e-302. Adherence to Standards.

Beginning upon registration with the division and continuing biennially thereafter, an AMC shall provide a statement to the division, signed by its designated controlling person, certifying that the AMC verifies that each appraisal assignment offered to an appraiser acting as an independent contractor is:

(1) signed by an appraiser who is included in the AMC's panel at the time the assignment is offered; and

(2) includes the information outlined in Subsection 304(1)(b)-(c).

R162-2e-303. Recordkeeping.

An AMC's statement of recordkeeping required upon registration with the division and biennially thereafter shall be signed by its designated controlling person and shall describe:

(1) its system for maintaining a record of:

(a)(i) the name of the appraiser who accepts each assignment and signs the corresponding appraisal report; and

(ii) if an assignment is accepted by an appraisal entity, the name of the entity that accepts the assignment; and

(b) the client that requested the appraisal report;

(2) the format in which the records required to be kept under Section 61-2e-303(1) are maintained;

(3) an explanation of the system through which the AMC backs up any records kept as required by Section 61-2e-303(1) that are maintained in an electronic format;

(4) the location where the records are kept; and

(5) the name of the records custodian.

R162-2e-304. Required Disclosure.

In addition to the disclosures required by Section 61-2e-304, an AMC shall:

(1) at the time an assignment is offered, disclose to the appraiser:

(a) the total amount that the appraiser may expect to earn from the assignment:

(i) disclosed as a dollar amount; and

(ii) delineating any fees or costs that will be charged by the AMC to the appraiser;

(b)(i) the property address;

(ii) the legal description; or

(iii) equivalent information that would allow the appraiser to determine whether the appraiser has been involved with any service regarding the subject property within the three years preceding the date on which the assignment is offered;

(c) the assignment conditions and scope of work requirements in sufficient detail to allow the appraiser to determine whether the appraiser is competent to complete the assignment; and

(d) any known deadlines within which the assignment must be completed;

(2) at or before the time the appraiser accepts an assignment, obtain the appraiser's acknowledgment as to the AMC's competency statement;

(3) before requiring the appraiser to submit a completed report, disclose to the appraiser:

(a) the total fee that will be collected by the AMC for the assignment; and

(b) the total amount that the AMC will retain from the fee charged, disclosed as a dollar amount; and

(4) direct the appraiser who performs the real estate appraisal activity to disclose in the body of the appraisal report:

(a) the total compensation, stated as a dollar amount, paid to the appraiser or, if the appraiser is employed by an appraisal company, to the appraiser's employer; and

(b) the total compensation retained by the AMC in connection with the real estate appraisal activity, stated as a dollar amount.

R162-2e-305. Employee Requirements.

(1) An AMC seeking registration shall demonstrate to the division that each person who selects an appraiser or reviews an appraiser's work for the AMC:

(a) is a licensed or certified appraiser in good standing; or

(b) has taken and passed the 15-hour national USPAP

course.

(2) An AMC seeking renewal of the company's registration shall demonstrate to the division that each person who selects an appraiser or reviews an appraiser's work for the AMC:

(a) is a licensed or certified appraiser in good standing; or

(b) has completed the seven-hour national USPAP update course.

R162-2e-401. Unprofessional Conduct.

(1) An entity that is registered or required to be registered with the division as an AMC pursuant to Section 61-2e-201 commits unprofessional conduct if the entity:

(a) requires an appraiser to modify any aspect of the appraisal report, unless the modification complies with Section 61-2e-307;

(b) unless first prohibited by the client or applicable law, prohibits or inhibits an appraiser from contacting:

(i) the client;

(ii) a person licensed under Section 61-2c or Section 61-2f; or

(iii) any other person with whom the appraiser reasonably needs to communicate in order to obtain information necessary to complete a credible appraisal report;

(c) requires the appraiser to do anything that does not comply with:

(i) USPAP; or

(ii) assignment conditions and certifications required by the client;

(d) makes any portion of the appraiser's fee or the AMC's fee contingent on a favorable outcome, including but not limited to:

(i) a loan closing; or

(ii) a specific dollar amount being achieved by the appraiser in the appraisal report;

(e) requests, for the purpose of facilitating a mortgage loan transaction,

(i) a broker price opinion; or

(ii) any other real property price or value estimation that does not qualify as an appraisal;

(f) charges an appraiser:

(i) for a service not actually performed; or

(ii) for a fee or cost that:

(A) is not accurately disclosed pursuant to Subsection R162-2e-304(1)(a)(ii); or

(B) exceeds the actual cost of a service provided by a third party;

(g) fails to pay the appraiser's fee within 45 days of completion of the appraisal assignment;

(h) uses or retains an employee to complete an appraisal assignment without first disclosing to the client that the appraiser is an employee of the company, such that the company is acting in the capacity of an appraisal firm rather than as an AMC pursuant to Utah Code Subsection 61-2e-102(4); or

(i) when acting in the capacity of an AMC pursuant to Utah Code Subsection 61-2e-102(4), uses or retains an employee appraiser to complete an appraisal assignment.

(2) An AMC commits unprofessional conduct and creates a violation by the appraiser of R162-2g-502b(1)(f) if the AMC requires the appraiser to:

(a) accept full payment; and

(b) remit a portion of the full payment back to the AMC.

R162-2e-402. Administrative Proceedings.

(1) An adjudicative proceeding before the board shall be conducted as an informal adjudicative proceeding.

(2)(a) A hearing before the board will be held in:

(i) a proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order;

(ii) a case where the division seeks to deny an application for original or renewed registration, licensure, or certification for failure of the applicant to meet the criteria of good moral character, honesty, integrity or truthfulness;

(iii) a case where the division seeks disciplinary action pursuant to Sections 61-2e-307 or 61-2e-402(2) against an AMC or an owner or controlling person of an AMC; and

(iv) an appeal from an automatic revocation under Section 61-2e-203(3)(b), if the appellant requests a hearing.

(b) If properly requested by the applicant, a hearing will be held before the board to consider an application that is denied by the division on the grounds that the controlling person's attestation to upstanding moral character is false.

(c) A hearing is not required and will not be held in the following informal adjudicative proceedings:

(i) the issuance, renewal, or reinstatement of an AMC registration by the division;

(ii) the issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division; and

(iii) the denial of renewal or reinstatement of an AMC registration for incompleteness or for failure to comply with a requirement found in statute or rule.

(3)(a) An application for an AMC registration shall be deemed a request for agency action.

(b) Any other request for agency action shall be in writing, signed by the requestor, and shall contain the following:

(i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number, if known;

(iii) the date of mailing of the request for agency action;

(iv) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;

(v) a statement of the relief or action sought from the division; and

(vi) a statement of the facts and reasons forming the basis for relief or agency action.

(c) A complaint against an AMC, a controlling person, or an appraiser on the panel of an AMC requesting that the division commence an investigation or a disciplinary action is not a request for agency action.

(4) Procedures for hearings in informal adjudicative proceedings.

(a) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Rule R151-4 et seq.; and

(iii) the rules promulgated by the division.

(b) Except as provided in Subsection R162-2e-402(5)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(c) In any proceeding under this Subsection R162-2e-402, the board and division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the board and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(d)(i) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing, to the

respondent at the address last provided to the division through a registration process.

(ii) The notice shall set forth the matters to be addressed in the hearing.

(e) Formal discovery is prohibited.

(f) The division may issue subpoenas or other orders to compel production of necessary evidence:

(i) on its own behalf; or

(ii) on behalf of a party where the party:

(A) makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.

(g) Upon ordering a person who is registered or required to be registered as an AMC to appear for a hearing, the division shall provide to the person the information that the division will introduce at the hearing.

(h) Intervention is prohibited.

(i) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(j) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.

(5) Additional procedures for disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division no later than 30 days following the mailing date of the notice of agency action pursuant to this Subsection (5)(a).

(c) Witness and exhibit lists.

(i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of agency action.

(ii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from the witness.

(iii) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

KEY: administrative proceedings, appraisal management company, conduct, registration

January 28, 2015

61-2e-102(4)
61-2e-103
61-2e-307
61-2e-305
61-2e-402(1)

R162. Commerce, Real Estate.
R162-2f. Real Estate Licensing and Practices Rules.
R162-2f-101. Title and Authority.

(1) This chapter is known as the "Real Estate Licensing and Practices Rules."

(2) The authority to establish rules for real estate licensing and practices is granted by Section 61-2f-103.

(3) The authority to establish rules governing undivided fractionalized long-term estates is granted by Section 61-2f-307.

(4) The authority to collect fees is granted by Section 61-2f-105.

R162-2f-102. Definitions.

(1) "Active license" means a license granted to an applicant who:

(a) qualifies for licensure under Section 61-2f-203 and these rules;

(b) pays all applicable nonrefundable license fees; and

(c) affiliates with a principal brokerage.

(2) "Advertising" means solicitation through:

(a) newspaper;

(b) magazine;

(c) Internet;

(d) e-mail;

(e) radio;

(f) television;

(g) direct mail promotions;

(h) business cards;

(i) door hangers;

(j) signs; or

(k) any other medium.

(3) "Affiliate":

(a) when used in reference to licensure, means to form, for the purpose of providing a real estate service, an employment or non-employment association with another individual or entity licensed or registered under Title 61, Chapter 2f et seq. and these rules; and

(b) when used in reference to an undivided fractionalize long-term estate, means an individual or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified individual or entity.

(4) "Branch broker" means an associate broker who manages a branch office under the supervision of the principal broker.

(5) "Branch office" means a principal broker's real estate brokerage office other than the principal broker's main office.

(6) "Brokerage" means a real estate sales or a property management company.

(7) "Brokerage record" means any record related to the business of a principal broker, including:

(a) record of an offer to purchase real estate;

(b) record of a real estate transaction, regardless of whether the transaction closed;

(c) licensing records;

(d) banking and other financial records;

(e) independent contractor agreements;

(f) trust account records, including:

(i) deposit records in the form of a duplicate deposit slip, deposit advice, or equivalent document; and

(ii) conveyance records in the form of a check image, wire transfer verification, or equivalent document; and

(g) records of the brokerage's contractual obligations.

(8) "Business day" is defined in Subsection 61-2f-102(3).

(9) "Certification" means authorization from the division to:

(a) establish and operate a school that provides courses approved for prelicensing education or continuing education; or

(b) function as an instructor for courses approved for prelicensing education or continuing education.

(10) "Commission" means the Utah Real Estate Commission.

(11) "Continuing education" means professional education required as a condition of renewal in accordance with Section R162-2f-204 and may be either:

(a) core: topics identified in Subsection R162-2f-206c(5)(c); or

(b) elective: topics identified in Subsection R162-2f-206c(5)(e).

(12) "Correspondence course" means a self-paced real estate course that:

(a) is not distance or traditional education; and

(b) fails to meet real estate educational course certification standards because:

(i) it is primarily student initiated; and

(ii) the interaction between the instructor and student lacks substance and/or is irregular.

(13) "Day" means calendar day unless specified as "business day."

(14)(a) "Distance education" means education in which the instruction does not take place in a traditional classroom setting, but occurs through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including the following:

(i) computer conferencing;

(ii) satellite teleconferencing;

(iii) interactive audio;

(iv) interactive computer software;

(v) Internet-based instruction; and

(vi) other interactive online courses.

(b) "Distance education" does not include home study and correspondence courses.

(15) "Division" means the Utah Division of Real Estate.

(16) "Double contract" means executing two or more purchase agreements, one of which is not made known to the prospective lender or loan funding entity.

(17) "Expired license" means a license that is not renewed pursuant to Section 61-2f-204 and Section R162-2f-204 by:

(a) the close of business on the expiration date, if the expiration date falls on a day when the division is open for business; or

(b) the next business day following the expiration date, if the expiration date falls on a day when the division is closed.

(18) "Guaranteed sales plan" means:

(a) a plan in which a seller's real estate is guaranteed to be sold; or

(b) a plan whereby a licensee or anyone affiliated with a licensee agrees to purchase a seller's real estate if it is not purchased by a third party:

(i) in the specified period of a listing; or

(ii) within some other specified period of time.

(19) "Inactive license" means a license that has been issued pursuant to Sections R162-2f-202a through 202c or renewed pursuant to Section R162-2f-204, but that may not be used to conduct the business of real estate because the license holder is not affiliated with a principal broker. Pursuant to Section R162-2f-203, a license may be inactivated:

(a) voluntarily, with the assent of the license holder; or

(b) involuntarily, without the assent of the license holder.

(20) "Informed consent" means written authorization, obtained from both principals to a single transaction, to allow

a licensee to act as a limited agent.

(21) "Limited agency" means the representation of all principals in the same transaction to negotiate a mutually acceptable agreement:

(a) subject to the terms of a limited agency agreement; and

(b) with the informed consent of all principals to the transaction.

(22) "Net listing" means a listing agreement under which the real estate commission is the difference between the actual selling price of the property and a minimum selling price as set by the seller.

(23)(a) "Non-certified education" means a continuing education course offered outside of Utah, but for which a licensee may apply for credit pursuant to Subsection R162-2f-206c(1)(b).

(b) "Non-certified education" does not include:

(i) home study courses; or

(ii) correspondence courses.

(24) "Nonresident applicant" means a person:

(a) whose primary residence is not in Utah; and

(b) who qualifies under Title 61, Chapter 2f et seq. and these rules for licensure as a principal broker, associate broker, or sales agent.

(25) "Principal brokerage" means the main real estate or property management office of a principal broker.

(26) "Principal" in a transaction means an individual who is represented by a licensee and may be:

(a) the buyer or lessee;

(b) an individual having an ownership interest in the property;

(c) an individual having an ownership interest in the entity that is the buyer, seller, lessor, or lessee; or

(d) an individual who is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor, or lessee.

(27) "Provider" means an individual or business that is approved by the division to offer continuing education.

(28) "Property management" is defined in Subsection 61-2f-102(19).

(29) "Registration" means authorization from the division to engage in the business of real estate as:

(a) a corporation;

(b) a partnership;

(c) a limited liability company;

(d) an association;

(e) a dba;

(f) a professional corporation;

(g) a sole proprietorship; or

(h) another legal entity of a real estate brokerage.

(30) "Reinstatement" is defined in Subsection 61-2f-102(22).

(31) "Reissuance" is defined in Subsection 61-2f-102(23).

(32) The acronym RELMS means "real estate licensing and management system," which is the online database through which licensees shall submit licensing information to the division.

(33) "Renewal" is defined in Subsection 61-2f-102(24).

(34) "Residential property" means real property consisting of, or improved by, a single-family one- to four-unit dwelling.

(35) "School" means:

(a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;

(b) any community college or vocational-technical school;

(c) any local real estate organization that has been approved by the division as a school; or

(d) any proprietary real estate school.

(36) "Sponsor" means the party that is the seller of an undivided fractionalized long-term estate.

(37) "Third party service provider" means an individual or entity that provides a service necessary to the closing of a specific transaction and includes:

(a) mortgage brokers;

(b) mortgage lenders;

(c) loan originators;

(d) title service providers;

(e) attorneys;

(f) appraisers;

(g) providers of document preparation services;

(h) providers of credit reports;

(i) property condition inspectors;

(j) settlement agents;

(k) real estate brokers;

(l) marketing agents;

(m) insurance providers; and

(n) providers of any other services for which a principal or investor will be charged.

(38) "Traditional education" means education in which instruction takes place between an instructor and students where all are physically present in the same classroom.

(39) "Undivided fractionalized long-term estate" is defined in Subsection 61-2f-102(26).

R162-2f-105. Fees.

Any fee collected by the division is nonrefundable.

R162-2f-201. Qualification for Licensure.

(1) Character. Pursuant to Subsection 61-2f-203(1)(c), an applicant for licensure as a sales agent, associate broker, or principal broker shall evidence honesty, integrity, truthfulness, and reputation.

(a) An applicant shall be denied a license for:

(i) a felony that resulted in:

(A) a conviction occurring within the five years preceding the date of application;

(B) a plea agreement occurring within the five years preceding the date of application; or

(C) a jail or prison term with a release date falling within the five years preceding the date of application; or

(ii) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:

(A) a conviction occurring within the three years preceding the date of application; or

(B) a jail or prison term with a release date falling within the three years preceding the date of application.

(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past that reflect negatively on the applicant's honesty, integrity, truthfulness, and reputation. In evaluating an applicant for these qualities, the division and commission may consider:

(i) criminal convictions or plea agreements other than those specified in this Subsection (1)(a);

(ii) past acts related to honesty or truthfulness, with particular consideration given to any such acts involving the business of real estate, that would be grounds under Utah law for sanctioning an existing license;

(iii) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(iv) court findings of fraudulent or deceitful activity;

(v) evidence of non-compliance with court orders or conditions of sentencing; and

(vi) evidence of non-compliance with:

(A) terms of a diversion agreement not yet closed and dismissed;

(B) a probation agreement; or
(C) a plea in abeyance.
(c)(i) An applicant who, as of the date of application, is serving probation or parole for a crime that contains an element of violence or physical coercion shall, in order to submit a complete application, provide for the commission's review current documentation from two licensed therapists, approved by the division, stating that the applicant does not pose an ongoing threat to the public.
(ii) For purposes of applying this rule, crimes that contain an element of violence or physical coercion include, but are not limited to, the following:
(A) assault, including domestic violence;
(B) rape;
(C) sex abuse of a child;
(D) sodomy on a child;
(E) battery;
(F) interruption of a communication device;
(G) vandalism;
(H) robbery;
(I) criminal trespass;
(J) breaking and entering;
(K) kidnapping;
(L) sexual solicitation or enticement;
(M) manslaughter; and
(N) homicide.
(iii) Information and documents submitted in compliance with this Subsection (1)(c) shall be reviewed by the commission, which may exercise discretion in determining whether the applicant qualifies for licensure.
(2) Competency. In evaluating an applicant for competency, the division and commission may consider evidence including:
(a) civil judgments, with particular consideration given to any such judgments involving the business of real estate;
(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;
(c) suspension or revocation of a professional license;
(d) sanctions placed on a professional license; and
(e) investigations conducted by regulatory agencies relative to a professional license.
(3) Age. An applicant shall be at least 18 years of age.
(4) Minimum education. An applicant shall have:
(a) a high school diploma;
(b) a GED; or
(c) equivalent education as approved by the commission.

R162-2f-202a. Sales Agent Licensing Fees and Procedures.

(1) To obtain a Utah license to practice as a sales agent, an individual who is not currently and actively licensed in any state shall:
(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
(c)(i) successfully complete 120 hours of approved prelicensing education;
(ii) evidence current membership in the Utah State Bar; or
(iii) apply to the division for waiver of all or part of the education requirement by virtue of:
(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or
(B) completing other equivalent real estate education within the 12-month period prior to the date of application;
(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and
(ii) pay a nonrefundable examination fee to the testing center;
(e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;
(f) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
(i) documentation indicating successful completion of the required prelicensing education;
(ii) a report of the examination showing a passing score for each component of the examination; and
(iii) the applicant's business, home, and e-mail addresses;
(g) if applying for an active license, affiliate with a principal broker; and
(h) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.
(2) To obtain a Utah license to practice as a sales agent, an individual who is currently and actively licensed in another state shall:
(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
(c)(i) successfully complete 120 hours of approved prelicensing education;
(ii) evidence current membership in the Utah State Bar; or
(iii) apply to the division for waiver of all or part of the education requirement by virtue of:
(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree;
(B) completing other equivalent real estate education within the 12-month period prior to the date of application; or
(C) having been licensed in a state that has substantially equivalent prelicensing education requirements;
(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and
(ii) pay a nonrefundable examination fee to the testing center;
(e)(i) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination; or
(ii) if actively licensed during the two years immediately preceding the date of application in a state that has substantially equivalent licensing examination requirements:
(A) take and pass the state component of the licensing examination; and
(B) apply to the division for a waiver of the national component of the licensing examination;
(f) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
(i) documentation indicating successful completion of the required prelicensing education;
(ii) a report of the examination showing a passing score for each component of the examination; and
(iii) the applicant's business, home, and e-mail addresses;
(g) provide from any state where licensed:
(i) a written record of the applicant's license history; and
(ii) complete documentation of any disciplinary action taken against the applicant's license;
(h) if applying for an active license, affiliate with a principal broker; and
(i) pay the nonrefundable fees required for licensure,

including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.

(3) Deadlines.

(a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:

(i) within six months of the date on which the individual achieves a passing score on the passed component; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(b) An application for licensure shall be submitted:

(i) within 90 days of the date on which the individual achieves passing scores on both examination components; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(c) If any deadline in this Section R162-2f-202a falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-202b. Principal Broker Licensing Fees and Procedures.

(1) To obtain a Utah license to practice as a principal broker, an individual shall:

(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);

(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);

(c)(i) successfully complete 120 hours of approved prelicensing education, including:

(A) 45 hours of broker principles;

(B) 45 hours of broker practices; and

(C) 30 hours of Utah law and testing; or

(ii) apply to the division for waiver of all or part of the education requirement by virtue of:

(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or

(B) completing other equivalent real estate education within the 12-month period prior to the date of application;

(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and

(ii) pay a nonrefundable examination fee to the testing center;

(e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;

(f)(i) unless Subsection (2)(a) applies, evidence the individual's having, within the five-year period preceding the date of application, a minimum of three years experience related to real estate, including the following:

(A) at least two years full-time licensed, active experience selling, listing, or managing the property types identified in Appendix 1; and

(B) up to one year full-time professional experience related to real estate, as outlined in Appendix 3; and

(ii) evidence having accumulated, within the five-year period preceding the date of application, a total of at least 60 experience points as follows:

(A) 45 to 60 points pursuant to the experience points tables found in Appendices 1 and 2; and

(B) 0 to 15 points pursuant to the experience point table found in Appendix 3;

(g) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:

(i) documentation indicating successful completion of the approved broker prelicensing education;

(ii) a report of the examination showing a passing score for each component of the examination; and

(iii) the applicant's business, home, and e-mail addresses;

(h) provide from any state where licensed as a real estate agent or broker:

(i) a written record of the applicant's license history; and

(ii) complete documentation of any disciplinary action taken against the applicant's license;

(i) if applying for an active license, affiliate with a registered company;

(j) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund; and

(k) establish real estate and property management trust accounts, as applicable pursuant to Section R162-2f-403, that:

(i) contain the term "real estate trust account" or "property management trust account", as applicable, in the account name; and

(ii) are separate from any operating account(s) of the registered entity for which the individual will serve as a broker; and

(l) identify the location(s) where brokerage records will be kept.

(2)(a) If an individual applies under this Subsection R162-2f-202b within two years of allowing a principal broker license to expire, the experience required under Subsection (1)(f) shall be accumulated within the seven-year period preceding the date of application.

(b) Pursuant to Section R162-2f-407, an individual whose application is denied by the division for failure to meet experience requirements under this Subsection (1)(f) may bring the application before the commission.

(3) Deadlines.

(a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:

(i) within six months of the date on which the individual achieves a passing score on the passed component; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(b) An application for licensure shall be submitted:

(i) within 90 days of the date on which the individual achieves passing scores on both examination components; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(c) If any deadline in this Section R162-2f-202b falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(4) Restriction. A principal broker license may not be granted to an applicant whose sales agent license is on suspension or probation at the time of application.

(5) Dual broker licenses.

(a)(i) A person who holds or obtains a dual broker license under this Subsection may function as the principal broker of a property management company that is a separate entity from the person's real estate brokerage.

(ii) A dual broker may not conduct real estate sales activities from the separate property management company.

(iii) A principal broker may conduct property management activities from the person's real estate brokerage:

(A) without holding a dual broker license; and

(B) in accordance with Subsections R162-2f-401j and R162-2f-403a-403c;

(b) A dual broker who wishes to consolidate real estate and property management operations into a single brokerage may:

(i) at the broker's request, convert the dual broker

license to a principal broker license; and

(ii)(A) convert the property management company to a branch office of the real estate brokerage, including the assignment of a branch broker and using the same name as the real estate brokerage; or

(B) close the separate property management company.

(c) As of May 8, 2013:

(i) the Division shall:

(A) cease issuing property management principal broker (PMPB) licenses;

(B) cease issuing property management company (MN) registrations except as to a second company registered under a dual broker license;

(C) convert any property management principal broker (PMPB) license to a real estate principal broker (PB) license; and

(D) as to any property management company (MN) registration that is not a second company under a dual broker license, convert the registration to a real estate brokerage (CN) registration; and

(ii) it shall be permissible to conduct real estate sales activities under any company registration that is converted pursuant to this Subsection (5)(c)(i)(C).

R162-2f-202c. Associate Broker Licensing Fees and Procedures.

To obtain a Utah license to practice as an associate broker, an individual shall:

(1) comply with Subsections R162-2f-202b(1)(a) through (j); and

(2) if applying for an active license, affiliate with a principal broker.

R162-2f-203. Inactivation and Activation.

(1) Inactivation.

(a) To voluntarily inactivate the license of a sales agent or an associate broker, the holder of the license shall complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(b) To voluntarily inactivate a principal broker license, the principal broker shall:

(i) prior to inactivating the license:

(A) give written notice to each licensee affiliated with the principal broker of the date on which the principal broker proposes to inactivate the license; and

(B) provide to the division evidence that the licensee has complied with this Subsection (1)(b)(i)(A); and

(ii) complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(c) The license of a sales agent or associate broker is involuntarily inactivated upon:

(i) termination of the licensee's affiliation with a principal broker;

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the sales agent or associate broker is affiliated; or

(iii) inactivation or termination of the registration of the entity with which the licensee's principal broker is affiliated.

(d) The registration of an entity is involuntarily inactivated upon:

(i) termination of the entity's affiliation with a principal broker; or

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the entity is affiliated.

(e) The license of a principal broker is involuntarily inactivated upon termination of the licensee's affiliation with a registered entity.

(f) If the division or commission orders that a principal broker's license is to be suspended or revoked:

(i) the order shall state the effective date of the suspension or revocation; and

(ii) prior to the effective date, the entity shall:

(A)(I) affiliate with a new principal broker; and

(II) submit change forms through RELMS to affiliate each licensee with the new principal broker; or

(B)(I) provide written notice to each licensee affiliated with the principal broker of the pending suspension or revocation; and

(II) comply with Subsection R162-2f-207(3)(c)(ii)(B).

(2) Activation.

(a) To activate a license, the holder of the inactive license shall:

(i) complete and submit a change card through RELMS pursuant to Section R162-2f-207;

(ii) submit proof of:

(A) having been issued an active license at the time of last renewal;

(B) having completed, within the one-year period preceding the date on which the licensee requests activation, 18 hours of continuing education, including nine hours of core topics; or

(C) having passed the licensing examination within the six-month period prior to the date on which the licensee requests activation;

(iii)(A) if applying to activate a sales agent or associate broker license, evidence affiliation with a principal broker; or

(B) if applying to activate a principal broker license, evidence affiliation with a registered entity; and

(iv) pay a non-refundable activation fee.

(b) A licensee who submits continuing education to activate a license may not use the same continuing education to renew the license at the time of the licensee's next renewal.

R162-2f-204. License Renewal.

(1) Renewal period and deadlines.

(a) A license issued under these rules is valid for a period of two years from the date of licensure.

(b) By the 15th day of the month of expiration, an applicant for renewal shall submit to the division proof of having completed all continuing education required under this Subsection (2)(b).

(c) In order to renew on time without incurring a late fee:

(i) an individual who is required to submit a renewal application through the online RELMS system shall complete the online process, including the completion and banking of continuing education credits, by the license expiration date; and

(ii) an individual whose circumstances require a "yes" answer to a disclosure question on the renewal application shall submit a paper renewal:

(A) by the license expiration date, if that date falls on a day when the division is open for business; or

(B) on the next business day following the license expiration date, if that date falls on a day when the division is closed for business.

(2) Qualification for renewal.

(a) Character and competency.

(i) An individual applying for a renewed license shall evidence that the individual maintains character and competency as required for initial licensure.

(ii) An individual applying for a renewed license may not have:

(A) a felony conviction since the last date of licensure; or

(B) a finding of fraud, misrepresentation, or deceit entered against the applicant, related to activities requiring a

real estate license, by a court of competent jurisdiction or a government agency since the last date of licensure, unless the finding was explicitly considered by the division in a previous application.

(b) Continuing education.

(i) To renew at the end of the first renewal cycle, an individual shall complete:

(A) the 12-hour new sales agent course certified by the division; and

(B) an additional six non-duplicative hours of continuing education:

(I) certified by the division as either core or elective; or

(II) acceptable to the division pursuant to this Subsection (2)(b)(ii)(B).

(ii) To renew at the end of a renewal cycle subsequent to the first renewal, an individual shall:

(A) complete 18 non-duplicative hours of continuing education:

(I) certified by the division;

(II) including at least nine non-duplicative hours of core curriculum; and

(III) taken during the previous license period; or

(B) apply to the division for a waiver of all or part of the required continuing education hours by virtue of having completed non-certified courses that:

(I) were not required under Subsection R162-2f-206c(1)(a) to be certified; and

(II) meet the continuing education objectives listed in Subsection R162-2f-206c(2)(f).

(iii)(A) Completed continuing education courses will be credited to an individual when the hours are uploaded by the course provider pursuant to Subsection R162-2f-401d(1)(k).

(B) If a provider fails to upload course completion information within the ten-day period specified in Subsection R162-2f-401d(1)(k), an individual who attended the course may obtain credit by:

(I) filing a complaint against the provider; and

(II) submitting the course completion certificate to the division.

(c) Principal broker. In addition to meeting the requirements of this Subsection (2)(a) and (b), an individual applying to renew a principal broker license shall certify that:

(i) the business name under which the individual operates is current and in good standing with the Division of Corporations and Commercial Code; and

(ii) the trust account maintained by the principal broker is current and in compliance with Section R162-2f-403.

(3) Renewal and reinstatement procedures.

(a) To renew a license, an applicant shall, prior to the expiration of the license:

(i) submit the forms required by the division, including proof of having completed continuing education pursuant to this Subsection (2)(b); and

(ii) pay a nonrefundable renewal fee.

(b) To reinstate an expired license, an applicant shall, according to deadlines set forth in Subsections 61-2f-204(2)(b) - (d):

(i) submit all forms required by the division, including proof of having completed continuing education pursuant to Subsection 61-2f-204(2); and

(ii) pay a nonrefundable reinstatement fee.

(4) Transition to online renewal. An individual licensee shall submit an application for renewal through the online RELMS system unless the individual's circumstances require a "yes" answer in response to a disclosure question.

R162-2f-205. Registration of Entity.

(1) A principal broker may not conduct business through an entity, including a branch office, dba, or separate property management company, without first registering the entity with the division.

(2) Exemptions. The following locations may be used to conduct real estate business without being registered as branch offices:

(a) a model home;

(b) a project sales office; and

(c) a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth.

(3) To register an entity with the division, a principal broker shall:

(a) evidence that the name of the entity is registered with the Division of Corporations;

(b) certify that the entity is affiliated with a principal broker who:

(i) is authorized to use the entity name; and

(ii) will actively supervise the activities of all sales agents, associate brokers, branch brokers, and unlicensed staff;

(c) if registering a branch office, identify the branch broker who will actively supervise all licensees and unlicensed staff working from the branch office;

(d) submit an application that includes:

(i) the physical address of the entity;

(ii) if the entity is a branch office, the name and license number of the branch broker;

(iii) the names of associate brokers and sales agents assigned to the entity; and

(iv) the location and account number of any real estate and property management trust account(s) in which funds received at the registered location will be deposited;

(e) inform the division of:

(i) the location and account number of any operating account(s) used by the registered entity; and

(ii) the location where brokerage records will be kept; and

(f) pay a nonrefundable application fee.

(4) Restrictions.

(a)(i) The division shall not register an entity proposing to use a business name that:

(A) is likely to mislead the public into thinking that the entity is not a real estate brokerage or property management company;

(B) closely resembles the name of another registered entity; or

(C) the division determines might otherwise be confusing or misleading to the public.

(ii) Approval by the division of an entity's business name does not ensure or grant to the entity a legal right to use or operate under that name.

(b) A branch office shall operate under the same business name as the principal brokerage.

(c) An entity may not designate a post office box as its business address, but may designate a post office box as a mailing address.

(d) All trust accounts and operating accounts used by a registered entity shall be maintained in a bank or credit union located in the state of Utah.

(5) Registration not transferable.

(a) A registered entity shall not transfer the registration to any other person.

(b) A registered entity shall not allow an unlicensed person to use the entity's registration to perform work for which licensure is required.

(c) If a change in corporate structure of a registered entity creates a separate and unique legal entity, that entity shall obtain a unique registration, and shall not operate under an existing registration.

(d) The dissolution of a corporation, partnership, limited liability company, association, or other entity registered with the division terminates the registration.

R162-2f-206a. Certification of Real Estate School.

(1) Prior to offering real estate prelicensing or continuing education, a school shall:

(a) first, obtain division approval of the school name; and

(b) second, certify the school with the division pursuant to this Subsection (2).

(2) To certify, a school applicant shall, at least 90 days prior to teaching any course, prepare and supply the following information to the division:

(a) contact information, including:

(i) name, phone number, email address, and address of the physical facility;

(ii) name, phone number, email address, and address of each school director;

(iii) name, phone number, email address, and address of each school owner; and

(iv) an e-mail address where correspondence will be received by the school;

(b) evidence that the school directors and owners meet the character requirements outlined in Subsection R162-2f-201(1) and the competency requirements outlined in Subsection R162-2f-201(2);

(c) evidence that the school name, as approved by the division pursuant to this Subsection (1)(a), is registered with the Division of Corporations and Commercial Code as a real estate education provider;

(d) school description, including:

(i) type of school; and

(ii) description of the school's physical facilities;

(e) list of courses to be offered, including the following:

(i) a statement of whether each course is a prelicensing or continuing education course; and

(ii) as to a continuing education course, whether it is designed to qualify as fulfilling all or part of the core curriculum requirement for new agents;

(f) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;

(g) proof that each instructor is:

(i) certified by the division;

(ii) qualified as a guest lecturer by having:

(A) requisite expertise in the field; and

(B) approval from the division; or

(iii) exempt from certification under Subsection R162-2f-206d(4);

(h) schedule of courses offered, including the days, times, and locations of classes;

(i) statement of attendance requirements as provided to students;

(j) refund policy as provided to students;

(k) disclaimer as provided to students and as specified in Subsection (3)(c);

(l) criminal history disclosure statement as provided to students and as specified in Subsection (3)(d);

(m) disclosure, as specified in Subsection (3)(e), of any possibility of obtaining an education waiver;

(n) course completion policy, as provided to students, describing the length of time allowed for completion and detailed requirements; and

(o) any other information the division requires.

(3) Minimum standards.

(a) The course schedule may not provide or allow for more than eight credit hours per student per day.

(b) The attendance statement shall require that each student attend at least 90% of the scheduled class periods, excluding breaks.

(c) The disclaimer shall adhere to the following requirements:

(i) be typed in all capital letters at least 1/4 inch high; and

(ii) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the real estate brokerages that may be soliciting for licensees at this school."

(d) The criminal history disclosure statement shall:

(i) be provided to each student prior to the school accepting payment; and

(ii) clearly inform the student that upon application with the division, the student will be required to:

(A) accurately disclose the student's criminal history according to the licensing questionnaire provided by the division;

(B) submit fingerprint cards to the division and consent to a criminal background check; and

(C) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(iii) clearly inform the student that the division will consider the applicant's criminal history pursuant to Subsection 61-2f-204(1)(e) and Subsection R162-2f-201(1) in making a decision on the application; and

(iv) include a section for the student's attestation that the student has read and understood the disclosure.

(e) The education waiver disclosure shall adhere to the following requirements:

(i) disclose to students the requirements for obtaining an education waiver while they are still eligible for a full refund;

(ii) be typed in all capital letters at least 1/4 inch high;

(iii) inform the students that the division grants education waivers for qualified individuals; and

(iv) state the following language: "A student accepted or enrolled for education hours cannot later reduce those hours by applying for an education waiver. An education waiver must be obtained before a student enrolls and is accepted by a school for education hours."

(f) Within 15 days after the occurrence of any material change in the information outlined in this Subsection (2)(a), the school shall provide, to the division's education staff, written notice of the change.

(4)(a) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a school certification, an applicant shall:

(i) complete a renewal application as provided by the division; and

(ii) pay a nonrefundable renewal fee.

(c) To reinstate an expired school certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired school certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (4) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206b. Certification Prelicensing Course.

(1) To certify a prelicensing course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:

(a) comprehensive course outline including:

(i) description of the course, including a statement of whether the course is designed for:

(A) sales agents; or

(B) brokers;

(ii) number of class periods spent on each subject area;

(iii) minimum of three to five learning objectives for every three hours of class time; and

(iv) reference to the course outline approved by the commission for each topic;

(b) number of quizzes and examinations;

(c) grading system, including methods of testing and standards of grading;

(d)(i) a copy of at least two final examinations to be used in the course;

(ii) the answer key(s) used to determine if a student has passed the exam; and

(iii) an explanation of procedure if the student fails the final examination and thereby fails the course; and

(e) a list of the titles, authors and publishers of all required textbooks.

(2) To certify a prelicensing course for distance education, a person shall, no later than 60 days prior to the date on which the course is proposed to begin, provide the following to the division:

(a) all items listed in this Subsection (1);

(b) description of each method of course delivery;

(c) description of any media to be used;

(d) course access for the division using the same delivery methods and media that will be provided to the students;

(e) description of specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;

(f) description of how the students' achievement of the stated learning objectives will be measured at regular intervals;

(g) description of how and when certified prelicensing instructors will be available to answer student questions;

(h) attestation from the school director of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims; and

(i) a description of the complaint process to resolve student grievances.

(3) Minimum standards. A prelicensing course shall:

(a) address each topic required by the course outline as approved by the commission;

(b) meet the minimum hourly requirement as established by Subsection 61-2f-203(1)(d)(i) and these rules;

(c) limit the credit that students may earn to no more than eight credit hours per day;

(d) be taught in an appropriate classroom facility unless approved for distance education;

(e) allow a maximum of 10% of the required class time for testing, including:

(i) practice tests; and

(ii) a final examination;

(f) use only texts, workbooks, and supplemental materials that are appropriate and current in their application to the required course outline; and

(g) reflect the current statutes and rules of the division.

(4) A prelicensing course certification expires at the same time as the school certification and is renewed automatically when the school certification is renewed.

R162-2f-206c. Certification of Continuing Education Course.

(1)(a) The division may not award continuing education credit for a course that is advertised in Utah to real estate licensees unless the course is certified prior to its being taught.

(b) A licensee who completes a course that is not required to be certified pursuant to this Subsection (1)(a), and who believes that the course satisfies the objectives of continuing education pursuant to this Subsection (2)(f), may apply to the division for an award of continuing education credit after successfully completing the course.

(2) To certify a continuing education course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:

(a) name and contact information of the course provider;

(b) name and contact information of the entity through which the course will be provided;

(c) description of the physical facility where the course will be taught;

(d) course title;

(e) number of credit hours;

(f) statement defining how the course will meet the objectives of continuing education by increasing the participant's:

(i) knowledge;

(ii) professionalism; and

(iii) ability to protect and serve the public;

(g) course outline including a description of the subject matter covered in each 15-minute segment;

(h) a minimum of three learning objectives for every three hours of class time;

(i) name and certification number of each certified instructor who will teach the course;

(j) copies of all materials to be distributed to participants;

(k) signed statement in which the course provider and instructor(s):

(i) agree not to market personal sales products;

(ii) allow the division or its representative to audit the course on an unannounced basis; and

(iii) agree to upload, within ten business days after the end of a course offering, to the database specified by the division, the following:

(A) course name;

(B) course certificate number assigned by the division;

(C) date(s) the course was taught;

(D) number of credit hours; and

(E) names and license numbers of all students receiving continuing education credit;

(l) procedure for pre-registration;

(m) tuition or registration fee;

(n) cancellation and refund policy;

(o) procedure for taking and maintaining control of attendance during class time;

(p) sample of the completion certificate;

(q) nonrefundable fee for certification as required by the division; and

(r) any other information the division requires.

(3) To certify a continuing education course for distance education, a person shall:

(a) comply with this Subsection (2);

(b) submit to the division a complete description of all course delivery methods and all media to be used;

(c) provide course access for the division using the same

delivery methods and media that will be provided to the students;

(d) describe specific frequent and periodic interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives and encourage student participation;

(e) describe how and when certified instructors will be available to answer student questions; and

(f) provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

(4) Minimum standards.

(a) Except for distance education courses, all courses shall be taught in an appropriate classroom facility and not in a private residence.

(b) The minimum length of a course shall be one credit hour.

(c) Except for online courses, the procedure for taking attendance shall be more extensive than having the student sign a class roll.

(d) The completion certificate shall allow for entry of the following information:

(i) licensee's name;

(ii) type of license;

(iii) license number;

(iv) date of course;

(v) name of the course provider;

(vi) course title;

(vii) number of credit hours awarded;

(viii) course certification number;

(ix) course certification expiration date;

(x) signature of the course sponsor; and

(xi) signature of the licensee.

(5) Certification procedures.

(a) Upon receipt of a complete application for certification of a continuing education course, the division shall, at its own discretion, determine whether a course qualifies for certification.

(b) Upon determining that a course qualifies for certification, the division shall determine whether the content satisfies core or elective requirements.

(c) Core topics include the following:

(i) state approved forms and contracts;

(ii) other industry used forms or contracts;

(iii) ethics;

(iv) agency;

(v) short sales or sales of bank-owned property;

(vi) environmental hazards;

(vii) property management;

(viii) prevention of real estate and mortgage fraud;

(ix) federal and state real estate laws;

(x) division administrative rules;

(xi) broker trust accounts; and

(xii) water law, rights and transfer.

(d) If a course regarding an industry used form or contract is approved by the division as a core course, the provider of the course shall:

(i) obtain authorization to use the form(s) or contract(s) taught in the course;

(ii) obtain permission for licensees to subsequently use the form(s) or contract(s) taught in the course; and

(iii) if applicable, arrange for the owner of each form or contract to make it available to licensees for a reasonable fee.

(e) Elective topics include the following:

(i) real estate financing, including mortgages and other financing techniques;

(ii) real estate investments;

(iii) real estate market measures and evaluation;

(iv) real estate appraising;

(v) market analysis;

(vi) measurement of homes or buildings;

(vii) accounting and taxation as applied to real property;

(viii) estate building and portfolio management for clients;

(ix) settlement statements;

(x) real estate mathematics;

(xi) real estate law;

(xii) contract law;

(xiii) agency and subagency;

(xiv) real estate securities and syndications;

(xv) regulation and management of timeshares, condominiums, and cooperatives;

(xvi) resort and recreational properties;

(xvii) farm and ranch properties;

(xviii) real property exchanging;

(xix) legislative issues that influence real estate practice;

(xx) real estate license law;

(xxi) division administrative rules;

(xxii) land development;

(xxiii) land use;

(xxiv) planning and zoning;

(xxv) construction;

(xxvi) energy conservation in buildings;

(xxvii) water rights;

(xxviii) landlord/tenant relationships;

(xxix) property disclosure forms;

(xxx) Americans with Disabilities Act;

(xxxi) fair housing;

(xxxii) affirmative marketing;

(xxxiii) commercial real estate;

(xxxiv) tenancy in common;

(xxxv) professional development;

(xxxvi) business success;

(xxxvii) customer relation skills;

(xxxviii) sales promotion, including:

(A) salesmanship;

(B) negotiation;

(C) sales psychology;

(D) marketing techniques related to real estate knowledge;

(E) servicing clients; and

(F) communication skills;

(xxxix) personal and property protection for licensees and their clients;

(xl) any topic that focuses on real estate concepts, principles, or industry practices or procedures, if the topic enhances licensee professional skills and thereby advances public protection and safety;

(xli) any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education; and

(xlii) technology courses that utilize the majority of the time instructing students how the technology:

(A) directly benefits the consumer; or

(B) enables the licensee to be more proficient in performing the licensee's agency responsibilities.

(f) Unacceptable topics include the following:

(i) offerings in mechanical office and business skills, including:

(A) typing;

(B) speed reading;

(C) memory improvement;

(D) language report writing;

(E) advertising; and

(F) technology courses with a principal focus on technology operation, software design, or software use;

(ii) physical well-being, including:

(A) personal motivation;
(B) stress management; and
(C) dress-for-success;
(iii) meetings held in conjunction with the general business of the licensee and the licensee's broker, employer, or trade organization, including:
(A) sales meetings;
(B) in-house staff meetings or training meetings; and
(C) member orientations for professional organizations;
(iv) courses in wealth creation or retirement planning for licensees; and
(v) courses that are specifically designed for exam preparation.
(g) If an application for certification of a continuing education course is denied by the division, the person making application may appeal to the commission.
(6)(a) A continuing education course certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.
(b) To renew a continuing education course certification, an applicant shall:
(i) complete a renewal application as provided by the division; and
(ii) pay a nonrefundable renewal fee.
(c) To reinstate an expired continuing education course certification within 30 days following the expiration date, a person shall:
(i) comply with all requirements for a timely renewal; and
(ii) pay a nonrefundable late fee.
(d) To reinstate an expired continuing education course certification after 30 days and within six months following the expiration date, a person shall:
(i) comply with all requirements for a timely renewal; and
(ii) pay a non-refundable reinstatement fee.
(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
(f) If a deadline specified in this Subsection (6) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206d. Certification of Prelicensing Course Instructor.

(1) An instructor shall certify with the division prior to teaching a prelicensing course.
(2) To certify, an applicant shall provide, within the 30-day period prior to the date on which the applicant proposes to begin instruction:
(a) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);
(b) evidence of having graduated from high school or achieved an equivalent education;
(c) evidence that the applicant understands the real estate industry through:
(i) a minimum of five years of full-time experience as a real estate licensee;
(ii) post-graduate education related to the course subject; or
(iii) demonstrated expertise on the subject proposed to be taught;
(d) evidence of ability to teach through:
(i) a minimum of 12 months of full-time teaching experience;
(ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or
(iii) attendance at a division instructor development workshop totaling at least two days in length;
(e) evidence of having passed an examination:
(i) designed to test the knowledge of the subject matter proposed to be taught;
(ii) with a score of 80% or more correct responses, and;
(iii) within the six-month period preceding the date of application;
(f) name and certification number of the certified prelicensing school for which the applicant will work;
(g) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;
(h) a signed statement agreeing not to market personal sales products;
(i) any other information the division requires;
(j) an application fee; and
(k) course-specific requirements as follows:
(i) sales agent prelicensing course: evidence of being a licensed sales agent or broker; and
(ii) broker prelicensing course: evidence of being a licensed associate broker, branch broker, or principal broker.
(3) An applicant may certify to teach a subcourse of the broker prelicensing course by meeting the following requirements:
(a) Brokerage Management. An applicant shall:
(i) hold a current real estate broker license;
(ii) possess at least two years practical experience as an active real estate principal broker; and
(iii)(A) have experience managing a real estate office; or
(B) hold a certified residential broker or equivalent professional designation in real estate brokerage management.
(b) Advanced Real Estate Law. An applicant shall:
(i) hold a current real estate broker license;
(ii) evidence current membership in the Utah State Bar; or
(iii)(A) have graduated from an American Bar Association accredited law school; and
(B) have at least two years real estate law experience.
(c) Advanced Appraisal. An applicant shall hold:
(i) a current real estate broker license, or
(ii) a current appraiser license or certification from the division.
(d) Advanced Finance. An applicant shall:
(i) evidence at least two years practical experience in real estate finance; and
(ii)(A) hold a current real estate broker license;
(B) evidence having been associated with a lending institution as a loan officer; or
(C) hold a degree in finance.
(e) Advanced Property Management. An applicant shall hold a current real estate license and:
(i) evidence at least two years full-time experience as a property manager; or
(ii) hold a certified property manager or equivalent professional designation.
(4) A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the division academic training or experience qualifying the faculty member to teach the course.
(5)(a) A prelicensing instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.
(b) To renew a prelicensing course instructor certification, an individual shall:
(i) submit all forms required by the division;
(ii) evidence having taught, within the two-year period prior to the date of application, a certified real estate course;
(iii) evidence having attended, within the two-year

period prior to the date of application, an instructor development workshop sponsored by the division; and

(iv) pay a nonrefundable renewal fee.

(c) To reinstate an expired prelicensing course instructor certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired prelicensing course instructor certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (5) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-206e. Certification of Continuing Education Course Instructor.

(1) An instructor shall certify with the division before teaching a continuing education course.

(2) To certify, an applicant shall, within the 30-day period prior to the date on which the applicant proposes to begin instruction, provide the following:

(a) name and contact information of the applicant;

(b) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);

(c) evidence of having graduated from high school or achieved an equivalent education;

(d) evidence that the applicant understands the subject matter to be taught through:

(i) a minimum of two years of full-time experience as a real estate licensee;

(ii) college-level education related to the course subject; or

(iii) demonstrated expertise on the subject proposed to be taught;

(e) evidence of ability to teach through:

(i) a minimum of 12 months of full-time teaching experience; or

(ii) part-time teaching experience equivalent to 12 months of full-time teaching experience;

(f) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

(g) a signed statement agreeing not to market personal sales products;

(h) any other information the division requires; and

(i) a nonrefundable application fee.

(3)(a) A continuing education course instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a continuing education course instructor certification, a person shall:

(i) submit all forms required by the division;

(ii)(A) evidence having taught, within the previous renewal period, a minimum of 12 continuing education credit hours; or

(B) submit written explanation outlining:

(I) the reason for not having taught a minimum of 12 continuing education credit hours; and

(II) documentation to the division that the applicant maintains satisfactory expertise in the subject area proposed to be taught; and

(iii) pay a nonrefundable renewal fee.

(c) To reinstate an expired continuing education instructor certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired continuing education instructor certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (3) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

R162-2f-207. Reporting a Change of Information.

(1) Individual notification requirements.

(a) An individual licensed as a sales agent, associate broker, or principal broker shall report the following to the division:

(i) change in licensee's name; and

(ii) change in licensee's business, home, e-mail, or mailing address.

(b) In addition to complying with this Subsection (1)(a):

(i) an individual licensed as a sales agent or associate broker shall report to the division a change in affiliation with a principal broker; and

(ii) an individual licensed as a principal broker shall report to the division:

(A) termination of a sales agent, associate broker, or branch broker, if the change is not reported pursuant to this Subsection (1)(b)(i);

(B) change in assignment of branch broker; and

(C) termination of the principal broker's affiliation with an entity.

(2) Entity notification requirements. A registered entity shall report the following to the division:

(a) change in entity's name;

(b) change in entity's affiliation with a principal broker;

(c) change in corporate structure;

(d) dissolution of corporation; and

(e) change of location where brokerage records are kept.

(3) Notification procedures.

(a) Name. To report a change in name, a person shall submit to the division a paper change form and:

(i) if the person is an individual, attach to it official documentation such as a:

(A) marriage certificate;

(B) divorce decree;

(C) court order; or

(D) driver license; and

(ii) if the person is an entity:

(A) obtain prior approval from the division of the new entity name; and

(B) attach to the change form proof that the new name as approved by the division pursuant to this Subsection (3)(a)(ii)(A) is registered with, and approved by, the Division of Corporations.

(b) Address. To report a change in address, a person shall enter the change into RELMS.

(c) Affiliation.

(i) To terminate an affiliation between an individual and

a principal broker, a person shall submit a change form through RELMS to inactivate or transfer the individual's license; and

(A)(I) obtain the electronic affirmation of the other party to the terminated affiliation; or

(II) comply with this Subsection (4); and

(B) if a sales agent, associate broker, or branch broker simultaneously establishes an affiliation with a new principal broker, obtain the electronic affirmation of the new principal broker on a change form.

(ii) To terminate an affiliation between a principal broker and an entity:

(A) the principal broker shall submit a paper change form to the division to inactivate or transfer the principal broker's license; and

(B) if the entity does not simultaneously affiliate with a new principal broker, the entity shall:

(I) cease operations;

(II) submit to the division a paper company/branch change form to inactivate the entity registration;

(III) submit change forms through RELMS to inactivate the license of any licensee affiliated with the entity;

(IV) advise the division as to the location where records will be stored;

(V) notify each listing and management client that the entity is no longer in business and that the client may enter into a new listing or management agreement with a different brokerage;

(VI) notify each party and cooperating broker to any existing contracts; and

(VII) retain money held in trust under the control of a signer on the trust account, or an administrator or executor, until all parties to each transaction agree in writing to the disposition or until a court of competent jurisdiction issues an order relative to the disposition.

(iii) Branch broker. To change an assignment of branch broker, a principal broker shall submit a paper change form to the division.

(d) Corporate structure.

(i) To report a change in corporate structure of a registered entity, the affiliated principal broker shall:

(A) if the change does not involve a new business license, or a new registration with the Utah Division of Corporations and Commercial Code, submit a letter to the division, fully explaining the change; and

(B) if the change involves a new business license or a new registration with the Utah Division of Corporations and Commercial Code for a purpose other than a company name change, obtain a new registration.

(ii) To report the dissolution of an entity registered with the division, a person shall comply with this Subsection (3)(c)(ii)(B).

(e) Brokerage records. To report a change in the location where brokerage records are kept, the principal broker of the registered entity shall submit to the division a letter on brokerage letterhead.

(4) Unavailability of individual. If an individual is unavailable to sign or electronically affirm a change form, the person responsible to report the change may do so by:

(a) sending a letter by certified mail to the last known address of the individual to notify that individual of the change; and

(b) as applicable:

(i) entering the certified mail reference number into the appropriate field on the electronic change form; or

(ii) providing to the division a copy of the certified mail receipt.

(5) Fees. The division may require a notification submitted pursuant to this subsection to be accompanied by a nonrefundable change fee.

(6) Deadlines.

(a) A change in affiliation shall be reported to the division before the change is made.

(b) A change in branch manager shall be reported to the division at the time the change is made.

(c) Any other change shall be reported to the division within ten business days of the change taking effect.

(d) As to a change that requires submission of a paper form or document, if the deadline specified in this Section R162-2f-207 falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(7) Effective date. A change reported in compliance with this Section R162-2f-207 becomes effective with the division the day on which the properly executed change form is received by the division.

R162-2f-307. Undivided Fractionalized Long-Term Estate.

(1) A real estate licensee who markets an undivided fractionalized long-term estate shall:

(a) obtain from the sponsor written disclosures pursuant to this Subsection (2) regarding the sponsor and each affiliate; and

(b) provide the disclosures to purchasers prior to closing so as to allow adequate review by the purchaser.

(2) Required disclosures.

(a) Disclosure as to the sponsor and the sponsor's affiliates, including the following:

(i) current certified financial statements;

(ii) current credit reports;

(iii) information concerning any bankruptcies or civil lawsuits;

(iv) proposed use of purchaser proceeds;

(v)(A) if applicable, financial statements of the master lease tenant, audited according to generally accepted accounting principles; and

(B) if the master lease tenant is an entity formed for the sole purpose of acting as the master lease tenant, audited financial statements of the owners of that entity;

(vi) statement as to whether the sponsor is an affiliate of a master lease tenant; and

(vii) statement as to whether any affiliate of the sponsor is:

(A) a third-party service provider; or

(B) a master lease tenant.

(b) Disclosure as to the real property in which the undivided fractionalized long-term estate is offered, including the following:

(i) material information concerning any leases or subleases affecting the real property;

(ii) material information concerning any environmental issues affecting the real property;

(iii) a preliminary title report on the real property;

(iv) if available, financial statements on any tenants for the life of the entity or the last five years, whichever is shorter;

(v) if applicable, rent rolls and operating history;

(vi) if applicable, loan documents;

(vii)(A) a tenants in common agreement; or

(B) any agreement that forms the substance of the undivided fractionalized long-term estate, including definition of the undivided fractionalized interest;

(viii) third party reports acquired by the sponsor;

(ix) a narrative appraisal report that:

(A) is effective no more than six months prior to the date the offer of sale is made; and

(B) includes, at a minimum:

(I) pictures;
(II) type of construction;
(III) age of building; and
(IV) site information such as improvements, parking, cross easements, site and location maps;
(x) material information concerning the market conditions for the property class; and
(xi) material information concerning the demographics of the general market area.
(c) Disclosure as to the asset managers and the property managers of the real property in which the undivided fractionalized long-term estate is offered, including the following:
(i) contact information for any existing or recommended asset managers and property managers;
(ii) description of any relationship between:
(A) the asset managers and the sponsor; and
(B) the property managers and the sponsor; and
(iii) copies of any existing:
(A) asset management agreements; and
(B) property management agreements.
(d) Disclosure as to potential tax consequences, including the following:
(i) a statement that there might be tax consequences for a failure to close on the purchase;
(ii) a statement that there might be risks involved in the purchase; and
(iii) a statement advising purchasers to consult with tax advisors and other professionals for advice concerning these matters.
(3) The division and commission shall consider any offering of a fractionalized undivided long-term estate in real property that complies with the Securities and Exchange Commission Regulation D, Rule 506, 17 C.F.R. Sec. 203.506 to be in compliance with these rules.

R162-2f-401a. Affirmative Duties Required of All Licensed Individuals.

An individual licensee shall:
(1) uphold the following fiduciary duties in the course of representing a principal:
(a) loyalty, which obligates the agent to place the best interests of the principal above all other interests, including the agent's own;
(b) obedience, which obligates the agent to obey all lawful instructions from the principal;
(c) full disclosure, which obligates the agent to inform the principal of any material fact the agent learns about:
(i) the other party; or
(ii) the transaction;
(d) confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:
(i) a defect in the property; or
(ii) the client's ability to perform on the contract;
(e) reasonable care and diligence;
(f) holding safe and accounting for all money or property entrusted to the agent; and
(g) any additional duties created by the agency agreement;
(2) for the purpose of defining the scope of the individual's agency, execute a written agency agreement between the individual and the individual's principal, including:
(a) seller(s) the individual represents;
(b) buyer(s) the individual represents;
(c) buyer(s) and seller(s) the individual represents as a limited agent in the same transaction pursuant to this Subsection (4);
(d) the owner of a property for which the individual will provide property management services; and
(e) a tenant whom the individual represents;
(3) in order to represent both principals in a transaction as a limited agent, obtain informed consent by:
(a) clearly explaining in writing to both parties:
(i) that each is entitled to be represented by a separate agent;
(ii) the type(s) of information that will be held confidential;
(iii) the type(s) of information that will be disclosed; and
(iv) the circumstances under which the withholding of information would constitute a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations;
(b) obtaining a written acknowledgment from each party affirming that the party waives the right to:
(i) undivided loyalty;
(ii) absolute confidentiality; and
(iii) full disclosure from the licensee; and
(c) obtaining a written acknowledgment from each party affirming that the party understands that the licensee will act in a neutral capacity to advance the interests of each party;
(4) when acting under a limited agency agreement:
(a) act as a neutral third party; and
(b) uphold the following fiduciary duties to both parties:
(i) obedience, which obligates the limited agent to obey all lawful instructions from the parties, consistent with the agent's duty of neutrality;
(ii) reasonable care and diligence;
(iii) holding safe all money or property entrusted to the limited agent; and
(iv) any additional duties created by the agency agreement;
(5) prior to executing a binding agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:
(a) the licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease, or rent real property;
(b) the fact that the licensee holds a license with the division, whether the license status is active or inactive, in any circumstance where the licensee is a principal in an agreement to buy, sell, lease, or rent real property;
(c) the licensee's agency relationship(s);
(d)(i) the existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and
(ii) the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance;
(6) in order to offer any property for sale or lease, make reasonable efforts to verify the accuracy and content of the information and data to be used in the marketing of the property;
(7) in order to offer a residential property for sale, disclose the source on which the licensee relies for any square footage data that will be used in the marketing of the property:
(a) in the written agreement, executed with the seller, through which the licensee acquires the right to offer the property for sale; and
(b) in a written disclosure provided to the buyer, at the licensee's direction, at or before the deadline for the seller's disclosure per the contract for sale;
(8) upon initial contact with another agent in a

transaction, disclose the agency relationship between the licensee and the client;

(9) when executing a binding agreement in a sales transaction, confirm the prior agency disclosure:

(a) in the currently approved Real Estate Purchase Contract; or

(b) in a separate provision with substantially similar language incorporated in or attached to the binding agreement;

(10) when executing a lease or rental agreement, confirm the prior agency disclosure by:

(a) incorporating it into the agreement; or

(b) attaching it as a separate document;

(11) when offering an inducement to a buyer who will not pay a real estate commission in a transaction:

(a) obtain authorization from the licensee's principal broker to offer the inducement;

(b) comply with all underwriting guidelines that apply to the loan for which the borrower has applied; and

(c) provide notice of the inducement, using any method or form, to:

(i) the principal broker of the seller's agent, if the seller paying a commission is represented; or

(ii) the seller, if the seller paying a commission is not represented;

(12) if the licensee desires to act as a sub-agent for the purpose of showing property owned by a seller who is under contract with another brokerage, prior to showing the seller's property:

(a) notify the listing brokerage that sub-agency is requested; and

(b) enter into a written agreement with the listing brokerage with which the seller has contracted:

(i) consenting to the sub-agency; and

(ii) defining the scope of the agency;

(c) obtain from the listing brokerage all available information about the property; and

(d) uphold the same fiduciary duties outlined in this Subsection (1);

(13) provide copies of a lease or purchase agreement, properly signed by all parties, to the party for whom the licensee acts as an agent;

(14)(a) in identifying the seller's brokerage in paragraph 5 of the approved Real Estate Purchase Contract, use:

(i) the principal broker's individual name; or

(ii) the principal broker's brokerage name; and

(b) personally fulfill the licensee's agency relationship with the client, notwithstanding the information used to complete paragraph 5;

(15) timely inform the licensee's principal broker or branch broker of real estate transactions in which:

(a) the licensee is involved as agent or principal;

(b) the licensee has received funds on behalf of the principal broker; or

(c) an offer has been written;

(16)(a) disclose in writing to all parties to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and

(b) ensure that any such compensation is paid to the licensee's principal broker;

(17)(a) in negotiating and closing a transaction involving a property for which a certificate of occupancy has been issued, use:

(i)(A) the standard forms approved by the commission and identified in Section R162-2f-401f;

(B) standard supplementary clauses approved by the commission; and

(C) as necessary, other standard forms including settlement statements, warranty deeds, and quit claim deeds;

(ii) forms prepared by an attorney for a party to the transaction, if:

(A) a party to the transaction requests the use of the attorney-drafted forms; and

(B) the licensee first verifies that the forms have in fact been drafted by the party's attorney; or

(iii) if no state-approved form exists to serve a specific need, any form prepared by an attorney, regardless of whether the attorney is employed for the purpose by:

(A) the principal; or

(B) an entity in the business of selling blank legal forms; and

(b) in presenting an offer on a property for which a certificate of occupancy has not been issued, use any form prepared by an attorney, regardless of whether the attorney is employed for the purpose by:

(i) the principal; or

(ii) an entity in the business of selling blank forms.

(18) use an approved addendum form to make a counteroffer or any other modification to a contract;

(19) in order to sign or initial a document on behalf of a principal:

(a) obtain prior written authorization in the form of a power of attorney duly executed by the principal;

(b) retain in the file for the transaction a copy of said power of attorney;

(c) attach said power of attorney to any document signed or initialed by the individual on behalf of the principal;

(d) sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact;" and

(e) initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name);"

(20) if employing an unlicensed individual to provide assistance in connection with real estate transactions, adhere to the provisions of Section R162-2f-401g;

(21) strictly adhere to advertising restrictions as outlined in Section R162-2f-401h;

(22) as to a guaranteed sales agreement, provide full disclosure regarding the guarantee by executing a written contract that contains:

(a) the conditions and other terms under which the property is guaranteed to be sold or purchased;

(b) the charges or other costs for the service or plan;

(c) the price for which the property will be sold or purchased; and

(d) the approximate net proceeds the seller may reasonably expect to receive;

(23) immediately deliver money received in a real estate transaction to the principal broker for deposit; and

(24) as contemplated by Subsection 61-2f-401(18), when notified by the division that information or documents are required for investigation purposes, respond with the required information or documents in full and within ten business days.

R162-2f-401b. Prohibited Conduct As Applicable to All Licensed Individuals.

An individual licensee may not:

(1) engage in any of the practices described in Section 61-2f-401 et seq., whether acting as agent or on the licensee's own account, in a manner that:

(a) fails to conform with accepted standards of the real estate sales, leasing, or management industries;

(b) could jeopardize the public health, safety, or welfare; or

(c) violates any provision of Title 61, Chapter 2f et seq. or the rules of this chapter;

(2) require parties to acknowledge receipt of a final copy of any document prepared by the licensee prior to all parties signing a contract evidencing agreement to the terms thereof;

(3) make a misrepresentation to the division:

(a) in an application for license renewal; or

(b) in an investigation.

(4)(a) propose, prepare, or cause to be prepared a document, agreement, settlement statement, or other device that the licensee knows or should know does not reflect the true terms of the transaction; or

(b) knowingly participate in a transaction in which such a false device is used;

(5) participate in a transaction in which a buyer enters into an agreement that:

(a) is not disclosed to the lender; and

(b) if disclosed, might have a material effect on the terms or the granting of the loan;

(6) use or propose the use of a double contract;

(7) place a sign on real property without the written consent of the property owner;

(8) take a net listing;

(9) sell listed properties other than through the listing broker;

(10) subject a principal to paying a double commission without the principal's informed consent;

(11) enter or attempt to enter into a concurrent agency representation when the licensee knows or should know that the principal has an existing agency representation agreement with another licensee;

(12) pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect, except that:

(a) a licensee may give a gift valued at $150 or less to an individual in appreciation for an unsolicited referral of a prospect that results in a real estate transaction; and

(b) as to a property management transaction, a licensee may compensate an unlicensed employee or current tenant up to $200 per lease for assistance in retaining an existing tenant or securing a new tenant;

(13) accept a referral fee from:

(a) a lender; or

(b) a mortgage broker;

(14) act as a real estate agent or broker in the same transaction in which the licensee also acts as a:

(a) mortgage loan originator, associate lending manager, or principal lending manager;

(b) appraiser or appraiser trainee;

(c) escrow agent; or

(d) provider of title services;

(15) act or attempt to act as a limited agent in any transaction in which:

(a) the licensee is a principal in the transaction; or

(b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction;

(16) make a counteroffer by striking out, whiting out, substituting new language, or otherwise altering:

(a) the boilerplate provisions of the Real Estate Purchase Contract; or

(b) language that has been inserted to complete the blanks of the Real Estate Purchase Contract;

(17) advertise or offer to sell or lease property without the written consent of:

(a) the owner of the property; and

(b) if the property is currently listed, the listing broker;

(18) advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor;

(19) represent on any form or contract that the individual is holding client funds without actually receiving funds and securing them pursuant to Subsection R162-2f-401a(23);

(20) when acting as a limited agent, disclose any information given to the agent by either principal that would likely weaken that party's bargaining position if it were known, unless the licensee has permission from the principal to disclose the information;

(21) disclose, or make any use of, a short sale demand letter outside of the purchase transaction for which it is issued;

(22) in a short sale, have the seller sign a document allowing the licensee to lien the property; or

(23) charge any fee that represents the difference between:

(a) the total concessions authorized by a seller and the actual amount of the buyer's closing costs; or

(b) in a short sale, the sale price approved by the lender and the total amount required to clear encumbrances on title and close the transaction.

R162-2f-401c. Additional Provisions Applicable to Principal Brokers.

(1) A principal broker shall:

(a) strictly comply with the record retention and maintenance requirements of Subsection R162-2f-401k;

(b) provide to the person whom the principal broker represents in a real estate transaction:

(i) a detailed statement showing the current status of a transaction upon the earlier of:

(A) the expiration of 30 days after an offer has been made and accepted; or

(B) a buyer or seller making a demand for such statement; and

(ii) an updated transaction status statement at 30-day intervals thereafter until the transaction either closes or fails;

(c)(i) regardless of who closes a real estate transaction, ensure that final settlement statements are reviewed for content and accuracy at or before the time of closing by:

(A) the principal broker;

(B) an associate broker or branch broker affiliated with the principal broker; or

(C) the sales agent who is:

(I) affiliated with the principal broker; and

(II) representing the principal in the transaction; and

(ii) ensure the principals in each closed real estate transaction receive copies of all documents executed in the transaction closing;

(d) in order to assign all or part of the principal broker's compensation to an associate broker or sales agent in accordance with Section 61-2f-305, provide written instructions to the title insurance agent that include the following:

(i) an identification of the property involved in the real estate transaction;

(ii) an identification of the principal broker and sales agent or associate broker who will receive compensation in accordance with the written instructions;

(iii) a designation of the amount of compensation that will be received by both the principal broker and the sales agent or associate broker;

(iv) a prohibition against alteration of the written instructions by anyone other than the principal broker; and

(v) additional instructions at the discretion of the principal broker;

(e) obtain written consent from both the buyer and the seller before retaining any portion of an earnest money deposit being held by the principal broker;

(f) exercise active supervision over the conduct of all

licensees and unlicensed staff employed by or affiliated with the principal broker, whether acting as:

(i) the principal broker for an entity; or

(ii) a branch broker;

(g) strictly adhere to the rules governing real estate auctions, as outlined in Section R162-2f-401i;

(h) strictly adhere to the rules governing property management, as outlined in Section R162-2f-401j;

(i)(i) except as provided in this Subsection (1)(i)(iii), within three business days of receiving a client's money in a real estate transaction, deposit the client's money into a trust account:

(A) maintained by the principal broker pursuant to Section R162-2f-403; or

(B) if the parties to the transaction agree in writing, maintained by:

(I) a title company pursuant to Section 31A-23a-406; or

(II) another authorized escrow entity; and

(ii) within three business days of receiving money from a client or a tenant in a property management transaction, deposit the money into a trust account maintained by the principal broker pursuant to Section R162-2f-403 or forward or deposit client or tenant money into an account maintained by the property owner;

(iii) a principal broker is not required to comply with this Subsection (1)(i)(i) or (ii) if:

(A) the contract or other written agreement states that the money is to be:

(I) held for a specific length of time; or

(II) as to a real estate transaction, deposited upon acceptance by the seller; or

(B) as to a real estate transaction, the Real Estate Purchase Contract or other written agreement states that a promissory note may be tendered in lieu of good funds and the promissory note:

(I) names the seller as payee; and

(II) is retained in the principal broker's file until closing;

(j)(i) maintain at the principal business location a complete record of all consideration received or escrowed for real estate and property management transactions; and

(ii) be personally responsible at all times for deposits held in the principal broker's trust account;

(k)(i)(A)(I) in a real estate transaction, assign a consecutive, sequential number to each offer; and

(II) assign a unique identification to each property management client; and

(B) include the transaction number or client identification, as applicable, on:

(I) trust account deposit records; and

(II) trust account checks or other equivalent records evidencing the transfer of trust funds;

(ii) maintain a separate transaction file for each offer in a real estate transaction, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;

(iii) maintain a record of each rejected offer in a real estate transaction that does not involve funds deposited to trust:

(A) in separate files; or

(B) in a single file holding all such offers; and

(l) if the principal broker assigns an affiliated associate broker or branch broker to assist the principal broker in accomplishing the affirmative duties outlined in this Subsection (1):

(i) actively supervise any such associate broker or branch broker; and

(ii) remain personally responsible and accountable for adequate supervision of all licensees and unlicensed staff affiliated with the principal broker.

(2) A principal broker shall not be deemed in violation of this Subsection (1)(f) where:

(a) an affiliated licensee or unlicensed staff member violates a provision of Title 61, Chapter 2f et seq. or the rules promulgated thereunder;

(b) the supervising broker had in place at the time of the violation specific written policies or instructions to prevent such a violation;

(c) reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures;

(d) upon learning of the violation, the broker attempted to prevent or mitigate the damage;

(e) the broker did not participate in the violation;

(f) the broker did not ratify the violation; and

(g) the broker did not attempt to avoid learning of the violation.

R162-2f-401d. School and Provider Conduct.

(1) Affirmative duties. A school's owner(s) and director(s) shall:

(a) within 15 days after the occurrence of any material change in the information provided to the division under Subsection R162-2f-206a(2)(a), give the division written notice of that change;

(b)(i) provide instructors of prelicensing courses with the state-approved course outline; and

(ii) ensure that any prelicensing course adheres to the topics mandated in the state-approved course outline;

(c) ensure that all instructors comply with Section R162-2f-401e.

(d) prior to accepting payment from a prospective student for a prelicensing education course:

(i) provide the criminal history disclosure statement described in Subsection R162-2f-206a(3)(d);

(ii) obtain the student's signature on the criminal history disclosure; and

(iii) have the enrollee verify that an education waiver has not been obtained from the division;

(e)(i) retain signed criminal history disclosures for a minimum of three years from the date of course completion; and

(ii) make the signed criminal history disclosures available for inspection by the division upon request;

(f) maintain for a minimum of three years after enrollment:

(i) the registration record of each student;

(ii) the attendance record of each student; and

(iii) any other prescribed information regarding the offering, including exam results, if any;

(g) ensure that course topics are taught only by:

(i) certified instructors; or

(ii) guest lecturers;

(h)(i) limit the use of approved guest lecturers to a total of 20% of the instructional hours per approved course; and

(ii) prior to using a guest lecturer to teach a portion of a course, document for the division the professional qualifications of the guest lecturer;

(i) furnish to the division an updated roster of the school's approved instructors and guest lecturers each time there is a change;

(j) within ten days of teaching a course, upload course completion information for any student who:

(i) successfully completes the course; and

(ii) provides an accurate name or license number within seven business days of attending the course;

(k) substantiate, upon request by the division, any claims made in advertising; and

(l) include in all advertising materials the continuing

education course certification number issued by the division.

(2) Prohibited conduct. A school may not:

(a) award continuing education credit for a course that has not been certified by the division prior to its being taught;

(b) award continuing education credit to any student who fails to:

(i) attend a minimum of 90% of the required class time; or

(ii) pass a prelicense course final examination;

(c) accept a student for a reduced number of hours without first having a written statement from the division defining the exact number of hours the student must complete;

(d) allow a student to challenge by examination any course or part of a course in lieu of attendance;

(e) allow a course approved for traditional education to be:

(i) taught in a private residence; or

(ii) completed through home study;

(f) make a misrepresentation in advertising about any course of instruction;

(g) disseminate advertisements or public notices that disparage the dignity and integrity of the real estate profession;

(h) make disparaging remarks about a competitor's services or methods of operation;

(i) attempt by any means to obtain or use the questions on the prelicensing examinations unless the questions have been dropped from the current exam bank;

(j) give valuable consideration to a real estate brokerage or licensee for referring students to the school;

(k) accept valuable consideration from a real estate brokerage or licensee for referring students to the brokerage;

(l) allow real estate brokerages to solicit for agents at the school during class time, including the student break time;

(m) obligate or require students to attend any event in which a brokerage solicits for agents;

(n) award more than eight credit hours per day per student;

(o) award credit for an online course to a student who fails to complete the course within one year of the registration date;

(p) advertise or market a continuing education course that has not been:

(i) approved by the division; and

(ii) issued a current continuing education course certification number; or

(q) advertise, market, or promote a continuing education course with language indicating that division certification is pending or otherwise forthcoming.

R162-2f-401e. Instructor Conduct.

(1) Affirmative duties. An instructor shall:

(a) adhere to the approved outline for any course taught;

(b) comply with a division request for information within ten business days of the date of the request; and

(c) maintain a professional demeanor in all interactions with students.

(2) Prohibited conduct. An instructor may not:

(a) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

(b) continue to teach any course after the course has expired and without renewing the course certification.

R162-2f-401f. Approved Forms.

The following standard forms are approved by the commission and the Office of the Attorney General for use by all licensees:

(1) August 27, 2008, Real Estate Purchase Contract;

(2) January 1, 1987, Uniform Real Estate Contract;

(3) October 1, 1983, All Inclusive Trust Deed;

(4) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;

(5) August 5, 2003, Addendum to Real Estate Purchase Contract;

(6) August 27, 2008, Seller Financing Addendum to Real Estate Purchase Contract;

(7) January 1, 1999, Buyer Financial Information Sheet;

(8) August 27, 2008, FHA/VA Loan Addendum to Real Estate Purchase Contract;

(9) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;

(10) January 1, 1999, Lead-based Paint Addendum to Real Estate Purchase Contract; and

(11) January 1, 1999, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards.

R162-2f-401g. Use of Personal Assistants.

In order to employ an unlicensed individual to provide assistance in connection with real estate transactions, an individual licensee shall:

(1) obtain the permission of the licensee's principal broker before employing the individual;

(2) supervise the assistant to ensure that the duties of an unlicensed assistant are limited to those that do not require a real estate license, including the following:

(a) performing clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact is initiated by the prospect and not by the unlicensed assistant;

(b) at an open house, distributing preprinted literature written by a licensee, where a licensee is present and the unlicensed person provides no additional information concerning the property or financing, and does not become involved in negotiating, offering, selling or completing contracts;

(c) acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion or completion of forms or documents;

(d) placing brokerage signs on listed properties;

(e) having keys made for listed properties; and

(f) securing public records from a county recorder's office, zoning office, sewer district, water district, or similar entity;

(3) compensate a personal assistant at a predetermined rate that is not:

(a) contingent upon the occurrence of real estate transactions; or

(b) determined through commission sharing or fee splitting; and

(4) prohibit the assistant from engaging in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in this Subsection (2)(a).

R162-2f-401h. Requirements and Restrictions in Advertising.

(1) Advertising shall include the name of the real estate brokerage or, as applicable, the property management brokerage as shown on division records except where:

(a) a licensee advertises unlisted property in which the licensee has an ownership interest; and

(b) the advertisement identifies the licensee as "owner-agent" or "owner-broker."

(2) An advertisement that includes the name of an

individual licensee shall also include the name of the licensee's brokerage in lettering that is at least one-half the size of the lettering identifying the individual licensee.

(3) An advertisement that includes a photograph of an individual who is not a licensee shall identify the individual's role in terms that make it clear that the individual is not licensed.

(4) An advertisement may not include artwork or text that states or implies that an individual has a position or status other than that of sales agent, associate broker, or principal broker affiliated with a brokerage.

(5) An advertising team, group, or other marketing entity that is not registered as a brokerage:

(a) shall, in all types of advertising, clearly:

(i) disclose that the team, group, or other marketing entity is not itself a brokerage; and

(ii) state the name of the registered brokerage with which the property being advertised is listed;

(b) shall, in any printed advertising material, clearly and conspicuously identify, in lettering that is at least one-half the size of the largest lettering used in the advertisement, the name of the registered brokerage with which the property being advertised is listed; and

(c) may not advertise as an "owner-agent" or "owner-broker."

(6)(a) A written advertisement of a guaranteed sales plan shall include, in print at least one-fourth as large as the largest print in the advertisement:

(i) a statement that costs and conditions may apply; and

(ii) information about how to contact the licensee offering the guarantee so as to obtain the disclosures required under Subsection R162-2f-401a(22).

(b) Any radio or television advertisement of a guaranteed sales plan shall include a conspicuous statement advising if any conditions and limitations apply.

R162-2f-401i. Standards for Real Estate Auctions.

A principal broker who contracts or in any manner affiliates with an auctioneer or auction company to sell at auction real property in this state shall:

(1) ensure that all aspects of the auction comply with the requirements of this section and all other laws otherwise applicable to real estate licensees in real estate transactions;

(2) ensure that advertising and promotional materials associated with an auction name the principal broker;

(3) attend and supervise the auction;

(4) ensure that any purchase agreement used at the auction:

(a) meets the requirements of Subsection R162-2f-401a(18); and

(b) is completed by an individual holding an active Utah real estate license;

(5) ensure that any money deposited at the auction is placed in trust pursuant to Subsection R162-2f-401c(1)(i); and

(6) ensure that adequate arrangements are made for the closing of any real estate transaction arising out of the auction.

R162-2f-401j. Standards for Property Management.

(1) Property management performed by a real estate brokerage, or by licensees or unlicensed assistants affiliated with the brokerage, shall be done under the name of the brokerage as registered with the division unless the principal broker holds a dual broker license and obtains a separate registration pursuant to Section R162-2f-205 for a separate business name.

(2) In addition to fulfilling all duties related to supervision per Section 61-2f-401(12), the principal broker of a registered entity, and the branch broker of a registered branch, shall implement training to ensure that each sales agent, associate broker, and unlicensed employee who is affiliated with the licensee has the knowledge and skills necessary to perform assigned property management tasks within the boundaries of these rules, including this Subsection R162-2f-401j(3).

(3) An unlicensed individual employed by a real estate or property management company may perform the following services under the supervision of the principal broker without holding an active real estate license:

(a) providing a prospective tenant with access to a rental unit;

(b) providing secretarial, bookkeeping, maintenance, or rent collection services;

(c) quoting rent and lease terms as established or approved by the principal broker;

(d) completing pre-printed lease or rental agreements, except as to terms that may be determined through negotiation of the principals;

(e) serving or receiving legal notices;

(f) addressing tenant or neighbor complaints; and

(g) inspecting units.

(4) Within 30 days of terminating a contract with a property owner for property management services, the principal broker shall return to the property owner or the property owner's designated agent all trust money that:

(a) is due to the property owner; or

(b) is being held for the benefit of the property owner or the owner's property.

R162-2f-401k. Recordkeeping Requirements.

A principal broker shall:

(1) maintain and safeguard the following records to the extent they relate to the business of a principal broker:

(a) all trust account records;

(b) any document submitted by a licensee affiliated with the principal broker to a lender or underwriter as part of a real estate transaction;

(c) any document signed by a seller or buyer with whom the principal broker or an affiliated licensee is required to have an agency agreement; and

(d) any document created or executed by a licensee over whom the principal broker has supervisory responsibility pursuant to Subsection R162-2f-401c(1)(f);

(2) maintain the records identified in Subsection R162-2f-401k(1):

(a)(i) physically:

(A) at the principal business location designated by the principal broker on division records; or

(B) where applicable, at a branch office as designated by the principal broker on division records; or

(ii) electronically, in a storage system that complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act; and

(b) for at least three calendar years following the year in which:

(i) an offer is rejected; or

(ii) the transaction either closes or fails;

(3) upon request of the division, make any record identified in Subsection R162-2f-401k(1) available for inspection and copying by the division;

(4) notify the division in writing within ten business days after terminating business operations as to where business records will be maintained; and

(5) upon filing for brokerage bankruptcy, notify the division in writing of:

(a) the filing; and

(b) the current location of brokerage records.

R162-2f-402. Investigations.

The investigative and enforcement activities of the division shall include the following:

(1) verifying information provided on new license applications and applications for license renewal;

(2) evaluation and investigation of complaints;

(3) auditing licensees' business records, including trust account records;

(4) meeting with complainants, respondents, witnesses and attorneys;

(5) making recommendations for dismissal or prosecution;

(6) preparation of cases for formal or informal hearings, restraining orders, or injunctions;

(7) working with the assistant attorney general and representatives of other state and federal agencies; and

(8) entering into proposed stipulations for presentation to the commission and the director.

R162-2f-403a. Trust Accounts - General Provisions.

(1) A principal broker shall:

(a)(i) if engaged in listing or selling real estate, maintain at least one real estate trust account in a bank or credit union located within the state of Utah; and

(ii) if engaged in property management, refer to Subsection R162-2f-403b(3);

(b) at the time a trust account is established, notify the division in writing of:

(i) the account number;

(ii) the address of the bank or credit union where the account is located; and

(iii) the type of activity for which the account is used.

(2) A trust account maintained by a principal broker shall be non-interest-bearing, unless:

(a) the parties to the transaction agree in writing to deposit the funds in an interest-bearing account;

(b) the parties to the transaction designate in writing the person to whom the interest will be paid upon completion or failure of the sale;

(c) the person designated under this Subsection (2)(b):

(i) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code; and

(ii) operates exclusively to provide grants to affordable housing programs in Utah; and

(d) the affordable housing program that is the recipient of the grant under this Subsection (2)(c)(ii) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code.

(3) A principal broker may not deposit into the principal broker's real estate trust account funds received in connection with rental of tourist accommodations where the rental period is less than 30 consecutive days.

(4) Records of deposits to a trust account shall include:

(a) transaction number or unique client identifier, as applicable pursuant to Subsection R162-2f-401c(1)(k);

(b) identification of payee and payor;

(c) amount of deposit;

(d) location of property subject to the transaction; and

(e) date and place of deposit.

(5) Any instrument by which funds are disbursed from a real estate or property management trust account shall include:

(a) the business name of the registered entity;

(b) the address of the registered entity;

(c) clear identification of the trust account from which the disbursement is made, including:

(i) account name; and

(ii) account number;

(iii) transaction number or unique client identification, as applicable, pursuant to Subsection R162-2f-401c(1)(k);

(iv) date of disbursement;

(v) clear identification of payee and payor;

(vi) amount disbursed;

(vii) notation identifying the purpose for disbursement; and

(viii) check number, wire transfer number, or equivalent bank or credit union instrument identification.

(6) Any instrument of conveyance that is voided shall be clearly marked with the term "void" and the original instrument retained pursuant to Subsection R162-2f-401k.

(7) If both parties to a contract make a written claim to money held in a principal broker's trust fund and the principal broker cannot determine from any signed agreement which party's claim is valid, the principal broker may:

(a) interplead the funds into court and thereafter disburse:

(i) upon written authorization of the party who will not receive the funds; or

(ii) pursuant to the order of a court of competent jurisdiction; or

(b) within 15 days of receiving written notice that both parties claim the funds, refer the parties to mediation if:

(i) no party has filed a civil suit arising out of the transaction; and

(ii) the parties have contractually agreed to submit disputes arising out of their contract to mediation.

(8) If a principal broker is unable to disburse trust funds within five years after the failure of a transaction, the principal broker shall remit the funds to the State Treasurer's Office as unclaimed property pursuant to Title 67, Chapter 4a et seq.

(9) Trust account reconciliation. For each real estate or property management trust account operated by a registered entity, the principal broker of the entity shall:

(a) maintain a date-sequential record of all deposits to and disbursements from the account, including or cross-referenced to the information specified in Subsection R162-2f-401c(1)(k);

(b) maintain a current, running total of the balance contained in the trust account;

(c)(i) maintain records sufficient to detail the final disposition of all funds associated with each transaction; and

(ii) ensure that each closed transaction balances to zero;

(d) reconcile the brokerage trust account records with the bank or credit union records at least monthly; and

(e) upon request, make all trust account records available to the division for auditing or investigation.

(10) The principal broker shall notify the division within 30 days if:

(a) the principal broker receives, from a bank or credit union in which the principal broker maintains a real estate or property management trust account, documentation to evidence that the trust account is out of balance; and

(b) the imbalance cannot be cured within the 30-day notification period.

R162-2f-403b. Real Estate Trust Accounts.

(1) A real estate trust account shall be used for the purpose of securing client funds:

(a) deposited with the principal broker in connection with a real estate transaction regulated under Title 61, Chapter 2f et seq.;

(b) if the principal broker is also a builder or developer, deposited under a Real Estate Purchase Contract, construction contract, or other agreement that provides for the construction of a dwelling; and

(c) collected in the performance of property

management duties, pursuant to this Subsection (3).

(2) A principal broker violates Subsection 61-2f-401(4)(B) if the principal broker deposits into the real estate trust account more than $500 of the principal broker's own funds.

(3)(a) A principal broker who regularly engages in property management on behalf of seven or more individual units shall establish at least one property management trust account that is:

(i) separate from the real estate trust account; and

(ii) operated in accordance with Subsection R162-2f-403c.

(b) A principal broker who collects rents or otherwise manages property for no more than six individual units at any given time may use the real estate trust account to secure funds received in connection with the principal broker's property management activities.

(4) Unless otherwise agreed pursuant to this Subsection (5)(b), a principal broker may not pay a commission from the real estate trust account without first:

(a) obtaining written authorization from the buyer and seller, through contract or otherwise;

(b) closing or otherwise terminating the transaction;

(c) delivering the settlement statement to the buyer and seller;

(d) ensuring that the buyer or seller whom the principal broker represents has been paid the amount due as determined by the settlement statement;

(e) making a record of each disbursement; and

(f) depositing funds withdrawn as the principal broker's commission into the principal broker's operating account prior to further disbursing the money.

(5) A principal broker may disburse funds from a real estate trust account only in accordance with:

(a) specific language in the Real Estate Purchase Contract authorizing disbursement;

(b) other proper written authorization of the parties having an interest in the funds; or

(c) court order.

(6) A principal broker may not release for construction purposes those funds held as deposit money under an agreement that provides for the construction of a dwelling unless the purchaser authorizes such disbursement in writing.

(7) A principal broker may not release earnest money or other trust funds associated with a failed transaction unless:

(a) a condition in the Real Estate Purchase Contract authorizing disbursement has occurred; or

(b) the parties execute a separate signed agreement containing instructions and authorization for disbursement.

R162-2f-403c. Property Management Trust Accounts.

(1) As of January 1, 2014, a trust account that is used exclusively for property management purposes shall be used to secure the following:

(a) tenant security deposits;

(b) rents; and

(c) money tendered by a property owner as a reserve fund or for payment of unexpected expenses.

(2) A principal broker violates Subsection 61-2f-401(4)(B) if the principal broker deposits into a property management trust account any funds belonging to the principal broker without:

(a) maintaining records to clearly identify the total amount belonging to the principal broker; or

(b) performing a monthly line-item reconciliation of all deposits and withdrawals of funds belonging to the principal broker.

(3) A principal broker may disburse funds from a property management trust account only in accordance with:

(a) specific language in the property management contract or tenant lease agreement, as applicable, authorizing disbursement;

(b) other proper written authorization of the parties having an interest in the funds; or

(c) court order.

(4) A principal broker who transfers funds from a property management trust account for any purpose shall maintain records to clearly evidence that:

(a) prior to making the transfer, the principal broker verified the money as belonging to the property owner for whose benefit, or on whose instruction, the funds are transferred;

(b) any money transferred into an operating account as the principal broker's property management fee is earned according to the terms of the principal broker's contract with the property owner;

(c) any transfer for maintenance, repair, or similar purpose is:

(i) authorized according to the terms of the applicable property management contract, tenant lease agreement, or other instruction of the property owner; and

(ii) used strictly for the purpose for which the transfer is authorized, with any excess returned to the trust account.

R162-2f-407. Administrative Proceedings.

(1) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.

(2) Informal adjudicative proceedings.

(a) An adjudicative proceeding as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as an informal adjudicative proceeding.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Licensing and Practices Act or by these rules.

(3) Hearings required. A hearing before the commission shall be held in a proceeding:

(a) commenced by the division for disciplinary action pursuant to Section 61-2f-401 and Subsection 63G-4-201(2); and

(b) to adjudicate an appeal from an automatic revocation under Subsection 61-2f-204(1)(e), if the appellant requests a hearing.

(4) Procedures for hearings in informal adjudicative proceedings.

(a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to a member of the commission or an administrative law judge.

(b) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Rule R151-4 et seq.; and

(iii) the rules promulgated by the division.

(c) Except as provided in this Subsection (5)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(d) In any proceeding under this Subsection 407, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(e) Upon the scheduling of a hearing by the division and

at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing:

(i) to the respondent at the address last provided to the division pursuant to Section 61-2f-207; and

(ii) if the respondent is an actively licensed sales agent or associate broker, to the principal broker with whom the respondent is affiliated.

(f) Formal discovery is prohibited.

(g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:

(i) on its own behalf; or

(ii) on behalf of a party where the party:

(A) makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.

(h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.

(j) The division may decline to provide a party with information that it has previously provided to that party.

(k) Intervention is prohibited.

(l) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(m) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.

(5) Additional procedures for disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.

(c) Witness and exhibit lists.

(i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of hearing.

(ii) The respondent shall provide its witness and exhibit lists to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.

(iii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from the witness.

(iv) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

R162-2f-501. Appendices.

TABLE 1
APPENDIX 1 - REAL ESTATE TRANSACTIONS EXPERIENCE TABLE

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:		
(a)	One unit dwelling	2.5 points
(b)	Two- to four-unit dwellings	5 points
(c)	Apartments, 5 units or over	10 points
(d)	Improved lot	2 points
(e)	Vacant land/subdivision	10 points
COMMERCIAL		
(f)	Hotel or motel	10 points
(g)	Industrial or warehouse	10 points
(h)	Office building	10 points
(i)	Retail building	10 points
(j)	Leasing of commercial space	5 points

TABLE 2
APPENDIX 2 - PROPERTY MANAGEMENT EXPERIENCE TABLE

RESIDENTIAL		
(a)	Each unit managed	0.25 pt/month
COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building		
(b)	Each contract OR each separate property address or location for which licensee has direct responsibility	1 pt/month

TABLE 3
APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

KEY: real estate business, operational requirements, trust account records, notification requirements
January 21, 2015

61-2f-103(1)
61-2f-105
61-2f-203(1)(e)
61-2f-206(3)
61-2f-206(4)(a)
61-2f-306
61-2f-307

R251. Corrections, Administration.
R251-303. Offenders' Use of Telephones.
R251-303-1. Authority and Purpose.

(1) This rule is authorized by Sections 63G-3-201 and 64-13-10, of the Utah Code, which allows the Department to adopt standards and rules in accordance with its responsibilities.

(2) The purpose of this rule is to provide the Department's policy and procedures governing offenders' access to and use of telephones.

R251-303-2. Definitions.

(1) "Center" means community correctional centers; halfway houses.

(2) "Offender" means any person under the jurisdiction of the Department; including inmates, parolees, probationers, and persons in halfway houses or other non-secure facilities.

R251-303-3. Standards and Procedures.

It is the policy of the Department that in order to ensure Center telephones are used for authorized purposes, staff may listen to the offender's conversation, except calls made to legal counsel.

KEY: corrections, halfway houses
1991 **64-13-10**
Notice of Continuation January 8, 2015

R277. Education, Administration.
R277-111. Sharing of Curriculum Materials by Public School Educators.
R277-111-1. Definitions.

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

B. "Creative Commons License" means copyright licenses that grant certain rights such as the right to distribute the copyrighted work without changes, at no charge. Works licensed under a Creative Commons License is protected by copyright applicable law. Creative Commons Licenses are non-exclusive and non-revocable.

C. "District/LEA materials" means materials purchased or developed by a school district/charter school using district funds or resources, including materials, resources or activities which the district requested employees to create, develop or compile during the employees' contract time.

D. "Material(s)" means all copyrightable works, including writings, lectures, musical or dramatic compositions, sound recordings, films, videotapes and other pictorial or technological reproductions, computer programs, listings, charts, manuals, codes, instructions and software.

E. "Non-commercial use" means use or exchange without payment or compensation of any kind.

F. "Personally developed materials" means materials developed by an educator. These materials may be developed on the educator's contract time using school resources, on the educator's personal time using personal resources, as an individual employment assignment, or in conjunction with other colleagues.

G. "Teacher curriculum materials" means lesson plans, educator research materials, activities, teaching strategies or other printed or electronic materials developed by the public educator.

R277-111-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of Public Education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and by Section 53A-1-402(1)(e) which directs the Board to encourage school productivity and cost effectiveness measures.

B. The purpose of this rule is to provide information and assurance to public school educators about sharing materials created or developed by educators primarily for use in their own classes or assignments. The intent of this rule is to allow or encourage educators to use valuable time and resources to improve instruction and instructional practices with assistance from appropriate materials developed by other educators.

R277-111-3. Educators Sharing Materials.

A. Utah educators may share materials for noncommercial use that educators have developed primarily for use in their own classes, courses or assignments.

B. Utah educators may only share materials that they developed personally and may not unilaterally share materials that were purchased or developed by or on behalf of their public employer or the State.

C. Utah educators may only share materials that are consistent with R277-515 Utah Educator Professional Standards. For example, educators may not share materials that advocate illegal activities or that are inconsistent with their legal and role model responsibilities as public employees and licensed educators.

D. Utah educators may share materials under a Creative Commons License and shall be personally responsible for understanding and satisfying the requirements of a Creative Commons License.

E. The presumption of this rule is that materials may be shared. The presumption is that Utah educators need not seek permission from their employers to share personally-developed materials. However public school employers may provide notice to employees that materials developed with public school funds or during public school employment must be reviewed by the employer prior to sharing or distribution.

F. Public educators may not sell teacher curriculum materials developed in whole or in part with public education funds or developed within the employee's scope of employment to Utah educators.

R277-111-4. School District/Charter School Rights.

A. Utah school districts or charter schools may develop and make available a policy that directs employees to seek review and approval before employees share materials that were developed on contract time, developed partially or jointly with school district/charter school funding, as part of a district/charter school assignment or if materials reference or imply school district/charter school use or endorsement.

B. Utah school districts/charter schools may prohibit their employees from sharing materials that were purchased with school district funds or which are licensed specifically for school district/charter school use.

KEY: curriculum materials, sharing

January 8, 2010	**Art X Sec 3**
Notice of Continuation January 15, 2015	**53A-1-401(3)**
	53A-1-402(1)(e)

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

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

B. "Chief Privacy Officer" means a USOE employee designated by the Board as primarily responsible to oversee and direct the DGPB to carry out the responsibilities of this rule, direct the development of materials and training about student and public education employee privacy and security standards, including FERPA, for the USOE and LEAs.

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

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

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history; and

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

E. "Data Governance/Policy Board (DGPB)" means a board composed of USOE and LEA employees, as directed by the Board, whose purpose is to resolve public education data and process issues, make policy decisions, review all research requests for public education data, and fill only those requests that are appropriate and comply with the standards in this rule.

F. "Data security protections" means protections developed and initiated by the Chief Privacy Officer and the DGPB that protect, monitor and secure student, public educator and public education employee data as outlined and identified in FERPA and Sections 63G-2-302 through 63G-2-305.

G. "Disciplinary action" means any lesser action taken by UPPAC which does not materially affect a licensed educator's license and licensing action taken by the Board for suspension or revocation.

H. "FERPA" means the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, a federal law designed to protect the privacy of students' education records. The law is hereby incorporated by reference.

I. "LEA" means local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

J. "Personally identifiable student information" means the student's name; a personal identifier, such as the student's social security number or student number; other indirect identifiers such as the student's date of birth or place of birth; other information that, alone or in combination, is linked or linkable to a specific student and enables a person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonably knows is entitled to the requested information.

K. "Student information" means materials, information, records and knowledge that an LEA possesses or maintains, or both, about individual students. Student information is broader than student records and personally identifiable student information may include information or knowledge that school employees possess or learn in the course of their duties.

L. "Student performance data" means data relating to student performance, including data on state, local and national assessments, course-taking and completion, grade-point average, remediation, retention, degree, diploma, or credential attainment, enrollment, and demographic data.

M. "USOE" means the Utah State Office of Education.

R277-487-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities; by Section 53A-13-301(3) regarding confidentiality and required or appropriate disclosure of personally identifiable student information; by Section 53A-1-607(2) regarding disclosure of student performance data to LEAs for assessment and accountability purposes; by Section 53A-8a-410(4) to ensure the privacy and protection of individual educator evaluation data; by Section 53A-3-602.5 regarding a school performance report requiring criterion-referenced or online computer adaptive tests to be aggregated for all students by class; by Section 53A-1-411 which directs the Board to establish procedures for administering or making available online surveys to obtain information about public education issues; and by Section 53A-6-104 which authorizes the Board to issue licenses to educators and maintain licensing information.

B. The purpose of this rule is to:

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

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

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

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

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

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

A. Board Responsibilities:

(1) The Board shall develop resource materials for LEAs to train employees, aids, and volunteers of an LEA regarding confidentiality of personally identifiable student information and student performance data, as defined in FERPA.

(2) The Board shall make the materials available to each LEA.

B. LEA Responsibilities:

(1) LEAs shall establish policies and provide appropriate training for employees regarding the confidentiality of student performance data and personally identifiable student information, including an overview of all federal, state, and local laws that pertain to the privacy of students, their parents, and their families. The policy should address the specific needs or priorities of the LEA.

(2) LEAs shall require password protection for all student performance data and personally identifiable student information maintained electronically.

C. Public Education Employee and Volunteer Responsibilities:

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

(2) All public education employees, aids, and volunteers shall maintain appropriate confidentiality pursuant to federal, state, and local laws with regard to student performance data and personally identifiable student information.

(3) An employee, aid, or volunteer shall maintain student performance data and personally identifiable student information in a secure and appropriate place as designated by LEA policies.

(4) An employee, aid, or volunteer accessing student performance data and personally identifiable student information in electronic format shall comply with LEA policies regarding the procedures for maintaining confidentiality of electronic records.

(5) An employee, aid, or volunteer shall not share, disclose, or disseminate passwords for electronic maintenance of student performance data and personally identifiable student information.

(6) All public education employees, aids and volunteers have a responsibility to protect confidential student performance data and personally identifiable student information and access records only as necessary for their assignment(s).

(7) Public education employees licensed under Section 53A-6-104 shall access and use student information and records consistent with R277-515, Utah Educator Standards. Violations may result in licensing discipline.

R277-487-4. Transparency.

A. The Chief Privacy Officer working with the DGPB shall recommend USOE policies for Board approval and model policies for LEAs regarding the state's student data systems.

B. The Rules/policies shall address:

(1) accessibility to parents, students and the public of the student data defined in R277-487-1;

(2) authorized purposes, uses and disclosures of data maintained by the state and LEAs;

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

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

(5) contact information for parents and students to request student and public school information from LEAs consistent with the law.

R277-487-5. Additional Responsibilities of Chief Privacy Officer and DGPB.

A. The Chief Privacy Officer may pursue legislation as approved by the Board for additional data security protections and the regulation of use of the data.

B. The Chief Privacy Officer shall supervise regular privacy and security compliance audits, following initiation by the Board.

C. The Chief Privacy Officer and the DGPB shall have responsibility for identification of threats to data security protections.

D. The Chief Privacy Officer and the DGPB shall develop and recommend policies for USOE and model policies for LEAs for consistent wiping or destruction of devices when devices are discarded by public education entities.

E. The Chief Privacy Officer and the DGPB shall develop USOE and model LEA policies for the training of staff for appropriate responses to suspected or known breaches of data security protections.

R277-487-6. Prohibition of Public Education Data Use for Marketing.

Data maintained by the state, school districts, schools, and other public education agencies or institutions in the state, including data provided by contractors, shall not be sold or used for marketing purposes (except with regard to authorized uses or directory information not obtained through a contract with an educational agency or institution).

R277-487-7. Public Education Research Data.

A. The USOE may provide limited or extensive data sets for research and analysis purposes to qualified researchers or organizations.

(1) A reasonable method shall be used to qualify researchers or organizations to receive data, such as evidence that a research proposal has been approved by a federally recognized Institutional Review Board (IRB).

(2) Aggregate deidentified student assessment data are available through the USOE website. Personally identifiable student information is protected.

(3) The USOE is not obligated to fill every request for data and has procedures to determine which requests will be filled or to assign priorities to multiple requests. The USOE/Board understands that it will respond in a timely manner to all requests submitted under Section 63G-2-101 et seq., Government Records Access and Management Act. In filling data requests, higher priority may be given to requests that will help improve instruction in Utah's public schools.

(4) A fee may be charged to prepare data or to deliver data, particularly if the preparation requires original work. The USOE shall comply with Section 63G-2-203 in assessing fees.

(5) The researcher or organization shall provide a copy of the report or publication produced using USOE data to the USOE at least 10 business days prior to the public release.

B. Student data and information: Requests for data that disclose student information shall be provided in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; such responses may include:

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

(2) agreements with recipients of student data where recipients agree not to report or publish data in a manner that discloses students' identities. For example, reporting test scores for a race subgroup that has a count, also known as n-size, of less than 10 could enable someone to identify the actual students and shall not be published;

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

C. Licensed educator information:

(1) The USOE shall provide information about licensed educators maintained in the CACTUS database that is required under Section 63G-2-301(2).

(2) Additional information/data may be released by the USOE consistent with the purposes of CACTUS, the confidentiality protections accepted by requester(s), and the benefit that the research may provide for public education in Utah, as determined by the USOE.

D. Recipients of USOE research data shall sign a USOE-designated confidentiality agreement, if required by the USOE.

E. The Board or the USOE may commission research or may approve research requests.

R277-487-8. Public Education Survey Data.

A. The Chief Privacy Officer, working with the DGPB, shall approve statewide education surveys administered with public funds through the USOE or through a contract issued by the USOE, as required under Section 53A-1-411.

B. Data obtained from Board statewide surveys administered with public funds are the property of the Board.

C. Data obtained from Board statewide surveys administered with public funds shall be made available as follows:

(1) Survey data made available by the Board shall protect the privacy of students in accordance with FERPA.

(2) Survey data about educators shall be available in a manner that protects the privacy of individual educators consistent with State law.

R277-487-9. Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS) Data, Confidentiality, and Appropriate Disclosure.

A. CACTUS maintains public, protected and private information on licensed Utah educators. Private or protected information includes such items as home address, date of birth, social security number, and any disciplinary action taken against an individual's license.

B. A CACTUS file shall be opened on a licensed Utah educator when:

(1) the individual initiates a USOE background check, or

(2) the USOE receives a paraprofessional license application from an LEA.

C. The data in CACTUS may only be changed as follows:

(1) Authorized USOE staff or authorized LEA staff may change demographic data.

(2) Authorized USOE staff may update licensing data such as endorsements, degrees, license areas of concentration and licensed work experience.

(3) Authorized employing LEA staff may update data on educator assignments for the current school year only.

D. A licensed individual may view his own personal data. An individual may not change or add data except under the following circumstances:

(1) A licensed individual may change his demographic data when renewing his license.

(2) A licensed individual shall contact his employing LEA for the purpose of correcting demographic or current educator assignment data.

(3) A licensed individual may petition the USOE for the purpose of correcting any errors in his CACTUS file.

E. Individuals currently employed by public or private schools under letters of authorization or as interns are included in CACTUS.

F. Individuals working in LEAs as student teachers are included in CACTUS.

G. Designated individuals have access to CACTUS data:

(1) Training shall be provided to designated individuals prior to granting access.

(2) Authorized USOE staff may view or change CACTUS files on a limited basis with specific authorization.

(3) For employment or assignment purposes only, authorized LEA staff members may access data on individuals employed by their own LEA or data on licensed individuals who do not have a current assignment in CACTUS.

(4) Authorized LEA staff may also view specific limited information on job applicants if the applicant has provided the LEA with a CACTUS identification number.

(5) CACTUS information belongs solely to the USOE. The USOE shall make the final determination of information included in or deleted from CACTUS.

(6) CACTUS data consistent with Section 63G-2-301(1) under the Government Records Access and Management Act are public information and shall be released by the USOE.

R277-487-10. Educator Evaluation Data.

A. The Board shall provide classroom-level assessment data to administrators and teachers. School administrators shall share information requested by parents while ensuring the privacy of individual student information and educator evaluation data.

B. Individual educator evaluation data shall be protected at the school, LEA and state levels and, if applicable, at the USOE.

C. LEAs shall designate employees who may have access to educator evaluation records.

D. LEAs may not release or disclose student assessment information that reveals educator evaluation information or records.

E. LEAs shall train employees in the confidential nature of employee evaluations and the importance of securing evaluations and records.

R277-487-11. Training and Technical Assistance.

A. The Chief Privacy Officer and DGPB shall develop training for the Board, the USOE and LEAs.

B. The Chief Privacy Officer and DGPB shall develop model policies, as resources permit.

R277-487-12. Application to Third Party Vendors and Contractors.

A. The USOE and LEAs shall have policies that expressly limit access to personally identifiable student data to third party vendors and contractors.

B. Personally identifiable student information may only be released consistent with the provisions of 34 CFR Part 99.31(a).

C. De-identified student data and information may only be released consistent with 34 CFR Part 99.31(b).

D. CACTUS or public education employee information may only be released consistent with state law, with express permission of the licensed individual or employee or with the purposes for which the information was entered into CACTUS or a similar employee database.

E. Sanctions for violations of authorized use and release of student and employee data:

(1) All USOE contracts shall include sanctions for contractors or third part vendors who violate provisions of state policies regarding unauthorized use and release of student and employee data.

(2) The USOE shall recommend that LEA policies include sanctions for contractors or third part vendors who violate provisions of LEA policies regarding unauthorized use and release of student and employee data.

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

A. The Chief Privacy Officer shall work with the DGPB, the USOE, and the Board to prepare an annual report about student data.

B. The public report shall include:

(1) information about the implementation of this rule;

(2) information about research studies begun or planned using student information and data;

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

(4) a summary of data system audits; and

(5) recommendations for further improvements specific to student data security and the systems that are necessary for accountability in:

(1) Board rules;

(2) legislation; or
(3) both Board rules and legislation, if appropriate.

KEY: students, records, confidentiality

January 7, 2015	**Art X Sec 3**
Notice of Continuation November 14, 2014	**53A-13-301(3)**
	53A-1-401(3)
	53A-1-411

R280. Education, Rehabilitation.
R280-203. Certification Requirements for Interpreters/Transliterators for the Hearing Impaired.
R280-203-1. Definitions.

A. "Advisory board" means the Interpreters Certification Board created to assist the Board created by and with the responsibilities of 53A-26a-201 and 202.

B. "American Sign Language (ASL), cued speech, and oral interpreting" are types of alternative communications for purposes of this rule.

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

D. "Certified interpreter/transliterator" means an individual who provides interpreter/transliterator services and is certified or qualified as required by state or federal law.

E. "Hearing impaired or deaf" means a hearing loss which:

(1) necessitates the visual acquisition of the language; or

(2) adversely affects the acquisition of language and communication but which does not preclude the auditory acquisition of language.

F. "Interpreter/transliterator services" means services that facilitate effective communication between a hearing person and a person who is hearing impaired or deaf, such as student to teacher, student to staff and student to peer, through ASL or a language system or code that is modeled after ASL, in whole or in part, or is in any way derived from ASL; or cued speech.

G. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

H. "Policies and Procedures Governing Certification of Interpreters and Transliterators Manual, 2009 (Manual)," hereby incorporated by reference under 63G-3-201(7), means the manual that provides procedures for the certification examination process, renewal of certification, length of certification, levels of certification, examination, scoring, temporary permits, and the disciplinary process for interpreters/transliterators in the event of misconduct.

I. "USOR" means the Utah State Office of Rehabilitation.

R280-203-2. Authority and Purpose.

A. This rule is authorized by 53A-24-103 which places the USOR under the policy direction of the Board. The Board is authorized under 53A-1-401(3) to adopt rules and policies in accordance with its responsibilities.

B. The purpose of this rule is to satisfy the directives of 53A-26a-202(2) including:

(1) certification qualifications provided in the Manual;

(2) procedures governing applications for certification;

(3) provisions for a fair and impartial method of examination of applicants; and

(4) procedures for determining unprofessional conduct by interpreters/transliterators.

R280-203-3. Certification Qualifications and Report to the USOE.

A. Candidates for certification shall be at least 18 years old.

B. Candidates shall pass written and performance evaluations provided by the Division of Services to the Deaf.

C. Candidates shall meet the criteria of 53A-26a-302.

D. All individuals who provide interpreter/transliterator services to an LEA shall complete a background check, prior to working in an LEA with students, through their employer or an LEA that contracts for the contractor's services.

E. An LEA shall identify and report to the USOE individuals, including contractors, who provide interpreter/transliterator services to students for the LEA, annually upon request.

F. An LEA shall identify and report to the USOE students who receive interpreter/transliterator services together with the provider of services, annually upon request.

R280-203-4. Examination of Applicants for Certification.

The Division of Services for the Deaf and Hard of Hearing Interpreters Certification Panel shall test and rate candidates applying for interpreter/transliterator certification consistent with the Manual.

R280-203-5. Temporary Exemptions from Certification.

A. Individuals may engage in the practice of a certified interpreter/transliterator in the public schools without being certified subject to the following circumstances and limitations:

(1) a candidate is engaged in providing interpreters/transliterator services while in training in a recognized school approved by the Board to the extent the candidate's activities are supervised by qualified staff, or designee, the services are a defined part of the training program, and the training program has a record that the candidate has had a successful fingerprint background check within one year prior to the date of the interpreting/transliterating services being provided.

(2) a candidate is engaged in an internship, residency, apprenticeship, or an on-the-job training program approved by the Board while under the supervision of qualified persons, and who have record of a successful fingerprint background check, consistent with Section 53A-3-410(2) and R277-516.

(3) a candidate meets the criteria consistent with Sections 53A-26a-305(1)(d) through 53A-26a-305(f).

B. Violation of any limitation identified in R280-203-5 is grounds for rescission of exemption, denial of certification, or other discipline as determined by the Board.

R280-203-6. Unprofessional Conduct.

A. The Manual supplements the definition of unprofessional conduct provided in 53A-26a-502.

B. The Board designates the procedure in R280-203-6 as an informal adjudicative proceeding, under Section 63G-4-203.

C. A complaint alleging unprofessional conduct by a certified interpreter/transliterator may be filed consistent with the procedure in the Manual.

D. A member of the advisory board shall assist the Board in reviewing the recommendation of the Commission, as provided in 53A-26a-202(3) and upon request by the Board.

E. The Board shall make the final disciplinary decision consistent with the Manual.

R280-203-7. Renewal and Reinstatement.

A. An individual holding an interpreter/transliterator certificate is eligible to have that certificate renewed as provided in the Manual.

B. An individual whose interpreter/transliterator certificate has been suspended or revoked for unlawful or unprofessional conduct may apply for reinstatement to the Board. The Board may require the applicant for reinstatement to complete the procedure for certification or may, upon consultation with the advisory board, designate the areas of the application process in which the applicant shall be reviewed.

KEY: certification, interpreters/transliterators
January 2, 2015 53A-24-103

Notice of Continuation September 9, 2014	53A-1-401(3) 53A-26a-201 53A-26a-202

R362. Governor, Energy Development (Office of).
R362-3. Energy Efficiency Fund.
R362-3-1. Purpose.

(1) This rule is for the purposes of

(a) Implementing the responsibilities assigned to the Utah Governor's Energy Advisor (Advisor), and the Utah Office of Energy Development (Office) in managing the Energy Efficiency Fund as defined in Utah Code Section 11-45-102, and implementing the associated loan program established in Utah Code Section 11-45-201; and

(b) Establishing requirements for eligibility for loans from the Energy Efficiency Fund, procedures for accepting, evaluating, and prioritizing applications for loans, and the terms and conditions for loans.

R362-3-2. Authority.

(1) Pursuant to Utah Code Section 11-45-204, the Advisor shall make rules establishing criteria, procedures, priorities, and conditions for the award of loans from the Energy Efficiency Fund.

R362-3-3. Definitions.

(1) "Advisor" means the Governor's Energy Advisor, who oversees the Utah Office of Energy Development.

(2) "Energy" means, for the purposes of this rule, electricity, natural gas or other methane, fuel oil, coal, or propane that is used by a political subdivision to operate a building's electrical devices, lighting, heating and cooling systems, and other equipment necessary for the building's operation.

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

(4) "Energy cost savings" means the monetary value to a political subdivision of the energy that is saved or is not consumed as a result of an energy efficiency project and is generally stated on an annual cost savings basis. This value is measured based upon the current cost per unit of the energy source or sources used by the building at which an energy efficiency project is to take place.

(5) "Energy savings" means the combined value, in British thermal units (Btu's), of all energy sources saved or not consumed as a result of an energy efficiency project. For purposes of this rule, the following conversion factors are used in calculating the total energy savings:

(a) Electricity - One kilowatt hour = 10,495 Btu's.

(b) Natural gas or methane - One therm = 100,000 Btu's.

(c) Natural gas or methane - One cubic foot = 1,030 Btu's.

(d) Fuel oil - One gallon = 138,690 Btu's.

(e) Coal - One pound = 11,580 Btu's.

(f) Propane - One gallon = 91,333 Btu's.

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

(7) "Director" means Director of the Utah Office of Energy Development.

(8) "Associate Director" means Associate Director of the Utah Office of Energy Development.

R362-3-4. Eligibility of Projects for Loans.

(1) Eligibility for loans from the Fund is limited to political subdivisions within the State of Utah.

(2) Loans may be used only by political subdivisions to fully or partially finance energy efficiency projects within buildings owned and operated by the political subdivision.

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

(a) Building exterior weatherization, air sealing, or thermal efficiency;

(b) Increase or improvement in building insulation;

(c) Door, window, or skylight upgrades;

(d) Lighting technology upgrades, or reduction of the number of fixtures;

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

(f) Improvements to energy control systems;

(g) Renewable energy systems;

(h) Other energy efficiency projects that a political subdivision can demonstrate will result in a significant reduction in the consumption of energy within a building.

(4) The following project measures are not eligible for energy efficiency projects from the Fund involving renovation, upgrade, or improvement of existing buildings:

(a) The repair of existing buildings or equipment;

(b) Projects that save money through switching of fuels, energy sources, or vendors, except in the case of the installation of a renewable energy system or other fuel changes that result in energy savings;

(c) Projects or measures intended to save money by changing the time of day or year at which energy is consumed (i.e. thermal energy storage or other peak demand reduction systems); or

(d) Upgrades to non-fixed appliances or equipment within a building such as computers, copiers, and other systems.

(5) An energy efficiency project can be eligible as part of a new building construction if the following conditions are met:

(a) The building measure or system for which a loan is sought must surpass the minimum prescriptive requirements of the Utah Energy Code; and

(b) The completed building must exceed the minimum energy performance standards of the Utah Energy Code for its building type by at least 10%.

(6) An energy efficiency project is eligible for a loan only if the total amount of funds awarded to the project are repaid in a term of between two and twelve years.

R362-3-5. Eligible Costs.

(1) This section defines the specific costs incurred by an energy efficiency project that are eligible for financing from the Fund.

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

(a) Building materials;

(b) Doors, windows, and skylights;

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

(d) Electrical systems and components including lighting, renewable energy systems, and energy management systems.

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

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

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

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

(3) The following costs are not eligible for financing from the Fund:

(a) The costs of a construction or renovation project that are not directly related to energy efficiency measures;

(b) Costs incurred for the acquisition of financing for the project;

(c) Costs for equipment or systems that reduce energy costs without also resulting in reductions in the use of energy.

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

(5) For an energy efficiency project undertaken as part of a new building construction, only the incremental cost of the project is eligible. For purposes of this section, incremental cost means the portion of the overall cost of a measure or system that exceeds the cost that would have been incurred by meeting the minimum prescriptive requirements of the Utah Energy Code.

(6) For an energy efficiency project undertaken as part of the renovation of an existing building, building components or systems that are covered by the prescriptive requirements of the Utah Energy Code must exceed the minimum Utah Energy Code requirements in order for their costs to be eligible for a loan from the Fund.

R362-3-6. Loan Application Process.

(1) The Office shall receive and evaluate applications for loans from the Fund during competitive bid cycles, based on Fund availability.

(2) Political subdivisions interested in applying for a loan should first contact the Office. Office staff will consult or meet with political subdivision staff to make an initial assessment of the strength or weakness of a proposed project. Office staff may also choose to conduct a site visit of the proposed project location prior to an application. Office staff shall engage with political subdivisions in a pre-application process evaluating potential project measures and preparing applications.

(3) Applications for loans will be made using forms developed by the Office. Application forms shall require that the following information be provided by the political subdivision:

(a) Identification of political subdivision personnel responsible for financial authority and project management;

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

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

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

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

(f) Appendices providing supplemental information detailing the extent of political subdivision commitment to the project (i.e. special needs, prior investments, existing audit/design documents) or descriptions of any additional community or environmental benefits that may result from the project.

(4) The Office and the Advisor or Director shall establish a Review Committee to provide in-depth evaluation of loan applications. The Committee shall consist of at least the following:

(a) The State Energy Program Manager;

(b) An Office technical specialist;

(c) The Associate Director; and

(d) Other members as may be designated at the discretion of the Advisor or Director.

(5) When the Office has deemed that an application is complete and that the proposed project complies with this rule, the application will be forwarded to the Review Committee for its evaluation.

(6) The Review Committee will review and discuss the merits of each application in light of all materials submitted by the political subdivision and technical analysis undertaken by Office staff. After discussion of each application, Review Committee members will evaluate each according to the following criteria and scoring:

(a) The feasibility and practicality of the project (maximum 35 points);

(b) The projected energy cost payback period of the project (maximum 25 points);

(c) The energy savings and energy cost savings attributable to the project (maximum 40 points);

A separate score sheet will be completed by each Review Committee member for each application under consideration.

(7) The Review Committee will compile the scores of each of its members for each application. Based upon the compiled scores of all members, the Committee will make recommendations to the Advisor or Director for the funding of energy efficiency projects.

(8) The Review Committee provides advice and recommendations to the Advisor or Director. It is not vested with the authority to make decisions regarding the public's business in connection with the Fund. The Advisor or Director is the decision making authority with regard to the award of loans from the Fund.

(9) Based upon the Review Committee's evaluations and recommendations, the Office will prepare a memorandum for the Advisor or Director that will

(a) Provide a brief description of each project reviewed by the Review Committee;

(b) List estimates of energy savings, energy cost savings and simple paybacks.

(c) Specify projects recommended for funding and those not recommended for funding;

(d) Provide a brief explanation of the Review Committee's rationale for each application that is not recommended for funding.

(10) The Advisor or Director can approve or deny loans through electronic correspondence if a majority of the Review Committee is in favor.

(11) When considering loan applications, the Office upon consultation with the Advisor or Director may modify the dollar amount or project scope for approved projects if the Office determines that individual measures included in a project do not meet the requirements of this rule, are not cost effective, or that funds could better be used for funding of other projects.

R362-3-7. Loan Terms.

(1) The maximum amount that may be approved by the Advisor or Director for any single energy efficiency project is $1,000,000. The minimum amount that may be approved is $5,000.

(2) The final value of any loan may vary from the Advisor or Director-approved amount according to the actual incursion of costs by the political subdivision. In cases where costs have exceeded those presented in the initial application, a political subdivision may request that the Advisor or Director increase its loan award, subject to the limitations of subsections (1) and (2) above.

(3) After approval of a loan application by the Advisor or Director, a political subdivision has one year in which to complete the energy efficiency project. If at the end of one

year a political subdivision is unable to meet this time limitation, it may request an extension from the Office of no more than six additional months.

(4) Loan amounts from the Fund will be reserved for periodic disbursement upon invoice approval at the discretion of the Office. Expenditures will be documented in each quarterly progress report, and the final 10% withheld pending a determination of substantial completion by the Office.

(5) Once a project has been completed, the political subdivision shall provide the Office documentation of actual costs incurred, such as invoices from contractors, as well as information on any third party financial incentives received. The Office will use this information to determine the actual cost of the project measures approved by the Advisor or Director.

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

(a) This amount exceeds $1,000,000, in which case the amount of the loan will be set at $1,000,000; or

(b) This amount exceeds the amount approved by the Advisor or Director, in which case the loan amount will be set at the amount originally approved by the Advisor or Director; or

(c) This amount exceeds the amount approved by the Advisor or Director and the Advisor or Director increases the loan award at the request of the political subdivision.

(7) At the discretion of the Office, interest will be charged to political subdivisions receiving loans for energy efficiency projects from the Fund at or below market interest rates.

(8) An administrative fee may be charged to loan recipients to defray the cost of servicing loan accounts.

(9) Loan repayment periods will be set to any term desired by the applicant between two and twelve years at the discretion of the Office. The loan repayment period for a specific energy efficiency project begins with the first day of the next quarter after all of the loan funds have been disbursed.

(10) Loan repayments will be due at the beginning of each quarter.

(11) Quarterly loan repayment amounts will be calculated using a standard amortization schedule.

(12) Political subdivisions that are approved for a loan award will enter into a contract with the Office that specifies all terms applying to the loan, including the terms specified in this rule and standard contract terms for contracts and loans currently in effect for the State of Utah.

R362-3-8. Reporting and Site Visits.

(1) In the period between approval and project completion, the political subdivision shall complete and provide to the Office a report at the beginning of each quarter. The report shall include information on the political subdivision's progress in completing the energy efficiency project, its most-current estimate for the time of project completion, what proportion of the loan award has been disbursed in the quarter and total to date, and any notable problems or changes in the project since Advisor or Director approval such as construction delays or cost overruns.

(2) If a political subdivision fails to submit the quarterly reports described in subsection (1) above, the Office upon consulting with the Advisor or Director may freeze the remainder of the loan award.

(3) After loan funds have been completely disbursed, the political subdivision shall complete and provide to the Office annual reports due at the beginning of the calendar quarter in which the anniversary of the loan repayment period began. This report shall include the following:

(a) A description of the performance of the building and of the performance of the measures included in the energy efficiency project;

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

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

(d) Documentation of building energy consumption and cost in the prior year.

Annual reports shall be provided for either the first four years after project completion or for each year of the repayment period, whichever is longer.

(4) If a political subdivision fails to submit the annual reports described in subsection (3) above, the Office upon consulting with the Advisor or Director may bar the political subdivision from eligibility for future loans from the Fund.

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

KEY: energy, efficiency, municipalities, loans
January 7, 2015 11-45-101
Notice of Continuation August 30, 2012

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-11. Podiatric Services.
R414-11-1. Introduction.

The Podiatric Services program provides a scope of services for Medicaid recipients in accordance with the Podiatric Services Utah Medicaid Provider Manual and Attachment 4.19-B of the Medicaid State Plan, as incorporated into Section R414-1-5.

KEY: Medicaid
January 13, 2015 26-1-5
Notice of Continuation March 18, 2014 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-310. Medicaid Primary Care Network Demonstration Waiver.
R414-310-1. Authority and Purpose.

(1) This rule is authorized by Sections 26-1-5 and 26-18-3. The Primary Care Network Demonstration is authorized by a waiver of federal Medicaid requirements approved by the Centers for Medicare and Medicaid Services and allowed under Section 1115(a) of the Social Security Act.

(2) The purpose of this rule is to establish eligibility requirements for enrollment under the Medicaid Primary Care Network Demonstration Waiver.

R414-310-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule. In addition, the following definitions apply throughout this rule:

(1) "Avenue H" means Utah's Health Insurance Marketplace for Utah employers and their employees where the employees can find information about available employer-sponsored health insurance plans, select a plan and enroll online.

(2) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(3) "Children's Health Insurance Program" or (CHIP) means the program for medical benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act.

(4) "Copayment and coinsurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under the Primary Care Network.

(5) "Creditable Health Coverage" means any health insurance coverage as defined in 45 CFR 146.113.

(6) "Employer-sponsored health plan" means a health insurance plan offered by an employer either directly or through Avenue H.

(7) "Enrollee" means an individual who has applied for and has been found eligible for the Primary Care Network program.

(8) "Open enrollment" means a period during which the eligibility agency accepts applications for the Primary Care Network program.

(9) "Primary Care Network" or (PCN) means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.

(10) "Review month" means the last month of the review period for an enrollee during which the eligibility agency shall redetermine eligibility for a new review period if the enrollee completes the review process timely.

(11) "Student health insurance plan" means a health insurance plan that is offered to students directly through a university or other educational facility.

(12) "Utah's Premium Partnership for Health Insurance" or (UPP) means the program described in Rule R414-320.

R414-310-3. Applicant and Enrollee Rights and Responsibilities.

(1) The provisions of Section R414-301-4 apply to applicants and enrollees of the PCN program except that reportable changes for PCN applicants and enrollees are defined in Subsection R414-310-3(2).

(2) An applicant or enrollee must report certain changes to the eligibility agency within ten calendar days of the day the change becomes known. The eligibility agency shall notify the applicant at the time of application of the changes that the enrollee must report. Reportable changes include:

(a) An enrollee in PCN begins to receive coverage or to have access to coverage under a group health plan or other health insurance coverage;

(b) An enrollee in PCN begins to receive coverage under, or begins to have access to student health insurance, Medicare, or the Veteran's Administration Health Care System;

(c) Changes in household income;

(d) Changes in household composition;

(e) Changes in tax filing status;

(f) Changes in the number of dependents claimed as tax dependents;

(g) An enrollee or the household moves out of state;

(h) Change of address of an enrollee or the household; or

(i) An enrollee enters a public institution or an institution for mental diseases.

(3) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in Sections R414-301-6 and R414-301-7.

(4) An enrollee in PCN is responsible for paying any required copayments or coinsurance amounts to providers for medical services that the enrollee receives that are covered under PCN.

R414-310-4. General Eligibility Requirements.

(1) The provisions of Sections R414-302-3, R414-302-4, R414-302-7, and R414-302-8 concerning United States (U.S.) citizenship, alien status, state residency, use of social security numbers, and applying for other benefits, apply to applicants and enrollees of PCN.

(2) An individual who is not a U.S. citizen or national, or who does not meet the alien status requirements of Section R414-302-3 is not eligible for any services or benefits under PCN.

(3) An individual must be at least 19 and not yet 65 years of age to enroll in PCN.

(a) The month in which an individual turns 19 years of age is the first month that the person may enroll in PCN.

(b) An individual must apply for the PCN program before he turns 65 years of age.

(c) Enrollment shall end effective the end of the month in which an individual turns 65 years of age.

(4) The eligibility agency only accepts applications during open enrollment periods. The eligibility agency limits the number it enrolls according to the funds available for the program and may stop enrollment at any time.

(a) The open enrollment period may be limited to:

(i) individuals with children under the age of 19 in the home;

(ii) individuals without children under the age of 19 in the home.

(b) The eligibility agency may not accept applications or maintain waiting lists during a period that enrollment of new individuals is stopped.

(5) The provisions of Subsection R414-302-6(1) and (4) apply to applicants and enrollees of PCN who are residents of institutions.

(6) An applicant or enrollee is not required to provide Duty of Support information to enroll in PCN. An adult whose eligibility for Medicaid has been denied or terminated for failure to cooperate with Duty of Support requirements may not enroll in the PCN program.

R414-310-5. Verification and Information Exchange.

(1) The provisions of Section R414-308-4 regarding verification of eligibility factors apply to applicants and enrollees of PCN.

(2) The Department shall safeguard information about applicants and enrollees to comply with the provisions of

Section R414-301-5.

(3) The Department shall enter into agreements with other government agencies as outlined in Section R414-301-3.

R414-310-6. Creditable Health Coverage.

(1) The Department adopts and incorporates by reference 42 CFR 433.138(b) and 435.610, October 1, 2013 ed., and Section 1915(b) of the Compilation of the Social Security Laws, in effect January 1, 2013.

(2) An applicant who is covered under a group health plan or other creditable health insurance coverage as defined in 29 CFR 2590.701-4, July 1, 2013 ed., is not eligible for enrollment in PCN. This includes coverage under student health insurance and the Veteran's Administration Health Care System.

(a) An individual who is enrolled in the Utah Health Insurance Pool or who can receive health coverage through Indian Health Services may enroll in PCN.

(b) An individual who could enroll in Medicare is not eligible for enrollment in PCN, even if the individual must wait for a Medicare open enrollment period to apply.

(c) An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for PCN as long as the individual applies for and takes all necessary steps to enroll. Eligibility for PCN ends once the individual's coverage in the VA Health Care System begins.

(d) Individuals who are full-time students and who can enroll in student health insurance coverage are not eligible to enroll in PCN.

(3) An individual is not eligible for PCN if the individual becomes eligible for Refugee Medical without a spenddown as defined in Section R414-303-10. An individual who is eligible for Refugee Medical with a spenddown may choose to enroll in either Refugee Medical or PCN.

(4) An individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage through an employer or a spouse's employer is not eligible for PCN if the individual's cost for the least expensive health insurance plan offered by the employer directly, or for the employer's default plan offered through Avenue H, does not exceed 15% of the countable MAGI-based income for the individual's household.

(a) The cost of coverage includes a deductible if the employer-sponsored plan has a deductible.

(b) The eligibility agency will include in the cost of coverage for the spouse, the cost to enroll the employee, if the employee must be enrolled to enroll the spouse.

(c) The eligibility agency considers the individual to have access to coverage if the individual has had at least one opportunity to enroll

(5) An individual who voluntarily terminates health insurance coverage is ineligible to enroll in PCN for 180 days from the date the coverage ended. The eligibility agency may not apply a 180-day ineligibility period in the following situations:

(a) Voluntary termination of COBRA.

(b) Voluntary termination of Utah Comprehensive Health Insurance Pool coverage.

(6) To be eligible to enroll in PCN, the 180-day ineligibility period must end by the earlier of the following dates or the eligibility agency shall deny the application:

(a) the last day of the open enrollment period during which the individual applies for PCN; or

(b) the last day of the month that follows the month in which the individual applies for PCN, if the open enrollment period does not expire before that following month ends.

(c) Enrollment in PCN may not begin before the 180-day ineligibility period ends.

R414-310-7. Household Composition and Income Provisions.

(1) The eligibility agency determines household composition and countable household income according to the provisions in R414-304-5.

(2) For an individual to be eligible to enroll in PCN, countable MAGI-based income for the individual must be equal to or less than 95% of the federal poverty guideline for the applicable household size.

R414-310-8. Budgeting.

(1) The Department shall apply the MAGI-based budgeting methodology defined at 42 CFR 435.603(c), (d), (e), (g) and (h), October 1, 2013 ed., which it adopts and incorporates by reference.

(2) The eligibility agency determines an individual's eligibility prospectively at application and at each review for continuing eligibility.

(a) The eligibility agency determines prospective eligibility by using the best estimate of the household's average monthly income that the agency expects the household to receive or to become available to the household during the upcoming review period.

(b) The eligibility agency shall include in the best estimate, reasonably predictable income expected to be received during the review period, such as seasonal income, contract income, income received at irregular intervals, or income received less often than monthly. The income will be prorated over the review period to determine an average monthly income.

(3) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The eligibility agency may use a combination of methods to obtain the best estimate. The best estimate may be a monthly amount that the agency expects the household to receive each month of the review period, or an annual amount that is prorated over the review period. The eligibility agency may use different methods for different types of income that the same household receives.

(4) The eligibility agency determines farm and self-employment income by using the individual's most recent tax return forms or other verification the individual can provide. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the eligibility agency may request income information from the most recent time period during which the individual had farm or self-employment income. The eligibility agency shall deduct the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses to determine net self-employment income, if those expenses are expected to occur in the future.

(5) The eligibility agency may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.

R414-310-9. Assets.

An asset test is not required for PCN eligibility.

R414-310-10. Application and Signature.

(1) The provisions of Section R414-308-3 apply to PCN applicants, except for paragraph (9), (10) and the three months of retroactive coverage.

(2) A Medicaid or CHIP recipient may make a request during the open enrollment period for the agency to determine the individual's eligibility for PCN without completing a new

application.

(3) The eligibility agency shall reinstate a medical case without requiring a new application if the agency closes the case in error.

(4) An applicant may withdraw an application for PCN any time before the eligibility agency completes an eligibility decision on the application.

R414-310-11. Eligibility Decisions and Reviews.

(1) The Department adopts and incorporates by reference 42 CFR 435.911 and 435.912, October 1, 2013 ed., regarding eligibility determinations.

(2) At application and review, the eligibility agency shall determine whether the individual is eligible for Medicaid, Refugee Medical or CHIP.

(a) An individual who qualifies for Medicaid or Refugee Medical without paying a spenddown or for Medicaid Work Incentive (MWI) without paying an MWI premium may not enroll in PCN.

(b) An applicant who is eligible for Medicaid, Refugee Medical or CHIP during the application month, or a Medicaid, Refugee Medical or CHIP recipient who requests PCN enrollment during an open enrollment period, may enroll in PCN in accordance with Subsection R414-310-12(1).

(3) An individual open on Medicaid, Refugee Medical or UPP may request to enroll in PCN.

(a) A new application form is not required.

(b) The rules in Section R414-310-12 govern the effective date of enrollment.

(c) If the individual is moving from UPP, the eligibility agency shall waive the open enrollment requirement if there is no break in coverage.

(d) If the individual is moving from Medicaid or Refugee Medical, the eligibility agency shall waive the open enrollment period if the individual was previously on PCN, became eligible for Medicaid or Refugee Medical, and requests to reenroll in PCN without a break in coverage.

(e) If the individual is moving from Medicaid or Refugee Medical and was not previously on PCN, or there has been a break in coverage of one or more months, the individual must reapply during an open enrollment period.

(f) All other eligibility requirements must be met.

(4) The eligibility agency shall complete an eligibility determination for each application unless:

(a) the applicant voluntarily withdraws the application and the eligibility agency sends a notice to the applicant to confirm the withdrawal;

(b) the applicant dies;

(c) the applicant cannot be located; or

(d) the applicant does not respond to requests for information within the 30-day application period or by the verification due date, if the verification date is later.

(5) The eligibility agency shall complete a periodic review of an enrollee's eligibility for medical assistance in accordance with the requirements of 42 CFR 435.916.

(a) The agency may request a recipient to contact the agency to complete the eligibility review.

(b) The agency shall provide the recipient a written request for verification needed to complete the review.

(c) The agency shall provide proper notice of an adverse decision.

(d) If the agency cannot provide proper notice of an adverse decision, the agency extends eligibility to the following month to allow for proper notice.

(6) If a recipient fails to respond to a request to complete the review or fails to provide all requested verification to complete the review, the eligibility agency shall end eligibility effective the end of the month for which the agency sends proper notice to the recipient.

(a) If the recipient contacts the agency to complete the review or returns all requested verification within three calendar months of the closure date, the eligibility agency shall treat such contact or receipt of verification as a new application. The agency may not require a new application form.

(b) The application processing period applies to this request to reapply.

(c) Eligibility can begin in the month the client contacts the agency to complete the review if all verification is received within the application processing period.

(d) If the recipient fails to return the verification timely, but before the end of the three calendar months, eligibility becomes effective the first day of the month in which all verification is provided and the individual is found eligible.

(e) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(f) The eligibility agency shall waive the open enrollment requirement during these three calendar months.

(g) If the enrollee does not respond to the request to complete the review for PCN during the three calendar months immediately following the review closure date, the enrollee must reapply for PCN and meet all eligibility criteria.

(7) If the individual files a new application or makes a request to reenroll within the calendar month that follows the effective closure date when the closure is for a reason other than incomplete review, the eligibility agency shall waive the open enrollment period and process the request as a new application.

(8) The enrollee must reapply if the case closes for one or more calendar months for any reason other than an incomplete review.

(9) The eligibility agency shall comply with the requirements of 42 CFR 435.1200(e), regarding transfer of the electronic file for the purpose of determining eligibility for other insurance affordability programs.

R414-310-12. Effective Date of Enrollment and Enrollment Period.

(1) Subject to the limitations in Sections R414-306-4 and R414-310-6, the effective date of PCN enrollment is the first day of the application month with the following exceptions:

(a) An applicant may be eligible for PCN if the applicant applies during an open enrollment period and will turn 19 before the end of the month in which open enrollment ends.

(i) Enrollment in PCN may not begin before an individual turns 19 years of age.

(ii) If an applicant qualifies for Medicaid or CHIP in the application month, enrollment in PCN begins the month after eligibility for Medicaid or CHIP ends.

(b) If the individual is moving from UPP, the effective date of enrollment is the first day after the health insurance coverage ends.

(c) If the individual is moving from Medicaid, or is eligible for Medicaid in the application month or the month following the application month, the effective date of enrollment is the first day of the month after Medicaid coverage ends. To enroll in PCN, Medicaid eligibility must end by the end of the month following the application month.

(2) The effective date of reenrollment for PCN after the eligibility agency completes the periodic review is the first day after either the review month or due process month. Subsection R414-310-11(5) defines the effective date of reenrollment when the enrollee completes the review process in the three calendar months after the case is closed for incomplete review.

(3) The eligibility agency shall end eligibility for any of the following reasons:

(a) the individual turns 65 years of age;

(b) the individual enrolls in a health coverage plan as defined in Subsection 414-310-6(2);

(c) the individual gains access to an employer-sponsored health plan that meets the requirements of Subsection R414-310-6(2);

(d) a change in income or household composition results in the individual exceeding the income limit;

(e) the individual dies;

(f) the individual moves out of state or cannot be located; or

(g) the individual enters a public institution or an Institution for Mental Disease.

(4) An enrollee who gains access to or enrolls in an employer-sponsored health plan may switch to the UPP program if the enrollee meets UPP eligibility requirements.

R414-310-13. Change Reporting and Benefit Changes.

(1) Enrollees are required to report changes defined in Subsection R414-310-3(2) to the eligibility agency.

(a) The eligibility agency shall determine the effect of the change and make the appropriate change in the enrollee's eligibility.

(b) The eligibility agency shall send proper notice of changes in eligibility.

(2) An enrollee who fails to report changes or return verification timely must repay any overpayment of benefits for which the enrollee is not eligible to receive.

(3) If an enrollee requests enrollment for a spouse, the application date for the spouse is the date of the request.

(a) A new application form is not required.

(b) The eligibility of the spouse is determined according to Section R414-310-11.

(c) The eligibility agency shall determine the effective date of enrollment for the individual in accordance with Section R414-310-12.

(d) All other eligibility requirements must be met.

(4) If the eligibility agency requests verification of a reported change and the enrollee fails to return the verification by the due date, the eligibility agency shall end eligibility effective the end of the month in which the agency sends proper notice.

R414-310-14. Notice and Termination.

(1) The Department adopts and incorporates by reference 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, and 435.919, October 1, 2013 ed.

(2) The eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the review.

(3) The eligibility agency shall end an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

R414-310-15. Improper Medical Coverage.

(1) Improper medical coverage occurs when:

(a) an individual receives medical assistance for which the individual is not eligible, including benefits that the individual receives pending a fair hearing or during an undue hardship waiver if the enrollee fails to act as required by the eligibility agency;

(b) an individual receives a benefit or service that is not part of the benefit package for which the individual is eligible;

(c) an individual pays too much or too little for medical assistance benefits; or

(d) the Department pays too much or too little for medical assistance benefits on behalf of an eligible individual.

(2) An individual who receives benefits under PCN for which the individual is not eligible must repay the Department for the cost of the benefits that the individual receives.

(3) An alien and the alien's sponsor are jointly liable for benefits that an individual receives for which the individual is not eligible.

(4) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee, or for the benefit of the enrollee during a period in which the enrollee is not eligible to receive the benefits.

KEY: Medicaid, primary care, demonstration

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26-18-3

R432. Health, Family Health and Preparedness, Licensing.
R432-35. Background Screening -- Health Facilities.
R432-35-1. Authority.

This rule is adopted pursuant to Title 26 Chapter 21 Part 2.

R432-35-2. Purpose.

To outline the process required for individuals to be cleared to have direct patient access while employed by a covered provider, covered contractor or covered employer.

R432-35-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 21 Part 2.

In addition:

(1) "Aged" means an individual who is 60 years of age or older.

(2) "Clearance" means approval by the department under Section 26-21-203 for an individual to have direct patient access.

(3) "Covered body" means a covered provider, covered contractor, or covered employer.

(4) "Corporation" means a corporation that has business interest/connection to covered providers that employ individuals who provide consultative services which may result in direct patient access.

(5) "Covered contractor" means a person or corporation that supplies covered individuals, by contract, to:

(a) a covered employer, or

(b) a covered provider for services within the scope of the health facility license.

(6) "Covered employer" means an individual who:

(a) engages a covered individual to provide services in a private residence to:

(i) an aged individual, as defined by department rule; or

(ii) a disabled individual, as defined by department rule;

(b) is not a covered provider; and

(c) is not a licensed health care facility within the state.

(7) "Covered individual":

(a) means an individual:

(i) whom a covered body engages; and

(ii) who may have direct patient access;

(b) which may include:

(i) a nursing assistant;

(ii) a personal care aide;

(iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act;

(iv) a provider of medical, therapeutic, or social services, including a provider of laboratory and radiology services;

(v) an executive;

(vi) administrative staff, including a manager or other administrator;

(vii) dietary and food service staff;

(viii) housekeeping;

(ix) transportation staff;

(x) maintenance staff; and

(xi) volunteer as defined by department rule.

(c) does not include a student directly supervised by a member of the staff of the covered body or the student's instructor.

(8) "Covered provider" means:

(a) an end stage renal disease facility;

(b) a long-term care hospital;

(c) a nursing care facility;

(d) a small health care facility;

(e) an assisted living facility;

(f) a hospice;

(g) a home health agency; or

(h) a personal care agency.

(9) "Direct patient access" means for an individual to be in a position where the individual could, in relation to a patient or resident of the covered body who engages the individual:

(a) cause physical or mental harm;

(b) commit theft; or

(c) view medical or financial records.

(10) "Disabled individual" means an individual who has limitations with two or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and employment.

(11) "Engage" means to obtain one's services:

(a) by employment;

(b) by contract;

(c) as a volunteer; or

(d) by other arrangement.

(12) "Long-term care hospital":

(a) means a hospital that is certified to provide long-term care services under the provisions of 42 U.S.C. Sec. 1395tt; and

(b) does not include a critical access hospital, designated under 42 U.S.C. Sec. 1395i-4(c)(2).

(13) "Nursing Assistant" means an individual who performs duties under the supervision of a nurse, which may include a nurse aide, personal care aide or certified nurse aide.

(14) "Patient" means an individual who receives health care services from one of the following covered providers:

(a) an end stage renal disease facility;

(b) a long-term care hospital;

(c) a hospice;

(d) a home health agency; or

(e) a personal care agency.

(15) "Resident" means an individual who receives health care services from one of the following covered providers:

(a) a nursing care facility;

(b) a small health care facility;

(c) an assisted living facility; or

(d) a hospice that provides living quarters as part of its services.

(16) "Residential setting" means a place provided by a covered provider:

(a) for residents to live as part of the services provided by the covered provider; and

(b) where an individual who is not a resident also lives.

(17) "Volunteer" means an individual who may have unsupervised direct patient access who is not directly compensated for providing services.

The following groups or individuals are excluded as volunteers and are not required to complete the background clearance process as defined in R432-35:

(a) Clergy;

(b) Religious groups;

(c) Entertainment groups;

(d) Resident family members;

(e) Patient family members; and

(f) Individuals volunteering services for 20 hours per month or less.

R432-35-4. Covered Provider - Direct Access Clearance System Process.

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered provider enter required information into the Direct Access Clearance System to initiate a clearance for each covered individual prior to issuance of a provisional license,

license renewal or engagement as a covered individual.

(2) The covered provider must ensure that the engaged covered individual:

(a) Signs a criminal background screening authorization form which must be available for review by the department; and

(b) Submits fingerprints within 15 working days of engagement.

(3) The covered provider must ensure the Direct Access Clearance System reflects the current status of the covered individual within 5 working days of the engagement or termination.

(4) A covered provider may provisionally engage a covered individual while direct patient access clearance is pending.

(5) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered provider and the individual explaining the action and the individual's right of appeal as defined in R432-30.

(6) The Department may allow a covered individual direct patient access with conditions, during an appeal process, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(7) A covered provider that provides services in a residential setting must enter required information into the Direct Access Clearance System to initiate and obtain a clearance for all individuals 12 years of age and older, who are not residents, and reside in the residential setting. If the individual is not eligible for clearance as defined in R432-35-8, the Department may revoke an existing license or deny licensure for healthcare services in the residential setting.

(8) Covered individuals under the age of 18 are not required to submit fingerprints as part of the Direct Access Clearance process. Covered individuals, while engaged with a covered provider, are required to submit fingerprints within 15 working days of their 18th birthday.

(9) Covered providers requesting to renew a license as a health care facility must enter required information into the Direct Access Clearance System to initiate and obtain a clearance for each covered individual.

(10) Individuals or covered individuals requesting to be licensed as a covered provider must submit required information to the Department to initiate and obtain a clearance prior to the issuance of the provisional license. If the individuals are not eligible for clearance as defined in R432-35-8, the Department may revoke an existing license or deny licensure as a health care facility.

R432-35-5. Covered Contractor - Direct Access Clearance System Process.

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered contractor enter required information into the Direct Access Clearance System to initiate a clearance for each covered individual prior to being supplied by contract to a covered provider.

(2) A covered contractor must ensure that the covered individual, being supplied by contract to a covered provider:

(a) Signs a criminal background screening authorization form which must be available for review by the department; and

(b) Submits fingerprints within 15 working days of placement with a covered provider.

(3) The covered contractor must ensure the Direct Access Clearance System reflects the current status of the covered individual within 5 working days of placement or termination.

(4) A covered contractor may provisionally supply a covered individual to a covered provider while clearance is pending.

(5) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered contractor and the individual explaining the action and the individual's right of appeal as defined in R432-30.

(6) The Department may allow a covered individual direct patient access with conditions, during an appeal process, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(7) Covered individuals under the age of 18 are not required to submit fingerprints as part of the Direct Access Clearance process. Covered individuals, while engaged with a covered contractor, are required to submit fingerprints within 15 working days of their 18th birthday.

R432-35-6. Covered Employer - Direct Access Clearance System Process.

(1) Utah Code, Title 26, Chapter 21, Part 2 requires that a covered employer be allowed to enter required information into the Direct Access Clearance System to initiate and obtain a clearance for a covered individual.

(2) If the Department determines an individual is not eligible for direct patient access, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to the covered employer and the individual explaining the action and the individual's right of appeal as defined in R432-30.

R432-35-7. Sources for Background Review.

(1) As required in Utah Code 26-21-204 the department may review relevant information obtained from the following sources:

(a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;

(b) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6-209;

(c) federal criminal background databases available to the state;

(d) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(e) child abuse or neglect findings described in Section 78A-6-323;

(f) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(g) registries of nurse aids described in Title 42 Code of Federal Regulations Section 483.156;

(h) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; and

(i) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.

(2) If the Department determines an individual is not eligible for direct patient access based upon the criminal background screening and the individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the individual may challenge the information as provided in Utah Code Annotated Sections 77-18a.

(3) If the Department determines an individual is not eligible for direct patient access based upon the non-criminal background screening and the individual disagrees with the information provided, the individual may challenge the information through the appropriate agency.

R432-35-8. Exclusion from Direct Patient Access.

(1) Criminal Convictions or Pending Charges

(a) As required by Utah Code Subsection 26-21-204, if an individual or covered individual has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement, for the following offenses, they may not have direct patient access:

(i) any felony or class A conviction under Utah Criminal Code.

(ii) any felony or class A, B or C conviction under Title 76, Chapter 5 Offenses Against the Person, Utah Criminal Code;

(iii) any felony or class A conviction under Title 76, Chapter 6, Offenses Against Property, Utah Criminal Code;

(iv) any felony or class A conviction under Title 76, Chapter 6a, Pyramid Schemes, Utah Criminal Code;

(v) any felony or class A conviction under Title 76, Chapter 8, Offenses Against the Administration of Government, Utah Criminal Code;

(vi) any felony or class A conviction under Title 76, Chapter 9, Offenses Against Public Order and Decency, Utah Criminal Code;

(vii) any felony or class A, B or C conviction under the following Utah Criminal Codes:

(A) 76-9-301.8, Bestiality;

(B) 76-9-702, Lewdness - Sexual Battery - Public urination; and

(C) 76-9-702.5, Lewdness Involving Child.

(viii) any felony or class A conviction under Title 76, Chapter 10, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code;

(ix) any felony or class A, B or C conviction under the following Utah Criminal Codes:

(A) 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; and

(B) 76-10-1301 to 1314, Prostitution;

(x) any felony or class A conviction under Utah Criminal Code 76-10-2301, Contributing to the Delinquency of a Minor;

(b) As required by Utah Code Subsection 26-21-204, if an individual or covered individual has a warrant for arrest or an arrest for any of the identified offenses in R432-35-8(1)(a), the department may deny clearance based on:

(i) the type of offense;

(ii) the severity of offense; and

(iii) potential risk to patients or residents.

(2) Juvenile Records

(a) As required by Utah Code Subsection 26-21-204(4)(a)(ii)(E), juvenile court records shall be reviewed if an individual or covered individual is:

(i) under the age of 28; or

(ii) over the age of 28 and has convictions or pending charges identified in R432-35-8(1)(a).

(b) Adjudications by a juvenile court may exclude the individual from direct patient access if the adjudications refer to an act that, if committed by an adult, would be a felony or a misdemeanor.

(3) Non-Criminal Records

(a) As required by Utah Code Subsection 26-21-204(3), the Department may review findings from the following sources to determine whether an individual or covered individual should be granted or retain direct patient access:

(i) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(ii) child abuse or neglect findings described in Section 78A-6-323;

(iii) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(iv) registries of nurse aids described in Title 42 Code of Federal Regulations Section 483.156;

(v) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; and

(vi) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.

(4) Review of Relevant Information

(a) Results of background screening review, as listed above in R432-35-8(1), (2), and (3), may be reviewed to determine under what circumstance, if any, the covered individual may be granted or retain direct patient access. The following factors may be considered:

(i) types and number;

(ii) passage of time;

(iii) surrounding circumstances;

(vi) intervening circumstances; and

(v) steps taken to correct or improve.

(b) The department shall rely on relevant information identified in R432-35-8(1), (2), and (3) as conclusive evidence and may deny clearance based on that information.

R432-35-9. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would be excluded under R432-35-8(1), the Department may act to protect the health and safety of patients or residents in covered providers.

(2) The Department may allow a covered individual direct patient access with conditions, until the arrest or criminal charges are resolved, if the covered individual can demonstrate the work arrangement does not pose a threat to the safety and health of patients or residents.

(3) If the Department denies or revokes a license, or denies direct patient access based upon arrest or criminal charges, the Department shall send a Notice of Agency Action to the covered provider and the covered individual notifying them of the right to appeal in accordance with R432-30.

R432-35-10. Penalties.

The department may impose civil monetary penalties in accordance with Title 26, Chapter 23, Utah Health Code Enforcement Provisions and Penalties, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of an individual resident, the department may impose a civil penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a resident, the department may impose a civil penalty of $1,050 to $10,000 per day.

KEY: health care facilities, background screening
January 27, 2015 26-21-9.5
Notice of Continuation March 25, 2013

R523. Human Services, Substance Abuse and Mental Health.
R523-8. Evidence-Based Prevention Registry.
R523-8-1. Purpose and Statutory Authority.

(1) Purpose. These rules define evidence-based prevention and evidence-informed prevention and prescribe standards for listing a prevention program or intervention on a statewide registry of evidence-based prevention programs.

(2) Statutory Authority. These definitions and standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (DSAMH) as authorized by Subsection 32B-2-402(1)(f).

(3) Intent. The objective of this rule is to decrease the harmful effects of substance use through implementation of evidence-based and evidence-informed prevention.

R523-8-2. Definitions.

(1) Evidence-based prevention includes programs, activities and strategies (hereinafter referred to as "interventions") that:

(a) Are included in private or federal registries that identify evidence-based interventions proven to result in sustained positive benefits to individuals or communities.

(b) Have been reported in peer-reviewed journals and with demonstrated positive effects on the primary targeted outcome; or

(c) Have documented effectiveness supported by other sources of information and the consensus judgment of informed experts, and meet the following criteria:

(i) The intervention is based on a theory of change that is documented in a clear logic or conceptual model; and

(ii) The intervention is similar in content and structure to interventions that appear in registries and/or the peer-reviewed literature; and

(iii) The intervention is supported by documentation that it has been effectively implemented in the past, and multiple times, in a manner attentive to scientific standards of evidence and with results that show a consistent pattern of credible and positive effects; and

(iv) The intervention is reviewed and deemed appropriate by the Division of Substance Abuse and Mental Health.

(2) Evidence-informed prevention includes programs, activities and strategies (hereinafter referred to as "interventions"):

(a) With documented effectiveness supported by other sources of information and the consensus judgment of informed experts; and

(b) Have been reviewed by the DSAMH and determined to meet the criteria for listing on Utah's Statewide Registry of Evidence-based Programs.

R523-8-3. Requirements For Listing On Statewide Registry of Evidence-Based Programs.

(1) The DSAMH shall develop and publish a statewide registry of evidence-based prevention interventions. This registry should be made available to the public in print and electronic formats.

(2) The DSAMH shall develop and make available registry application forms that include guidance on the documentation needed for review by DSAMH to the public in print and electronic formats.

(3) Only programs/interventions determined to be evidence-based in accordance with the definition in this rule shall be listed on the registry upon completion of an application and required forms.

(4) The registry shall at a minimum include contact information for key staff, a short program description, identification of the target population, and identify the long-term goals.

(5) Programs/interventions shall annually submit an application with a DSAMH approved logic model for continued listing on the registry.

R523-8-4. DSAMH Review Process.

(1) The DSAMH shall create an evidence-based prevention workgroup comprised of informed prevention experts to review programs that includes:

(a) At least one Doctorate level social scientist with at least three years experience evaluating prevention interventions similar to those under review;

(b) At least one urban prevention practitioner;

(c) One rural prevention practitioner;

(d) One representative from the Utah Substance Abuse Advisory Council;

(e) A representative from public health;

(f) DSAMH prevention staff; and

(f) Other members as needed.

(2) The Evidence-based Prevention Workgroup shall review all submissions to DSAMH and make recommendations to the DSAMH Division Director regarding whether the submission should be listed on the Statewide Registry of Evidence-based Programs.

(3) Programs for which the Evidence-based Workgroup determines do not meet the criteria for inclusion on the Statewide Registry of Evidence-Based Programs shall receive a written explanation of the decision and recommendations for the intervention that would improve the likelihood of meeting the requirements for listing on the registry.

KEY: evidence-based prevention; statewide registry; evidence-based prevention workgroup
January 6, 2015 32B-2-402(1)(f)

R590. Insurance, Administration.
R590-130. Rules Governing Advertisements of Insurance.
R590-130-1. Authority.

This rule is adopted pursuant to Subsection 31A-2-201(3), which authorizes rules to implement the Insurance Code, and Section 31A-23a-402, which authorizes the commissioner to define unfair or deceptive acts or practices in the business of insurance.

R590-130-2. Purpose.

This rule is designed to help assure the clear and truthful disclosure of the benefits, limitations and exclusions of policies sold as insurance. This is intended to be accomplished by the establishment of guidelines and standards of conduct in the advertising of insurance in a manner which prevents unfair, deceptive and misleading advertising and which is conducive to accurate presentation and description to the insurance buying public through the advertising media and material used by insurance producers and companies.

R590-130-3. Applicability.

A. This rule shall apply to any insurance "advertisement" as that term is defined herein unless otherwise specified in these rules, which the licensee knows or reasonably should know is intended for presentation, distribution or dissemination in this state when such presentation, distribution or dissemination is made either directly or indirectly by or on behalf of an insurer or producer, as those terms are defined in the Insurance Code of this state.

B. Advertising materials reproduced in quantity shall be identified by form numbers or other identifying means. Such identification shall be sufficient to distinguish an advertisement from any other advertising materials, policies, applications or other materials used by the insurer or advertiser.

R590-130-4. Definitions.

A (1) An "Advertisement" for the purpose of this rule shall include:

(a) printed and published material, audio or visual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio scripts, TV scripts, websites, emails, billboards and similar displays; and

(b) prepared sales talks, presentations and material for use by producers and solicitors whether prepared by the insurer or the producer or solicitor, when used for members of the insurance buying public, whether mailed or delivered in person.

(2) The definition of advertisement includes promotional material included with a policy when the policy is delivered as well as material used in the solicitation of renewals and reinstatements.

B. "Institutional Advertisement" for the purpose of this rule shall mean an advertisement having as its sole purpose the promotion of the reader's, viewer's or listener's interest in the concept of insurance, or the promotion of the insurer as a seller of insurance.

C. "Invitation to Contract" for the purpose of this rule shall mean an advertisement regarding a specific insurance product and which describes one or more of the provisions of the contract for that product.

D. "Invitation to Inquire" for the purpose of this rule shall mean an advertisement having as its objective the creation of a desire to inquire further about insurance and which is limited to a brief description of coverage, and which shall contain a provision in the following or substantially similar form:

"This policy has (exclusions) (limitations) (reduction of benefits) (terms under which the policy may be continued in force or discontinued). For costs and complete detail of the coverage, call (or write) your insurance agent or the company (whichever is applicable)."

E. "Preneed funeral contract" shall mean an agreement by or for an individual before the individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services, which is funded, at least in part, by insurance.

R590-130-5. Method of Disclosure of Required Information.

All information required to be disclosed by this rule shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it may not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the context of the advertisements so as to be confusing or misleading.

R590-130-6. Form and Content of Advertisements.

A. The format and content of an insurance advertisement shall be sufficiently complete and clear to avoid deceiving or misleading the reader, viewer, or listener. Whether an advertisement is misleading or deceiving shall be determined from the overall impression that the advertisement may reasonably be expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

B. Advertisements shall be truthful and not misleading in fact or in implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, may not be used without a clear explanation of such words or phrases.

C. An insurer must clearly identify its insurance policy as an insurance policy. A policy trade name must be followed by the words "Insurance Policy" or similar words clearly identifying the fact that an insurance policy or, in the case of health maintenance organizations, prepaid health plans and other direct service organizations, a health benefits product is being offered.

D. No insurer, producer, solicitor or other person may solicit residents of this state for the purchase of insurance through the use of a name that is deceptive or misleading with regard to the status, character, or proprietary or representative capacity of such person, or the true purpose of the advertisement.

R590-130-7. Advertisements of Benefits Payable, Losses Covered or Premiums Payable.

A. Deceptive Words, Phrases or Illustrations Prohibited:

(1) No advertisement may omit information, or use words, phrases, statements, references or illustrations if the omission of such information, or use of such words, phrases, statements, references or illustrations has the effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, or premium payable. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale or an offer is made to refund the premium if the purchaser is not satisfied, does not negate this requirement.

(2) No advertisement may contain or use words or phrases such as "all," "full," "complete," "comprehensive," "unlimited," "up to," "as high as," "this policy will help fill some of the gaps that Medicare and your present insurance leave out," "the policy will help to replace your income" (when used to express loss of time benefits), or similar words

and phrases, in a manner which exaggerates the extent of any policy benefit when the policy is viewed as a whole.

(3) An advertisement which also is an invitation to join an association, trust or discretionary group must solicit insurance coverage on a separate and distinct application which requires separate signatures for each application. The separate and distinct applications required shall be on separate documents. The insurance program must be presented so as to disclose to the prospective members that they are purchasing insurance as well as applying for membership, if that is the case. Refundability of a membership fee must be fully disclosed, as well as the complete identity of the underwriter.

(4) An advertisement may not contain descriptions of policy limitations, exceptions or reductions, worded in a positive manner to imply that it is a benefit such as describing a waiting period as a "benefit builder" or stating "even preexisting conditions are covered after two years." Words and phrases used in an advertisement to describe such policy limitations, exceptions and reductions shall fairly and accurately describe the negative features of such limitations, exceptions and reductions of the policy offered.

(5) No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility may use words or phrases such as "tax-free," "extra cash," "extra income," "extra pay," or substantially similar words or phrases because such words and phrases have the capacity, tendency or effect of misleading the public into believing that the policy advertised will, in some way, enable them to make a profit from being hospitalized.

(6) No advertisement of confinement indemnity benefits shall advertise weekly or monthly benefits without also, with equal prominence, explaining that these benefits are based upon an accumulated daily pro rata benefit, if that is in fact the case.

(7) No advertisement of a policy covering only one disease or a list of specified diseases may imply coverage beyond the terms of the policy. Synonymous terms may not be used to refer to any disease so as to imply broader coverage than is the fact.

(8) An advertisement for a policy providing benefits for specified illnesses only, such as cancer, or for specified accidents only, such as automobile accidents, shall clearly and conspicuously in prominent type state the limited nature of the policy. The statement shall be worded in language identical to or substantially similar to the following: "THIS IS A LIMITED POLICY," "THIS IS A CANCER ONLY POLICY," or "THIS IS AN AUTOMOBILE ACCIDENT ONLY POLICY."

(9) An advertisement for the solicitation or sale of a preneed funeral contract, which is funded or to be funded by a life insurance policy or annuity contract, shall adequately disclose the fact that a life insurance policy or annuity contract is involved or being used to fund such arrangement.

(10) An advertisement may not use as the name or title of a life insurance policy any phrase which does not include the words "life insurance" unless accompanied by other language clearly indicating it is life insurance.

B. Exceptions, Reductions and Limitations

(1) An advertisement which is an invitation to contract shall disclose those exceptions, reductions and limitations affecting the basic provisions of the policy.

(2) When a policy contains a waiting, elimination, probationary or similar time period between the effective date of the policy and the effective date of coverage under the policy or at a time period between the date of loss and the date benefits begin to accrue for such loss, an advertisement which is an invitation to contract shall disclose the existence of such periods.

(3) An advertisement may not use the words "only" "just," "merely," "minimum," "necessary" or similar words or phrases to describe the applicability of any exceptions, reductions, limitations or exclusions in any way so as to minimize the apparent effect of such exceptions, reductions, limitations, or exclusions.

C. Preexisting Conditions:

(1) An advertisement which is an invitation to contract shall, in negative terms, disclose the extent to which any loss is not covered if the cause of such loss is traceable to a condition existing prior to the effective date of the policy. The use of the term "preexisting condition" must be accompanied by a description or definition.

(2) When a accident and health insurance policy does not cover losses resulting from preexisting conditions, no advertisement of the policy may state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim. This rule prohibits the use of the phrase "no medical examination required" and phrases of similar import, but does not prohibit explaining "automatic issue." If an insurer requires a medical examination for a specified policy, the advertisement, if it is an invitation to contract, shall disclose that a medical examination is required.

(3) When an advertisement contains an application form to be completed by the applicant and returned by mail, such application form shall contain a question or statement which reflects the preexisting condition provisions of the policy immediately preceding the blank space for the applicant's signature or preceding the statement regarding the truthfulness of information provided in the application. For example, such an application form shall contain a question or statement substantially as follows: Do you understand that this policy will not pay benefits during the first (insert period of time) after the issue date for a disease or physical condition which you now have or have had in the past? YES.

Or substantially the following statement: I understand that the policy applied for will not pay benefits for any loss incurred during the first (insert period of time) after the issue date on account of disease or physical condition which I now have or have had in the past.

R590-130-8. Necessity for Disclosing Policy Provisions Relating to Renewability, Cancelability and Termination.

An advertisement which is an invitation to contract shall disclose the provisions relating to renewability, cancelability and termination, and any modification of benefits, losses covered, or premiums, in a manner which may not minimize or render obscure the qualifying conditions.

The terms "noncancelable" or "noncancelable and guaranteed renewable" may be used only to advertise a policy in which the insured has the right to continue in force by the timely payment of premiums set forth in the policy at least to age 65 or to eligibility for Medicare, during which period the insurer has no right to unilaterally make any change in any provision of the policy while the policy is in force; provided, however, any disability or accident only policy which provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from accident or sickness may provide that the insured has the right to continue the policy at least to age 60 if, at age 60, the insured has the right to continue the policy in force at least to age 65 while actively and regularly employed.

The term "guaranteed renewable" may be used only to advertise a policy in which the insured has the right to continue in force by the timely payment of premiums at least to the age of 65 or to eligibility for Medicare, during which period the insurer has no right to unilaterally make any change in any provision of the policy while the policy is in

force, except that the insurer may make changes in premium rates by classes; provided, however, any disability or accident only policy which provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from accident or sickness may provide that the insured has the right to continue the policy at least to age 60 if, at age 60, the insured has the right to continue the policy in force at least to age 65 while actively and regularly employed.

R590-130-9. Testimonials or Endorsements by Third Parties.

A. A person shall be deemed a "spokesperson" if the person making the testimonial or endorsement:

(1) Has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise; or

(2) Has been formed by the insurer, is owned or controlled by the insurer, its employees, or the person or persons who own or control the insurer; or

(3) Has any person in a policy making position who is affiliated with the insurer in any of the above described capacities; or

(4) Is in any way directly or indirectly compensated for making a testimonial or endorsement.

B. The fact of a financial interest or the proprietary or representative capacity of a spokesperson shall be disclosed in an advertisement and shall be accomplished in the introductory portion of the testimonial or endorsement in the same form and with equal prominence thereto. If a spokesperson is directly or indirectly compensated for making a testimonial or endorsement, such fact shall be disclosed in the advertisement by language substantially as follows: "Paid Endorsement." The requirement of this disclosure may be fulfilled by use of the phrase "Paid Endorsement" or words of similar import in a type style and size at least equal to that used for the spokesperson's name or the body of the testimonial or endorsement, whichever is larger. In the case of non-print advertising, the required disclosure must be accomplished in the introductory portion of the advertisement and must be given prominence.

C. An advertisement may not state or imply that an insurer or an insurance policy has been approved or endorsed by any individual, group of individuals, society, association or other organizations, unless such is the fact, and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial has been formed by the insurer or is owned or controlled by the insurer or the person or persons who own or control the insurer, such fact shall be disclosed in the advertisement. If the insurer or an officer of the insurer formed or controls the association, or holds any policy making position in the association, that fact must be disclosed.

D. When a testimonial refers to benefits received under an insurance policy, the specific claim data, including claim number, date of loss and other pertinent information shall be retained by the insurer for inspection for a period of three years after the last use of said testimonial in any advertisement. The use of testimonials which do not correctly reflect the present practices of the insurer or which are not applicable to the policy or benefit being advertised is prohibited.

E. An advertisement may not imply that approval, endorsement or accreditation of policy forms or advertising has been granted by any division or agency of any state or federal government. "Approval" or filing of either policy forms or advertising may not be used by an insurer to state or imply that a governmental agency has endorsed or recommended the insurer, its policies, advertising or its financial condition.

R590-130-10. Use of Statistics and Exaggerations.

A. An advertisement may not represent or imply that claim settlements by the insurer are "liberal" or "generous," or use words of similar import, or that claim settlements are or will be beyond the actual terms of the contract. An unusual amount paid for a unique claim under the policy advertised is misleading and may not be used.

B. The source of any statistics used in an advertisement shall be identified in such advertisement.

R590-130-11. Identification of Plan or Number of Policies.

A. When a choice of the amount of benefits is referred to, an advertisement which is an invitation to contract shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of the benefits selected.

B. When an advertisement which is an invitation to contract refers to various benefits which may be obtained only through two or more policies, other than group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies.

R590-130-12. Identity of Insurer.

A. The name of the actual insurer shall be stated in all advertisements. The form number or numbers of the policy advertised shall be stated in an advertisement which is an invitation to contract. An advertisement may not use a trade name, any insurance group designation, name of a parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol or other device without disclosing the name of the actual insurer if the advertisement would be misleading or deceiving as to the true identity of the insurer.

B. No advertisement may use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color or other characteristics are so similar to combination of words, symbols or physical materials used by agencies of the federal government or of any state, or otherwise appear to be of such a nature that it would confuse or mislead prospective insureds into believing that the solicitation is in some manner connected with an agency of any municipal, state or federal government.

C. Advertisements, envelopes or stationery which employ words, letters, initials, symbols or other devices that are so similar to those used in governmental agencies or by other insurers are not permitted if they may lead the public to believe:

(1) that the advertised coverages are somehow provided by or are endorsed by a governmental agency or such other insurers.

(2) that the advertiser is the same as, is connected with, or is endorsed by a governmental agency or such other insurers.

D. No advertisement may use the name of a state or political subdivision thereof in a policy name or description, unless the company name contains the same state or political subdivision name.

E. No advertisement in the form of envelopes or stationery of any kind may use any name, service mark, slogan, symbol or any device in such a manner that implies that the insurer or the policy advertised, or any producer who may call upon the consumer in response to the advertisement is connected with a governmental agency, such as the Social Security Administration.

F. No advertisement may incorporate the word "Medicare" in the title of the plan or policy being advertised

unless, where ever it appears, said word is qualified by language differentiating it from Medicare. Such an advertisement, however, may not use the phrase "( ) Medicare Department of the ( ) Insurance Company," or language of similar import.

G. No advertisement may imply that the reader may lose a right or privilege or benefit under federal, state or local law if he fails to respond to the advertisement.

H. The use of letters, initials, or symbols of the corporate name or trademark that would have the tendency or capacity to mislead or deceive the public as to the true identity of the insurer is prohibited unless the true, correct and complete name of the insurer is in close conjunction and in the same size type as the letters initials or symbols of the corporate name or trademark.

I. The use of the name of an agency or "( ) Underwriters" or "( ) Plan" in type, size and location so as to mislead or deceive as to the true identity of the insurer or advertiser is prohibited.

J. The use of an address that is misleading or deceiving as to the true identity of the insurer or advertiser, its location or licensing status is prohibited.

K. No insurer or advertiser may use, in the trade name of its insurance policy, any terminology or words so similar to the name of a governmental agency or governmental program that will confuse, deceive or mislead the prospective purchaser regarding governmental sponsorship, endorsement, or connection with the insurance policy or the insurer.

R590-130-13. Group or Quasi-Group Implications.

A. An advertisement of a particular policy may not state or imply that prospective insureds become group or quasi-group members covered under a group policy and as such enjoy special rates or underwriting privileges, unless such is the fact and renewal rates are also given special or preferred status.

B. This rule prohibits the solicitations of a particular class such as governmental employees, by use of advertisements which state or imply that their occupational status entitles them to reduced rates on a group or other basis when, in fact, the policy being advertised is sold only on an individual basis at regular rates.

R590-130-14. Enforcement Procedures.

Advertising File. Each insurer or advertiser shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement of its individual policies and typical printed, published or prepared advertisements of its blanket, franchise and group policies hereafter disseminated in this or any other state, whether or not licensed in such other state, with a notation attached to each such advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised. Such file shall be subject to regular and periodic inspection by this Department. All such advertisements shall be maintained in said file for a period of three years from date of last use.

R590-130-15. Enforcement Date.

The commissioner shall begin enforcing the revised provisions of this rule on the effective date.

R590-130-16. Severability Provision.

If any provision or clause of this rule or the application of it 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 provision of this rule are declared to be severable.

R590-130-17. Filing for Prior Review.

The commissioner may, at his discretion, require the filing with the department, for review prior to use, of advertising material, for informational purposes only.

KEY: insurance law
September 11, 2012 31A-2-201
Notice of Continuation September 15, 2010 31A-23a-402

R590. Insurance, Administration.
R590-142. Continuing Education Rule.
R590-142-1. Authority.

This rule is promulgated pursuant to:

(1) Subsection 31A-2-201(3) that authorizes the commissioner to adopt rules to implement the provisions of the Utah Insurance Code;

(2) Subsection 31A-23a-202(1) that authorizes the commissioner to adopt a rule to prescribe the continuation requirements for a producer and a consultant;

(3) Subsection 31A-23a-202(3) that authorizes the commissioner to adopt a rule to:

(a) prescribe the manner in which a producer or consultant may obtain continuing education credit; and

(b) publish a list of professional designations whose continuing education requirements can be used to meet the requirements for continuing education for a producer and a consultant;

(4) Subsection 31A-23a-202(5) that authorizes the commissioner to adopt a rule to prescribe the processes and procedures for continuing education provider registration and course approval;

(5) Subsection 31A-23b-205(2) that authorizes the commissioner to adopt a rule to prescribe how navigator training requirements may be administered;

(6) Subsection 31A-23b-206(1) that authorizes the commissioner to adopt a rule to prescribe the continuing education requirements for the a navigator;

(7) Subsection 31A-23b-206(3) that authorizes the commissioner to adopt a rule to prescribe the manner in which a navigator may obtain continuing education credit;

(8) Subsection 31A-23b-206(5) that authorizes the commissioner to adopt a rule to prescribe the processes and procedures for continuing education provider registration and course approval;

(9) Subsection 31A-26-206(1) that authorizes the commissioner to adopt a rule to prescribe the continuing education requirements for an adjuster; and

(10) Subsection 31A-30-209 that authorizes the commissioner to adopt a rule to implement the continuing education requirements for the defined contribution market.

R590-142-2. Purpose and Scope.

(1) The purpose of this rule is to implement the continuing education requirements of Sections 31A-23a-202, 31A-23b-206, 31A-26-206, and 31A-26-209.

(2) This rule applies to all continuing education providers and individual producer, consultant, navigator, and adjuster licensees under Sections 31A-23a-202, 31A-23b-206, 31A-26-206, and 31A-30-209.

R590-142-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Sections 31A-1-301, 31A-23a-102, 31A-23b-102, 31A-26-102, 31A-35-102, and the following:

(1) "Classroom course" means:

(a) a course of study that:

(i) is taught on-site by a live instructor at the same location;

(ii) requires monitoring of a student; and

(iii) may require examination of course content to be performed by a student; or

(b) an interactive course of study that:

(i) is taught by a live instructor from a separate location;

(A) is delivered to a student via:

(I) computer;

(II) teleconference;

(III) webinar; or

(IV) some other method acceptable to the commissioner; or

(ii) is not taught by a live instructor;

(A) is delivered to a student via computer; or

(B) some other method acceptable to the commissioner;

(iii) requires two-way interaction between a student and the instrument of instruction;

(iv) requires monitoring of a student; and

(v) requires examination of course content to be performed by a student.

(2) "Credit hour" means one 50-minute period of insurance related instruction consisting of:

(a) a classroom course;

(b) a home study course; or

(c) some other method acceptable to the commissioner;

(3) "Designated internet site" means an internet site that is designated by the commissioner for a registered provider to submit a student's course completion information.

(4) "Home-study course" means a non-interactive course of study that:

(a) is not taught by a live instructor;

(b) is completed by a student via:

(i) computer;

(ii) video recording, if the video is professionally produced;

(iii) text book; or

(iv) some other method acceptable to the commissioner;

(c) does not require two-way interaction between a student and the instrument of instruction;

(d) does not require monitoring of a student; and

(e) requires examination of course content to be performed by the student.

(5) "Insurance related instruction" means that amount of time that is assigned by the commissioner to a course of study to satisfy the requirements of continuing education credit hours under this rule, in which assignment of value shall be made on the basis of:

(a) content;

(b) presentation; and

(c) format.

(6) "Monitoring of a student" means a person or system in place who verifies participation in and completion of a course.

(7) "Nonprofit provider" means an organization that fits the definition of nonprofit corporation as defined in Subsection 16-6a-102(34).

(8) "Registered Provider" means a person who satisfies the requirements of R590-142-8 and 9, and offers a course of study or program for credit to an applicant to satisfy the continuing education requirements of this rule.

R590-142-4. Continuing Education Requirements.

(1) A producer, consultant, adjuster, and navigator licensee shall comply with, and a registered provider shall be familiar with, the following continuing education requirements:

(a) upon renewal of a license, no continuing education credit hours in excess of the number required to renew the license may be carried over or applied to any subsequent licensing period;

(b) a licensee shall attend a course in its entirety in order to receive credit for the course; and

(c) a licensee may repeat a course for credit but will not be permitted to take a course for credit more than once in a license continuation period.

(2) Producer, Consultant, and Adjuster License. A producer, consultant, and adjuster licensee shall comply with, and a registered provider shall be familiar with, the following continuing education requirements:

(a) the number of credit hours of continuing education

insurance related instruction required to be completed biennially as a prerequisite to a license renewal shall be in accordance with Sections 31A-23a-202 and 31A-26-206;

(b) a producer, consultant, or adjuster licensee may obtain continuing education credit hours at any time during the two-year licensing period;

(c) not more than half of the total credit hours required shall be satisfied by courses provided to a producer, consultant or adjuster licensee by one or more insurers;

(d) a nonresident producer, consultant, or adjuster licensee who satisfies the licensee's home state's continuing education requirement is considered to have satisfied Utah's continuing education requirement; and

(e) a producer, consultant, or adjuster licensee with a professional designation may use the continuing education credit hours required to maintain the designation to satisfy the requirement of the commissioner if:

(i) the hours are sufficient to meet the current continuing education requirement described in Sections 31A-23a-202 and 31A-26-206; and

(ii) the professional designation consists of one or more of the following:

(A) Accredited Customer Service Representative (ACSR);

(B) Accredited Financial Examiner (AFE) or Certified Financial Examiner (CFE);

(C) Accredited Insurance Examiner (AIE) or Certified Insurance Examiner (CIE);

(D) Certified Financial Planner (CFP);

(E) Certified Insurance Counselor (CIC);

(F) Certified Risk Manager (CRM);

(G) Registered Employee Benefits Consultant (REBC);

(H) Chartered Property Casualty Underwriter (CPCU) with completion of the Continuing Professional Development (CPD) program; or

(I) Certified Life Underwriter (CLU), Chartered Financial Consultant (ChFC) or Registered Health Underwriter (RHU) with completion of the Professional Achievement in Continuing Education (PACE) recertification program.

(f) A producer who solicits or sells a defined contribution plan in accordance with Section 31A-30-209 shall complete a minimum of two hours of defined contribution continuing education that includes training on use of the Utah Health Exchange and premium assistance programs:

(i) prior to soliciting or selling a defined contribution plan; and

(ii) during each subsequent two-year licensing period that the producer solicits or sells a defined contribution plan.

(g) Continuing education requirements may be administered by:

(i) the commissioner; or

(ii) a continuing education provider approved by and registered with the commissioner.

(3) A continuing education provider, including a state or national professional producer or consultant association, may:

(a) offer a qualified program on a geographically accessible basis; and

(b) collect a reasonable fee for funding and administration of a continuing education program, subject to the review and approval of the commissioner.

(4)(a) Navigator license. A navigator licensee shall comply with, and a registered provider shall be familiar with, the following continuing education requirements:

(i) for a navigator licensee, the number of credit hours of continuing education related instruction required to be completed annually as a prerequisite to license renewal shall be in accordance with Section 31A-23b-206; and

(ii) a navigator licensee may obtain continuing education credit hours at any time during the one-year licensing period;

(b) To act as a navigator, a person must:

(i) successfully complete the federal navigator training and certification program requirements as established by federal regulation under PPACA and administered through the United States Department of Health and Human Services, including any applicable training and certification or recertification requirements under that program; and

(ii) for a navigator line of authority:

(A) initially complete a minimum of two hours of defined contribution training that includes training on use of the Utah Health Exchange, and

(B) thereafter, prior to renewing the license, complete a minimum of one hour of defined contribution continuing education training on use of the Utah Health Exchange; or

(iii) for a certified application counselor line of authority:

(A) both initially and thereafter, prior to renewing the license, complete a minimum of one hour of defined contribution training that includes training on use of the Utah Health Exchange.

(c) A person is considered to have successfully completed the required continuing education requirements for a navigator license in accordance with Section 31A-23b-206 if the person has:

(i) met the requirements of (3)(b) above; and

(ii) completed at least 2 hours of ethics course.

(d) Continuing education requirements may be administered by:

(i) the commissioner;

(ii) a continuing education provider approved by and registered with the commissioner; or

(iii) a navigator related training program administered through the United States Department of Health and Human Services.

R590-142-5. Experience Credit.

(1) Continuing education credit hours may be granted to a producer, consultant, or adjuster licensee for experience credit at the discretion of the commissioner, including credit for experience such as the authoring of an insurance book, course or article.

(2) Membership by a producer or consultant in a state or national professional producer or consultant association is considered to be a substitute for two credit hours for each year during which the producer or consultant is a member of the association, except as provided in (3) below.

(3) No more than two hours of continuing education credit shall be granted per year during the two-year license continuation period, regardless of the number of professional associations of which the producer or consultant is a member.

(4) An approved continuing education course taught by an approved instructor holding a Utah producer, consultant, or adjuster license shall receive twice the number of credit hours allocated by the commissioner for the course, except as provided in Subsection (5) below.

(5) Credit for instruction of a course shall be granted no more than once per license renewal period for each course taught.

(6) Continuing education experience credit shall not be granted for committee service.

R590-142-6. Controls and Reporting of Credit Hours.

(1) Within 14 days of completion of a course of study, the registered provider shall:

(a) furnish to each student successfully completing the course a certificate of completion; and

(b) electronically submit through Sircon a course completion record identifying the:

(i) student that completed the course;

(ii) name and identifying course number of the course completed; and

(iii) number of credit hours completed by the student.

(2) In the event the registered provider fails to notify the commissioner of a student's course completion, the licensee may use the certificate of completion as proof of having successfully completed the course.

(3) The registered provider shall keep proof of successful electronic attendance submission on file for a period of at least the current calendar year plus two years.

R590-142-7. Course Requirements.

(1) Except as permitted in R590-142-4(3), prior to offering a course for credit in Utah, a person must register as a provider and submit a completed continuing education course filing form and course outline for review by the commissioner.

(2) Upon receipt of a completed continuing education course filing form and course outline from a registered provider, the commissioner shall:

(a) approve a course as qualifying for credit in accordance with the standards of this rule;

(b) issue a course number; and

(c) assign the number of hours to be awarded to the approved course; or

(d) disapprove a course as not qualifying for credit; and

(e) furnish an explanation of the reason for disapproval of the course.

(3) A new course offered by a registered provider must be submitted to and approved by the commissioner at least 30 days prior to being offered, except that post approval of a course may be granted by the commissioner upon submission of a written request and supporting documentation of a course attended.

(4) A course advertisement shall not state or imply that a course has been approved by the commissioner unless written confirmation of the approval has been received by the registered provider.

(5) A department employee may attend a course at no cost for the purpose of auditing the course for compliance.

(6) The following course topics are examples of subject areas that qualify for approval if they contribute to the knowledge and professional competence of an individual licensee as a producer, consultant, or adjuster, and demonstrate a direct and specific application to insurance:

(a) a particular line of insurance:

(b) investments or securities in connection with variable contracts;

(c) principles of risk management;

(d) insurance laws and administrative rules;

(e) tax laws related to insurance;

(f) accounting/actuarial considerations in insurance;

(g) business or legal ethics; and

(h) other course subject areas may be acceptable if the registered provider can demonstrate that they contribute to professional competence and otherwise meet the standards set forth in this rule.

(7) The following course topics are examples of subject areas that do not qualify for approval:

(a) computer training and software presentations;

(b) motivation;

(c) psychology;

(d) sales training;

(e) communication skills;

(f) recruiting;

(g) prospecting;

(h) personnel management;

(i) time management; and

(j) any course not in accordance with this rule.

(8) The following continuing education standards must be met for a course offered by a registered provider to qualify for continuing education credit:

(a) the course must have significant intellectual or practical content to enhance and improve the insurance knowledge and professional competence of participants;

(b) the course must be developed by persons who are qualified in the subject matter and instructional design;

(c) the course content must be up to date;

(d) the instructor must be qualified with respect to course content and teaching methods;

(e) the instructor may be considered qualified if through formal training or experience, the instructor has obtained sufficient knowledge to competently instruct the course;

(f) the number of participants and physical facilities for a course must be consistent with the teaching method specified;

(g) the course must include some means for evaluating the quality of the course content;

(h) the course must provide for a method to authenticate each student's identity; and

(i) the course must be taught in a manner compliant with the Americans With Disabilities Act to enable licensees with a physical or mental disability to complete the continuing education requirements.

(9) The following are additional requirements for an interactive computer course of study offered by a registered provider that is not taught by a live instructor:

(a) provide one or more of the following type of exam questions at the end of each section of course material presented:

(i) multiple choice;

(ii) matching; or

(iii) true false;

(b) the exam questions shall cover material from the applicable section of the course that was presented to the student;

(c) only upon completion of an exam and not before or during the exam, identify all incorrect responses and inform the student of the correct response with an explanation of the correct answer;

(d) require answering 70% of the inquiries for each exam correctly to demonstrate mastery of the current section before the student is allowed by the program to proceed to the next section or complete the course;

(e) in the event a student does not achieve the 70% correct response rate necessary to advance to the next section, generate a different set of inquiries for the section, which may be repeated as necessary on a random or rotating basis;

(f) provide a method to reasonably authenticate the student's identity on a periodic hourly basis, including upon entering, during, and exiting the course;

(g) provide a method to ensure that the amount of time necessary for a student to complete course instruction and exam is no less than the amount of credit hours approved for the course; and

(h) provide for a method to directly transmit the final course completion results to the registered provider or a printed course completion receipt to be sent to the registered provider for issuance of a completion certificate.

(10) A continuing education course shall not be offered or taught by a person who has:

(a) a lapsed, surrendered, suspended, or revoked provider registration;

(b) a suspended or revoked insurance license; or

(c) been prohibited from teaching a course.

(11) Continuing education credit may not be granted for a course offered by a registered provider in which the course is:

(a) not approved by the commissioner; or

(b) offered or taught by a person who has:

(i) a lapsed, surrendered, suspended, or revoked provider registration; or

(ii) been prohibited from teaching a course.

R590-142-8. Registered Provider Requirements.

(1) A registered provider, or a state or national professional producer, consultant, adjuster, or navigator association, may:

(a) offer a qualified course for a license type or line of authority on a geographically accessible basis; and

(b) collect a reasonable fee for funding and administration of a continuing education program, subject to the review and approval of the commissioner.

(2) A person must register with the commissioner as a provider prior to acting as a registered provider in Utah.

(3) Except as provided in Subsection (4) below, to initially register as a provider, a person must:

(a) electronically submit a completed provider registration form via Sircon; and

(b) pay an initial registration fee, as identified in Rule R590-102.

(4)(a) To initially register as a nonprofit provider, a person must electronically submit a completed provider registration form via:

(i) Sircon; or

(ii) facsimile, or as a PDF attachment to an email, using a form available through the Department's website.

(b) A person initially registering as a nonprofit provider is not required to pay a registration fee.

(5) To renew a provider registration, a provider, other than a nonprofit provider, must:

(a) electronically submit a completed provider renewal form via Sircon; and

(b) pay an annual renewal fee, as identified in Rule R590-102, prior to the annual renewal date.

(6)(a) To renew a nonprofit provider registration, a nonprofit provider must:

(i) electronically submit a completed provider renewal form via:

(A) Sircon; or

(B) facsimile, or as a PDF attachment to an email using a form available through the Department's website.

(b) A nonprofit provider is not required to pay an annual renewal fee.

(7) Prior to a course offered by a registered provider being taught, a registered provider shall:

(a) electronically submit via Sircon, a course outline that includes information regarding the course content and the number of credit hours requested for the course prior to offering the course;

(b) post the course offering to a designated internet site;

(c) provide the commissioner with the name and resume of the instructor or instructors who will be teaching the course; and

(d) include identifying information as to any insurance license previously or currently held by the instructor or instructors who will be teaching the course.

(8) A registered provider shall report to the commissioner:

(a) an administrative action taken against the registered provider in any jurisdiction; and

(b) a criminal prosecution taken against the registered provider in any jurisdiction.

(9) The report required by Subsection (8) shall:

(a) be filed:

(i) at the time of submitting the initial provider registration; and

(ii) within 30 days of the:

(A) final disposition of the administrative action; or

(B) initial appearance before a court; and

(b) include a copy of the complaint or other relevant legal documents related to the action or prosecution described in Subsection (8).

(10) The commissioner may prohibit any person from acting as a registered provider or instructor in Utah if the commissioner determines that:

(a) the person is not competent and trustworthy; or

(b) the person or course of study fails to meet the qualifying standards.

R590-142-9. Loss of Provider Registration and Course Disapproval.

(1) A provider registration, other than a nonprofit provider registration, shall lapse if a provider fails to;

(a) electronically submit a completed provider renewal form via Sircon; and

(b) pay an annual renewal fee prior to the annual renewal date.

(2) A nonprofit provider registration shall lapse if a nonprofit provider fails to electronically submit a completed provider renewal form via:

(a) Sircon; or

(b) facsimile, or as a PDF attachment to an email, using a form available through the Department's website.

(3) To reinstate a lapsed or surrendered provider registration, other than a nonprofit provider registration, a provider must:

(a) electronically submit a completed provider reinstatement form via Sircon; and

(b) pay a reinstatement fee, as identified in Rule R590-102.

(4)(a) To reinstate a lapsed or surrendered nonprofit provider registration, a nonprofit provider must electronically submit a completed provider registration form via:

(i) Sircon; or

(ii) facsimile, or as a PDF attachment to an email, using a form available through the Department's website.

(b) A nonprofit provider is not required to pay a reinstatement fee.

(5) A provider registration may be denied, suspended or revoked, an instructor prohibited from teaching a course, or a course disapproved, if the commissioner determines that:

(a) a course teaching method or course content fails to meet the standards of this rule;

(b) a registered provider reports that an individual completed a course in accordance with the standards furnished for course credit, when in fact the individual has not done so;

(c) a registered provider or instructor conducting a course instructs for less than the number of credit hours approved by the commissioner, but reports the full credits for the individual attending the course;

(d) credit for a course is not electronically reported to a designated internet site in a timely manner for an individual who satisfactorily completes a course in accordance with the standards furnished for course credit;

(e) a registered provider or instructor:

(i) lacks sufficient education or experience in the subject matter of the course;

(ii) has had a provider registration suspended or revoked in another jurisdiction;

(iii) has had an insurance license suspended or revoked;

(iv) uses course material that has been plagiarized, or

has copied course material without permission; or

(v) is otherwise no longer qualified in accordance with the standards of this rule; or

(f) there is other good cause evidencing that:

(i) a provider registration should be suspended or revoked;

(ii) an instructor should be disallowed from teaching a course; or

(iii) a course should be disapproved.

(6) The commissioner may disapprove any course, whether or not it had been previously approved, if:

(a) the commissioner determines that the course of study fails to meet the qualifying standards;

(b) the commissioner determines that the course material has been plagiarized, or copied without permission; or

(c) a change of 50% or more has been made in the course content since the initial approval of the course, subject to resubmission of the course for review and subsequent approval of the course by the commissioner.

(7) A registered provider may re-apply for a course that has been disapproved upon providing satisfactory proof to the commissioner that the conditions responsible for the disapproval have been corrected.

(8) To reinstate a suspended or revoked provider registration, a provider must:

(a) submit a completed provider registration form;

(b) submit a course outline that includes information regarding the course content and the number of credit hours requested for the course;

(c) pay a reinstatement fee, as identified in Rule R590-102, except as provided in Section 8(4) of this Rule; and

(d) provide satisfactory proof to the commissioner that the conditions responsible for the suspension or revocation have been corrected.

(9) A person with a revoked provider registration may not apply for a new registration for five years from the date the registration was revoked without the express approval by the commissioner, unless otherwise specified in the revocation order.

R590-142-10. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-142-11. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule on the effective date of the rule.

R590-142-12. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance continuing education
January 12, 2015
Notice of Continuation January 10, 2012

31A-2-201
31A-23a-202
31A-23b-205
31A-23b-206
31A-26-206
31A-26-209
31A-35-401.5

R590. Insurance, Administration.
R590-173. Credit For Reinsurance.
R590-173-1. Authority.

This rule is promulgated pursuant to the authority granted by Section 31A-2-201 of the Insurance Code.

R590-173-2. Purpose.

The purpose of this rule is to set forth requirements the commissioner deems necessary to carry out the provisions of Section 31A-17-404. The actions and information required by this rule are necessary and appropriate to the public interest and for the protection of the ceding insurers in this state.

R590-173-3. Definitions.

A. "Accredited Reinsurer" means an insurer that has, by order of the commissioner, been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied in that it is an authorized insurer in at least one state as provided for in Subsection 31A-17-404(3)(e).

B. "Beneficiary" means the entity for whose benefit a trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver, including conservator, rehabilitator or liquidator.

C. "Grantor" means the entity that has established a trust for the benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited, untrusteed assuming insurer.

D. "Liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers that are not otherwise secured by acceptable means and includes:

(1) For business ceded by domestic insurers authorized to write accident and health or property and casualty insurance:

(a) losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer:

(b) reserves for losses reported and outstanding;

(c) reserves for losses incurred but not reported;

(d) reserves for allocated loss expenses; and

(e) unearned premiums.

(2) For business ceded by domestic insurers authorized to write life, accident and health or annuity insurance:

(a) aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums:

(b) aggregate reserves for accident and health policies;

(c) deposit funds and other liabilities without life or accident and health contingencies; and

(d) liabilities for policy and contract claims.

E. "Mortgage-related security" means an obligation that is rated AA or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the National Association of Insurance Commissioners (NAIC) and that either:

(1) represents ownership of one or more promissory notes or certificates of interest or participation in the notes, including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation, that:

(a) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S. C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(b) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S. C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S. C.A. Section 1703; or

(2) is secured by one or more promissory notes or certificates of deposit or participations in the notes, with or without recourse to the insurer of the notes, and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Items (1)(a) and (1)(b) of this subsection.

F. "Obligations," means:

(a) reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(b) reserves for reinsured losses reported and outstanding;

(c) reserves for reinsured losses incurred but not reported; and

(d) reserves for allocated reinsured loss expenses and unearned premiums.

G. "Promissory note," when used in connection with a manufactured home, includes a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

H.(1) "Qualified United States financial institution" for the purposes of Section R590-173-7 and Subsection R590-173-8.A.(3) means an institution that:

(a) is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(b) is regulated, supervised and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(c) has been determined by either the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(2) "Qualified United States financial institution," for general purposes of this rule, means an institution that is eligible to act as a fiduciary of a trust that:

(a) is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state of the United States and has been granted authority to operate with fiduciary powers; and

(b) is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

I. "Trusteed Reinsurer" means an alien insurer which by order of the commissioner has been designated as having met the requirements under Section 31A-17-404 for the allowance of credit against a ceding company's reserves for reinsurance ceded and the security factor required under Subsection 31A-17-404(1)(b) is satisfied through a trust fund provided for in Subsection 31A-17-404(3)(d).

R590-173-4. Credit for Reinsurance - Reinsurer Licensed in this State.

The commissioner shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers authorized to do business in this state as of the date of the ceding insurer's statutory financial statement.

R590-173-5. Credit for Reinsurance - Accredited and Trusteed Reinsurers.

The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been granted accredited or trusteed reinsurer status in this state as of the date of the ceding insurer's statutory financial statement.

R590-173-6. Credit for Reinsurance - Reinsurer Domiciled and Licensed in Another State.

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which as of the date of the ceding insurer's statutory financial statement:

(1) is domiciled and licensed in a state which employs standards regarding credit for reinsurance substantially similar to those applicable under Section 31A-17-404 and this rule;

(2) maintains total adjusted capital above the Company Action Level RBC; and

(3) files a properly executed Certificate of Assuming Insurer, Form AR-1, with the commissioner as evidence of its submission to this state's authority to examine its books and records.

B. The provisions of this section relating to surplus as regards policyholders will not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same insurance holding company system.

R590-173-7. Credit for Reinsurance - Reinsurers Maintaining Trust Funds.

A. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of the date of the ceding insurer's statutory financial statement maintains a trust fund in an amount prescribed below in a qualified United States financial institution, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

B. The following requirements apply to the following categories of assuming insurer:

(1) the trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business written in the United States, and in addition, a trusteed surplus of not less than $20,000,000. For purposes of this section, liabilities attributable to business written in the United States means the liabilities attributable to reinsurance ceded by United States domiciled insurers.

(2)(a) The trust fund for a group of incorporated and individual unincorporated underwriters shall consist of:

(i) for reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after August 1, 1995, funds in trust in an amount not less than the group's aggregate liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(ii) for reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the group's aggregate insurance and reinsurance liabilities attributable to business written in the United States; and

(iii) in addition to these trusts, the group shall maintain a trusteed surplus of which $100,000,000 shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of account.

(b) The incorporated members of the group will not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:

(i) an annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(ii) if a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

(3)(a) The trust fund for a group of incorporated insurers under common administration shall:

(i) consist of funds in trust in an amount not less than the assuming insurers' aggregate liabilities attributable to business ceded by United States domiciled insurers to any members of the group pursuant to reinsurance contracts issued in the name of the group and;

(ii) maintain a joint trusteed surplus of which $100,000,000 shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and

(iii) file a properly executed Certificate of Assuming Insurer, Form AR-1, as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined shall bear the expense of any such examination.

(b) Within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C.(1) Credit for reinsurance will not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

(a) contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;

(b) legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest;

(c) the trust shall be subject to examination as determined by the commissioner;

(d) the trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and

(e) no later than February 28 of each year the trustee of

the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year-end, and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the following December 31.

(2)(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(b) The assets shall be distributed by and claims of United States trust beneficiaries shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(c) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part of the trust fund are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part of the assets, to the trustee for distribution in accordance with the trust agreement.

(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

D. Assets deposited in the trust shall be valued according to their fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a qualified United States financial institution, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust will not exceed 5% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under Subsection R590-173-7.D.(1)(e), (3), (5)(b) or (6), and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. A depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust shall be invested only as follows:

(1) government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

(a) the United States or by any agency or instrumentality of the United States;

(b) a state of the United States;

(c) a territory, possession or other governmental unit of the United States;

(d) an agency or instrumentality of a governmental unit referred to in Subsections R590-173-7.D.(1)(b) and (c) if the obligations shall be by law payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but will not be obligations eligible for investment under this subsection if payable solely out of special assessments on properties benefited by local improvements; or

(e) the government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(2) obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution, other than an insurance company, or that are assumed or guaranteed by a solvent United States institution, other than an insurance company, and that are not in default as to principal or interest if the obligations:

(a) are rated A or higher, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

(b) are insured by at least one authorized insurer, other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer, licensed to insure obligations in this state and, after considering the insurance, are rated AAA, or the equivalent, by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(c) have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

(3) obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(4) an investment made pursuant to the provisions of Subsection R590-173-7.D. (1), (2) or (3) shall be subject to the following additional limitations:

(a) an investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities will not exceed 5% of the assets of the trust;

(b) an investment in any one mortgage-related security will not exceed 5% of the assets of the trust;

(c) the aggregate total investment in mortgage-related securities will not exceed 25% of the assets of the trust; and

(d) preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under Subsections R590-173-7.D.(2)(a) and (2)(c), but will not exceed 2% of the assets of the trust.

(5) Equity interests

(a) Investments in common shares or partnership interests of a solvent United States institution are permissible if:

(i) its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(ii) the equity interests of the institution, except an insurance company, are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S. C. Sections 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the National Association of Securities Dealers, Inc. A trust will not invest in equity interests under this subsection an amount exceeding 1% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

(b) investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(i) all its obligations are rated A or higher, or the

equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(ii) the equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

(c) an investment in or loan upon any one institution's outstanding equity interests will not exceed 1% of the assets of the trust. The cost of an investment in equity interests made pursuant to this subsection, when added to the aggregate cost of other investments in equity interests then held pursuant to this subsection, will not exceed 10% of the assets in the trust;

(6) obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(7) Investment companies

(a) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S. C. Section 802, are permissible investments if the investment company:

(i) invests at least 90% of its assets in the types of securities that qualify as an investment under Subsection R590-173-7.D. (1), (2) or (3) or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in Subsection R590-173-7.D.(1), (2) or (3); or

(ii) invests at least 90% of its assets in the types of equity interests that qualify as an investment under Subsection R590-173-7.D.(5)(a);

(b) investments made by a trust in investment companies under this subsection will not exceed the following limitations:

(i) an investment in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(i) will not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies will not exceed 25% of the assets in the trust; and

(ii) investments in an investment company qualifying under Subsection R590-173-7.D.(7)(a)(ii) will not exceed 5% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to Subsection R590-173-7.D.(5)(a).

E. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 8 of this rule shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

R590-173-8. Asset or Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections 4 Through 7.

A. The commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of any of the following:

(1) cash;

(2) securities listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets;

(3) clean, irrevocable, unconditional and "evergreen" letters of credit that comply with Rule R590-114 issued or confirmed by a qualified United States financial institution; or

(4) any other form of security acceptable to the commissioner.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of the applicable portions of Sections R590-173-9 and 10 of this rule have been satisfied.

R590-173-9. Trust Agreements Qualified under Section 8.

A. Required conditions

(1) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee, which shall be a qualified United States financial institution.

(2) The trust agreement shall create a trust account into which assets shall be deposited.

(3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

(4) The trust agreement shall provide that:

(a) the beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(b) no other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(c) it is not subject to any conditions or qualifications outside of the trust agreement; and

(d) it will not contain references to any other agreements or documents except as provided for in Subsection R590-173-9.A.(11).

(5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

(a) receive assets and hold all assets in a safe place;

(b) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary may, whenever necessary, negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(c) furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(d) notify the grantor and the beneficiary within 10 days, of any deposits to or withdrawals from the trust account;

(e) upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(f) allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(7) The trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is

domiciled.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(10) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith.

(11) Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(a) to pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(b) to make payment to the assuming insurer any amounts held in the trust account that exceed 102 % of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(c) where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in Subsections R590-173-9.A.(11)(a) and (b) as may remain executory after such withdrawal and for any period after the termination date.

(12) Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of Section R590-173-8. in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(a) to pay or reimburse the ceding insurer for:

(i) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(ii) the assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(b) to pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(c) where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in Subsections R590-173-9.A.(12)(a) and (b) as may remain executory after withdrawal and for any period after the termination date.

(13) The reinsurance agreement may, but need not, contain the provisions required in Subsection R590-173-9.C.(1)(b), so long as these required conditions are included in the trust agreement.

(14) Notwithstanding any other provisions in the trust instrument, if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that all or part of the trust assets are not necessary to satisfy claims of the United States beneficiaries of the trust, all, or any part of the assets shall be returned to the trustee for distribution in accordance with the trust agreement.

B. Permitted conditions.

(1) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(2) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in Subsection R590-173-9.C.(1)(b).

(4) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(5) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered to the grantor.

C. Additional conditions applicable to reinsurance agreements:

(1) A reinsurance agreement may contain provisions that:

(a) require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specify what the agreement is to cover;

(b) stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust will not exceed 5% of total investments. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this subsection in lieu of including such provisions in the reinsurance agreement;

(c) require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

(d) require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(e) stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) to pay or reimburse the ceding insurer for:

(I) the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(II) the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(III) any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(ii) to make payment to the assuming insurer, amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(2) The reinsurance agreement also may contain provisions that:

(a) give the assuming insurer the right to seek approval from the ceding insurer, which will not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(i) the assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(ii) after withdrawal and transfer, the market value of the trust account is no less than 102 % of the required amount;

(b) provide for the return of any amount withdrawn in excess of the actual amounts required for Subsection R590-173-9.C.(1)(e), and for interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant to Subsection R590-173-9.C.(1)(e); and

(c) permit the award by any arbitration panel or court of competent jurisdiction of:

(i) interest at a rate different from that provided in Subsection R590-173-9.C.(2)(b);

(ii) court or arbitration costs;

(iii) attorney's fees; and

(iv) any other reasonable expenses.

(3) Financial reporting

A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction will be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(4) Existing agreements

Any trust agreement or underlying reinsurance agreement in existence prior to the effective date of this rule shall continue to be acceptable until January 1, 1999, at which time the agreements must fully comply with this rule for the trust agreement to be acceptable.

(5) The failure of any trust agreement to specifically identify the beneficiary will not be construed to affect any actions or rights that the commissioner may take or possess pursuant to the provisions of the laws of this state.

R590-173-10. Other Security.

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

R590-173-11. Contracts Affected.

All new and renewal reinsurance transactions entered into after the effective date of this rule shall conform to the requirements of this rule if credit is to be given to the ceding insurer for such reinsurance.

R590-173-12. Severability.

If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons or circumstances are not affected.

KEY: insurance
July 16, 1997 **31A-2-201**
Notice of Continuation June 27, 2012

R590. Insurance, Administration.
R590-194. Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism.
R590-194-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. The authority to set minimum standards by rule for coverage of dietary products for inborn errors of amino acid or urea cycle metabolism is provided by Subsection 31A-22-623(2).

R590-194-2. Purpose.

The purpose of this rule is to establish minimum standards of coverage for dietary products, including formulas and low protein modified food products, used for the treatment of inborn errors of amino acid or urea cycle metabolism. This coverage will be provided at levels consistent with the major medical benefit provided under an accident and health insurance policy. This entails the identification of a uniform billing code standard to be used by health insurers for the processing of claims covering dietary formulas in conjunction with the treatment of these specific inborn metabolic errors.

R590-194-3. Definitions.

For purposes of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and Subsection 31A-22-623(1).

R590-194-4. Applicability and Scope.

(1) This rule applies to all accident and health insurance policies sold in Utah which contain major medical benefits.

(2) This rules does not prohibit an insurer from requesting additional information required to determine eligibility of the claim under the terms of the policy, certificate or both, as issued to the claimant.

R590-194-5. Minimum Standards and General Provisions.

(1) Dietary products used for the treatment of inborn errors of amino acid or urea cycle metabolism must be used under the direction of a physician.

(2) Preauthorization for dietary products may be required if the preauthorization requirement is stated in the policy.

(3) Each insurer will provide direct access to a designated person familiar with the pertinent information in this rule, in order to facilitate the processing of claims for medical foods and low protein modified food products.

(4) For the purpose of this rule, dietary products will be paid under the major medical benefit, not under any limited benefit, such as Durable Medical Equipment(DME). The dietary product benefit is subject only to the major medical benefit limit.

(5) The uniform billing code Standard Number 27-4010, "Coverage for Metabolic Dietary Products," published by the Utah Health Information Network, implemented February 12, 1999, is incorporated in this rule by reference. This uniform billing standard is adopted under 31A-22-614.5, and shall be accepted and utilized for the billing and processing of claims for medical food and low protein modified food products coverage. This standard is available at the Utah Insurance Department upon request.

R590-194-6. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such validity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declare to be severable.

KEY: insurance law

December 1, 1999	**31A-2-201**
Notice of Continuation August 20, 2014	**31A-22-614.5**
	31A-22-623

R590. Insurance, Administration.
R590-226. Submission of Life Insurance Filings.
R590-226-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-2-201.1, and 31A-2-202(2).

R590-226-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for submitting:

(a) life insurance filings required by Section 31A-21-201; and

(b) report filings as required.

(2) This rule applies to:

(a) all types of individual and group life insurance, and variable life insurance; and

(b) group life insurance contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-226-3. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Data page" means the page or pages in a policy or certificate that provide the specific data for the insured detailing the coverage provided and may be titled by the insurer as policy specifications, policy schedule, policy information, etc.

(3) "Discretionary group" means a group that has been specifically authorized by the commissioner under Section 31A-22-509.

(4) "Electronic Filing" means a:

(a) filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF, or

(b) filing submitted via an email system.

(5) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.

(6) "Endorsement" means a written agreement attached to a life insurance policy that alters a provision of the policy, for example, a war exclusion endorsement, a name change endorsement and a tax qualification endorsement.

(7) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(8) "Filer" means a person who submits a filing.

(9) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a policy;

(b) a form;

(c) a document;

(d) an application;

(e) a report;

(f) a certificate;

(g) an endorsement;

(h) a rider;

(i) a life insurance illustration;

(j) a statement of policy cost and benefit information; and

(k) an actuarial memorandum, demonstration, and certification.

(10) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction of non-compliant items, may request clarification or additional information pertaining to the filing.

(11) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses.

(12) "Issue Ages" means the range of minimum and maximum ages for which a policy or certificate will be issued.

(13) "Letter of Authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.

(14) "Market type" means the type of policy that indicates the targeted market such as individual or group.

(15) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(16) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws or rules;

(b) returned to the licensee by the department with the reasons for rejection; and

(c) not considered filed with the department.

(17) "Rider" means a written agreement attached to a life insurance policy or certificate that adds a benefit, for example, a waiver of premium rider, an accidental death benefit rider and a term insurance rider.

(18) "Type of insurance" means a specific life insurance product including, but not limited to, term, universal, variable, or whole life.

(19) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department, that indicates a filing has been accepted.

R590-226-4. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Licensee and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing; and

(c) will not be reopened for purposes of resubmission.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order to Prohibit Use will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing Correction.

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within 15 days of the date the original filing was submitted to the department.

(c) A new filing is required if a filing correction is made more than 15 days after the date the original filing was submitted to the department. The filer must reference the original filing in the filing description.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to Section R590-226-13 for instructions.

(8) Filing withdrawal. A filer must notify the

department when withdrawing a previously filed form, rate, or supplementary information.

R590-226-5. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

(a) All filers must use SERFF to submit a filing.

(b) EXCEPTION: life settlement filers may choose to use email instead of SERFF to submit a filing.

(c) All filings must comply with the "NAIC Uniform Life, Accident and Health, Annuity, and Credit Coding Matrix," dated January 1, 2012, and incorporated by reference. This form is available on the department's website, www.insurance.utah.gov.

(2) A filings must be submitted by market type and type of insurance.

(3) A filing may not include more than one type of insurance, or request filing for more than one licensee.

(4) SERFF Filings.

(a) Filing Description. Do not submit a cover letter. On the General Information tab, complete the Filing Description section with the following information, presented in the order shown below.

(i) Certification.

(A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.

(B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORANCE WITH UTAH ADMINISTRATIVE RULE R590-226 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

(C) The "Utah Life Insurance Filing Certification for Individual" or the "Utah Life Insurance Filing Certification for Group" must be properly completed, signed, and attached to the Supporting Documentation tab.

(D) A filing will be rejected if the certification is false, missing, or incomplete.

(E) A false certification may subject the licensee to administrative action.

(ii) Provide a description of the filing including:

(A) the intent of the filing; and

(B) the purpose of each document within the filing.

(iii) Indicate if the filing:

(A) is new;

(B) has been submitted to the Interstate Insurance Product Regulation Commission (IIPRC);

(C) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected or withdrawn, the reasons for rejection or withdrawal, and the previous Utah Filed Date or the IIPRC approval date;

(D) includes documents for informational purposes; if so, provide the Utah Filed Date; or

(E) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iv) Identify if any of the provisions are unusual, innovative, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(v) Explain any change in benefits or premiums that may occur while the contract is in force.

(vi) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(vii) List the minimum death benefit.

(viii) Identify the intended market for filing, such as senior citizens, nonprofit organizations, association members, corporate owned, bank owned, etc.

(b) Domiciliary Approval and Filing Status Information. All filings for a foreign licensee must include on the Supporting Documentation tab:

(i) copy of domicile approval for the exact same filing; or

(ii) filing status information, which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(c) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must attach to the Supporting Documentation tab either a:

(i) signed and fully completed "Utah Life and Annuity Group Questionnaire"; or

(ii) copy of the Utah Life and Annuity Discretionary Group Authorization letter.

(d) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the Supporting Documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(e) Statement of Variability.

(i) A statement of variability must be attached to the Supporting Documentation tab and certify:

(A) the final form will not contain brackets denoting variable data;

(B) the use of variable data will be administered in a uniform and non-discriminatory manner and will not result in unfair discrimination;

(C) the variable data included in this statement will be used on the referenced forms;

(D) any changes to variable data will be submitted prior to implementation.

(ii) Variable data are denoted in brackets and are defined, either by imbedding in the form, or by a separate form identified by its own form number and edition date. Variable data submitted as a separate form must be in a manner that follows the construction of the form, by page and paragraph, or page and footnote.

(iii) Variable data must be reasonable, appropriate and compliant.

(iv) Use of unauthorized variable data is prohibited.

(f) Life Insurance Illustration Materials. If the life insurance form is identified as illustrated, the filing must include a sample:

(i) basic illustration complete with data in John Doe fashion;

(ii) current illustration actuary's certification;

(iii) company officer certification; and

(iv) sample annual report.

(g) Statement of Policy Cost and Benefit Information. If the life insurance form is not illustrated, the filing must include a sample of the Statement of Policy Cost and Benefit Information.

(h) Items being submitted for filing.

(i) All forms must be attached to the Form Schedule tab.

(ii) All rating documentation, including actuarial memorandums and rate schedules, must be attached to the Rate/Rule Schedule tab.

(iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration of compliance, and a certification of compliance with Utah laws are required in individual and group life insurance filings. The memorandum must be

currently dated and signed by the actuary. The memorandum must include:

(A) a description of the coverage in detail;

(B) a demonstration of compliance with applicable nonforfeiture and valuation laws; and

(C) a certification of compliance with Utah law.

(5) Refer to each applicable section of this rule for additional procedures on how to submit forms and reports.

(6) A filer submitting a life settlement filing, in addition to the requirements contained in R590-222-14, shall:

(a) attach a letter of authorization from the licensee if the filer is not the licensee;

(b) submit the documents in PDF format;

(c) identify any provisions that are unusual, controversial, innovative, or have been previously objected to, or prohibited, and explain why the provision is included in the filing; and

(d) shall certify that the filing has been properly completed and is in compliance with Utah laws and rules.

R590-226-6. Procedures for Filings.

(1) Forms in General.

(a) Forms are "File and Use" filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) Forms must contain a descriptive title on the cover page.

(d) Forms must be in final printed form. Drafts may not be submitted.

(e) Blank spaces within the form must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

(i) If the market intended is for the senior age group, the form must be completed with data representative of senior insureds.

(ii) All John Doe data in the forms including the data page must be accurate and consistent with the actuarial memorandum, the basic illustration, the Statement of Policy Cost and Benefit information, and the application, as applicable.

(2) Application Filing.

(a) Each application or enrollment form may be submitted as a separate filing or may be filed with its related policy or certificate filing.

(b) If an application has been previously filed or is filed separately, an informational copy of the application must be included with the policy or certificate filing.

(3) Policy Filings.

(a) Each type of insurance must be filed separately.

(b) A policy filing consists of one policy form, including its related forms, such as the application, sample data page, rider, endorsement, and actuarial memorandum.

(c) A policy data page must be included with every policy filing.

(d) Only one policy form for a single type of insurance may be filed, in each filing a life insurance policy with different premium payment periods is considered one form.

(e) A policy data page that changes the basic feature of the policy may not be filed without including the entire policy form in the filing.

(4) Rider or Endorsement Filing.

(a) Related riders or endorsements may be filed together.

(b) A single rider or endorsement that affects multiple forms may be filed if the Filing Description references all affected forms.

(c) A rider or endorsement that is based on morbidity risks, such as critical illness or long-term care, is considered accident and health insurance and must be filed in accordance with Rule R590-220, "Accident and Health Insurance Filings."

(d) The filing must include:

(i) a listing of all base policy form numbers, title and Utah Filed Dates;

(ii) a description of how each filed rider or endorsement affects the base policy; and

(iii) a sample data page with data for the submitted form.

(e) Unrelated riders or endorsement may not be filed together.

R590-226-7. Additional Procedures for Individual Life Insurance Forms and Group Life Insurance Certificates Marketed Individually.

(1) Insurers filing life insurance forms are advised to review the following code parts and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) R590-79, "Life Insurance Disclosure Rule;"

(d) R590-93, "Replacement of Life Insurance and Annuities;"

(e) R590-94, "Smoker/Nonsmoker Mortality Tables";

(f) R590-95, "Minimum Nonforfeiture Standards 1980 CSO and 1980 CET Mortality Tables;"

(g) R590-98, "Unfair Practice in Payment of Life Insurance and Annuity Policy Values;"

(h) R590-108, "Interest Rate During Grace Period or Upon Reinstatement of Policy;"

(i) R590-122, "Permissible Arbitration Provisions;"

(j) R590-177, "Life Insurance Illustrations;"

(k) R590-191, "Unfair Life Insurance Claims Settlement Practice;"

(l) R590-198, "Valuation of Life Insurance Policies;" and

(m) R590-223, "Rule to Recognize 2001 CSO Mortality Table."

(2) Every filing for an individual life insurance policy, rider or benefit endorsement, and a group life insurance policy that includes certificates that are marketed individually, shall include an actuarial memorandum, which includes a demonstration and certification of compliance with:

(a) Section 31A-22-408, "Standard Nonforfeiture Law for Life Insurance;" and

(b) Section 31A-17 Part V, "Standard Valuation Law."

R590-226-8. Additional Procedures for Group Market Filings.

(1) A filer submitting group life insurance filings are advised to review the following code parts and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) Section 31A-22 Part V, "Group Life Insurance;"

(d) R590-79, "Life Insurance Disclosure Rule;" and

(e) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) A policy must be included with each certificate filing along with a master application and enrollment form.

(3) Statement of Policy Cost and Benefit Information. A statement of policy cost and benefit information must be included in non-term group life insurance and preneed funeral policies or prearrangements. This disclosure requirement

shall extend to the issuance or delivery of certificates as well as to the master policy in compliance with R590-79-3.

(4) Actuarial Memorandum. An actuarial memorandum must be included in all group life insurance filings describing the coverage in detail and certifying compliance with applicable laws and rules. For non-term group life filings, the memorandum must also demonstrate nonforfeiture compliance with Section 31A-22-515.

(5) Eligible Group. A filing for an eligible group must include a completed "Utah Life and Annuity Group Questionnaire."

(a) A questionnaire must be completed for each eligible group under Section 31A-22-502 through 508.

(b) When a filing applies to multiple employer-employee groups under Section 31A-22-502, only one questionnaire is required to be completed.

(6) Discretionary Group. If a group is not an eligible group, then specific discretionary group authorization must be obtained prior to submitting the filing. If a form filing is submitted without discretionary group authorization, the filing will be rejected.

(a) To obtain discretionary group authorization a "Utah Life and Annuity Request For Discretionary Group Authorization" must be submitted and include all required information.

(b) Evidence or proof of the following items is considered in determining acceptability of a discretionary group:

(i) existence of a verifiable group;

(ii) that granting permission is not contrary to public policy;

(iii) the proposed group would be actuarially sound;

(iv) the group would result in economies of acquisition and administration which justify a group rate; and

(v) the group would not present hazards of adverse selection.

(c) Discretionary group filings that do not provide authorization documentation will be rejected.

(d) Any changes to an authorized discretionary group must be submitted to the department, such as change of name, trustee, domicile state, within 30 days of the change.

(e) The commissioner may periodically re-evaluate the group's authorization.

R590-226-9. Additional Procedures for Variable Life Filings.

(1) Insurers submitting variable life filings are advised to review the following code section and rule prior to submitting a filing:

(a) Section 31A-22-411, "Contracts Providing Variable Benefits;"

(b) R590-133, "Variable Contracts."

(2) A variable life insurance policy must have been previously approved or accepted by the licensee's state of domicile before it is submitted for filing in Utah.

(3) Information regarding the status of the filing of the variable life insurance policy with the Securities and Exchange Commission must be included in the filing.

(4) The description and the actuarial memorandum must:

(a) describe the types of accounts available in the policy; and

(b) identify those accounts that are separate accounts, including modified guaranteed accounts, and those that are general accounts.

(5) The actuarial memorandum must demonstrate nonforfeiture compliance:

(a) for separate accounts pursuant to Section 31A-22-411; and

(b) for fixed interest general accounts pursuant to Section 31A-22-408.

(c) In addition, for fixed accounts, the actuarial memorandum must:

(i) identify the guaranteed minimum interest rate; and

(ii) identify the maximum surrender charges.

(6) An actuarial certification of compliance with applicable Utah laws and rules must be included in the filing.

(7) A prospectus is not required to be filed.

R590-226-10. Additional Procedures for Combination Policies, Riders or Endorsements Providing Life and Accident and Health Benefits.

A filer submitting life and health combination policies, or health riders or endorsement to life policies, is advised to review Rule R590-220.

(1) A combination filing is a policy, rider, or endorsement which creates a product that provides both life and accident and health insurance benefits.

(a) The two types of acceptable combination filings are a rider or endorsement or an integrated policy.

(b) Combination filings take considerable time to process, and will be processed by both the Health Section and the Life Section of the Health and Life Insurance Division.

(2) A combination filing must be submitted separately to both the Health Section and the Life Section of the Health and Life Insurance Division.

(3)(a) For an integrated policy, the filing must be submitted to the appropriate division based on benefits provided in the base policy.

(b) For a rider or endorsement, the filing must be submitted to the appropriate section based on benefits provided in the rider or endorsement.

(4) The Filing Description must identify the filing as having a combination of insurance types, such as:

(a) whole policy with a long-term care benefit rider; or

(b) major medical health policy that includes a life insurance benefit.

R590-226-11. Classification of Documents.

(1) In accordance with Section 63G-2-305, the only information the commissioner may classify as protected is:

(a) information deemed to be a trade secret. Trade secret means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or

(b) commercial information and non-individual financial information obtained from a person if:

(i) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the commissioner to obtain necessary information in the future ; and

(ii) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

(2) The person submitting the information under Subsection (1)(a) or (b) and claiming that such is or should be protected shall provide the commissioner with the information in Section 63G-2-309(1)(a)(i).

(a) The filer shall request which specific document the filer believes qualifies under Subsections 63G-2-305(1) or (2) when the filing is submitted; and

(b) the request shall include a written statement of reasons supporting the request that the information should be classified as protected.

(3) Once the filing has been received, the commissioner will review the documents the filer has requested to be classified as protected to determine if the request meets the requirements of Subsections 63G-2-305(1) or (2).

(a) If all the information in the document meets the requirements for being classified as protected and the required statement is included, the document will be classified as protected and the information will not be available to the public.

(b) If all the information in the document does not meet the requirements for being classified as protected, the commissioner will notify the filer of the denial, the reasons for the denial, and the filer's right to appeal the denial. The filer has 30 days to appeal the denial as allowed by Section 63G-2-401.

(c)(i) Despite the denial of classifying the information as protected, the commissioner shall treat the information as if it had been classified as protected until:

(A) the 30 day time limit for an appeal to the commissioner has expired; or

(B) the filer has exhausted all appeals available under Title 63G, Chapter 2, Part 4 and the document has been found to be a public document.

(ii) During the 30 day time limit to appeal or the appeal process, the filer may withdraw:

(A) the filing; or

(B) the request for designation as protected.

(d) If the filer combines in a document, information it wishes to be classified as protected with information that is public, the document will be classified as public.

R590-226-12. Insurer Annual Reports.

All licensee annual reports must be properly identified and must be filed separately from other filings. Each annual report must be submitted when requested.

R590-226-13. Correspondence and Status Checks.

(1) Correspondence. When corresponding with the department, provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing;

(c) form numbers;

(d) Submission method, SERFF, or email; and

(e) SERFF tracking number.

(2) Status Checks.

(a) A complete filing is usually processed within 45 days of receipt.

(b) A filer can request the status of its filing 60 days after the date of submission. A response will not be provided to a status request prior to 60 days.

R590-226-14. Responses.

(1) Response to a Filing Objection Letter. When responding to a Filing Objection Letter a filer must:

(a) provide an explanation identifying all changes made;

(b) include an underline and strikeout version for each revised document;

(c) include a final version of revised documents that incorporates all changes; and

(d) for filing submitted in SERFF, attach the documents in Subsections R590-226-13(1)(b) and (c) to appropriate Form Schedule or Rate/Rule Schedule tab.

(2) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the order.

(b) Use of the filing must be discontinued no later than the date specified in the order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the order.

(d) A new filing is required if the licensee chooses to make the requested changes addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-226-15. Penalties.

Persons found, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-226-16. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 15 days from the effective date of this rule.

R590-226-17. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule, which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: life insurance filings

October 16, 2013	**31A-2-201**
Notice of Continuation March 18, 2014	**31A-2-201.1**
	31A-2-202

R590. Insurance, Administration.
R590-244. Individual and Agency Licensing Requirements.
R590-244-1. Authority.

This rule is promulgated pursuant to:

(1) Subsection 31A-2-201(3) that authorizes the commissioner to adopt rules to implement the provisions of the Utah Insurance Code;

(2) Subsections 31A-23a-104(2), 31A-23a-110(1), 31A-25-201(1), 31A-26-202(1), 31A-23b-203(2), 31A-23b-208(1), 31A-35-104, 301(1) and 401(2) that authorize the commissioner to prescribe the forms and manner in which an initial or renewal individual or agency license application under Chapters 23a, 23b, 25, 26 and 35 is to be made to the commissioner;

(3) Subsections 31A-23a-111(10), 31A-23b-401(9), 31A-25-208(9), 31A-26-213(10), and 31A-35-406(1) that authorize the commissioner to adopt a rule prescribing license renewal and reinstatement requirements for individual and agency licensees under Chapters 23a, 23b, 25, 26, and 35;

(4) Subsections 31A-23a-108(1), 31A-23b-205(2) and (3), and 31A-26-207(1) and (5), that authorize the commissioner to adopt a rule prescribing how examination and training requirements may administered to licensees under Chapters 23a, 23b, and 26;

(5) Subsection 31A-23a-115(1) that authorizes the commissioner to adopt a rule prescribing reporting requirements to be utilized by an insurer for the initial appointment or the termination of appointment of a person authorized to act on behalf of the insurer under Chapter 23a;

(6) Subsection 31A-23a-203.5(3) that authorizes the commissioner to adopt a rule prescribing the terms and conditions of any required legal liability insurance coverage to be maintained by or on behalf of a licensed resident individual producer;

(7) Subsection 31A-23b-207(1) that authorizes the commissioner to adopt a rule prescribing the amount of any surety bond required to be maintained by a licensed navigator to cover the legal liability of a navigator as the result of an erroneous act or failure to act in the navigator's capacity as a navigator;

(8) Subsections 31A-23a-302(2), 31A-23b-209(3), and 31A-26-210(1) that authorize the commissioner to adopt a rule prescribing reporting requirements to be utilized by an agency for the initial designation or the termination of designation of a person authorized to act on behalf of the agency under Chapters 23a, 23b, and 26; and

(9) Subsections 31A-23a-102(10) and 31A-23b-102(7) that authorize the commissioner to adopt a rule to define the word "resident".

R590-244-2. Purpose and Scope.

(1) The purpose of this rule is to provide standards for:

(a) an individual or agency licensee for:

(i) obtaining, renewing or reinstating a license;

(ii) maintaining any legal liability coverage or surety bond requirements; and

(iii) making other miscellaneous license amendments;

(b) an insurer for the initial appointment or the termination of an appointment of an individual or agency licensee; and

(c) an agency for the initial designation or the termination of a designation of an individual licensee to the agency's license.

(2) Scope.

(a) This rule applies to all individuals and agencies licensed under Chapters 23a, 23b, 25, 26 and 35.

(b) This rule applies to all admitted insurers doing business in Utah.

R590-244-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Subsections 31A-1-301, 31A-23a-102, 31A-23b-102, 31A-26-102, and 31A-35-102 and the following:

(1) "Active license" means a license under which a licensee has been granted authority by the commissioner to engage in some activity that is part of or related to the insurance business.

(2) "Inactive license" means a formerly active license where a licensee is no longer authorized by the commissioner to engage in some activity that is part of or related to the insurance business.

(3) "Lapse" means the inactivation of an active license by expiration of the period for which the license was issued or by operation of law.

(4) "License application" means information submitted by a license applicant to provide information about the license applicant that is used by the commissioner to evaluate the applicant's qualifications and decide whether to:

(a) issue or decline to issue a license;

(b) add or decline to add an additional line of authority to an active license;

(c) renew or decline to renew an active license; or

(d) reinstate or decline to reinstate an inactive license.

(5) "Line of authority" means a line of insurance of a particular subject matter area within a license type for which the commissioner may grant authority to do business.

(6) "License type" means a category of license identifying a specific functional area of insurance activity for which the commissioner may grant authority to do business.

(7) "NIPR" means an electronic application software provided by the National Insurance Producer Registry (NIPR).

(8) "Reinstate" means the activation of an inactive license within 365 days of the inactivation date.

(9) "Renewal" means the continuation of an active license from one two-year licensing period to another, except that the licensing period for a bail bond agency is one year.

(10) "Resident," for the purpose of a resident insurance license in this state, means a person who claims this state as the person's home state in which the person maintains the principal:

(a) place of residence; or

(b) place of business, and

(c) is licensed to do insurance business.

(11) "SIRCON" means an electronic application software provided by Sircon Corporation or its acquiring parent company, Vertafore, Inc.

(12) "Termination for cause" means

(a) an insurer or an agency has ended its relationship with a licensee or has cancelled the licensee's authority to act on behalf of the insurer or agency for one of the reasons identified in 31A-23a-111(5); or

(b) a licensee has been found to have engaged in any of the activities identified in 31A-23a-111(5), 31A-23b-401(4), 31A-26-213(5), by a court, government body, or self-regulatory organization authorized by law.

R590-244-4. Requirement to Electronically Submit License Applications, Appointments, Designations, and License Amendments.

(1) Except as otherwise provided in this rule the following shall be submitted electronically to the department using SIRCON or NIPR:

(a) all individual and agency license applications under chapters 23a, 23b, 25, 26, and 35 as prescribed in R590-244-6, 7, and 8 for:

(i) a new license;

(ii) an additional license type or line of authority;

(iii) a license renewal; or

(iv) a license reinstatement;

(b) all appointments, termination of appointments, designations, and terminations of designations as prescribed in R590-244-9 and 10;

(c) all miscellaneous license amendments pertaining to individual and agency licenses under Chapters 23a, 23b, 25, 26 and 35 as prescribed in R590-244-11;

(d) all documents related to reporting to the commissioner of criminal prosecution or administrative action taken against a licensee as required under Chapters 23a, 23b, 25, 26 and 35; and

(e) any additional documentation required in connection with an application, except as shown in (iv) below, including but not limited to:

(i) written explanation and documentation for positive responses to background questions on a license application;

(ii) evidence of meeting specific experience, bonding, or other requirements for certain license types or lines of authority; or

(iii) evidence of meeting continuing education requirements for a renewal or reinstatement application when there is a question regarding the number of course hours completed.

(iv) If an electronic attachment function for attaching a document required in connection with an application is not available in the attachment utility from SIRCON or NIPR, the document shall be submitted electronically via a facsimile or as a PDF attachment to an email, until such time that an electronic attachment function for submitting the document in connection with the application becomes available from SIRCON or NIPR.

(2) Attestation. Submission of an electronic application or other form under this Rule constitutes the applicant's or submitter's attestation under penalties of perjury that the information contained in the application or form is true and correct.

(3) Any submission subject to this rule that does not comply with this rule, including an application that remains incomplete for a period of 30 days following the initial submission, may be rejected as incomplete and returned to the submitter without being processed, with any paid fees forfeited to the State.

R590-244-5. Requirement of an Active License to Sell, Solicit, or Negotiate Insurance.

(1) A person must have the following to sell, solicit, or negotiate insurance:

(a) an active license matching the type and line of insurance being sold, solicited, or negotiated; and

(b) if the person is an agency, an appointment from an insurer; or

(c) if the person is an individual:

(i) an appointment from an insurer or a designation from an agency; and

(ii) if the individual is a resident producer, legal liability errors and omissions insurance coverage in an amount not less than $250,000 per claim and $500,000 annual aggregate limit, as applicable in accordance with Section 31A-23a-203.5.

(2) A licensee whose license is inactivated for any reason shall not sell, solicit, or negotiate insurance from the date the active license is inactivated until the date the inactive license is reactivated.

R590-244-6. Requirement of an Active License to Act as a Navigator.

(1) A person must have the following to act as a navigator:

(a)(i) an active navigator license issued under Chapter 31A-23b, or

(ii) an active producer license issued under Chapter 31A-23a with an accident and health line of authority; and

(b)(i) a surety bond in an amount not less than $50,000 to cover the legal liability of the navigator as the result of an erroneous act or failure to act in the navigator's capacity as a navigator, as applicable in accordance with Section 31A-23b-207; or

(ii) legal liability errors and omissions insurance coverage in an amount not less than $250,000 per claim and $500,000 annual aggregate limit, as applicable in accordance with Section 31A-23b-207.

(2) A professional liability coverage plan is considered to be a form of errors and omissions insurance coverage.

(3) A navigator whose license is inactivated for any reason shall not act as a navigator from the date the active license is inactivated until the date the inactive license is reactivated.

(4) A navigator license includes the following lines of authority:

(a) navigator; and

(b) certified application counselor.

R590-244-7. New License Application.

(1) A resident or non-resident license application for a new license, or for the addition of an additional license type or line of authority, shall be submitted using either SIRCON or NIPR, except as stated in (2) and (3) below.

(2) An application for a navigator license shall be submitted using SIRCON, except as stated in (3) below.

(3) A non-resident license application for a license type or line of authority not offered in the person's home state shall be submitted to the commissioner via facsimile or as a PDF attachment to an email using a form available through the Department's website, until such time that an electronic application becomes available from SIRCON or NIPR.

R590-244-8. Examination and Training.

(1) Examination and training requirements may be administered by:

(a) the commissioner;

(b) a testing vendor approved and contracted by the commissioner; or

(c) navigator related examination and training administered through the United States Department of Health and Human Services.

(2) To act as a navigator in Utah, a person must successfully complete:

(a) the federal navigator training and certification program requirements as established by federal regulation under PPACA and administered through the United States Department of Health and Human Services, including any applicable training, examination, certification or recertification requirements under that program; and

(b) the state defined contribution arrangements and small employer health insurance exchange training required under Section 31A-23b-205.

(c) A person who has successfully completed both the federal and state navigator training and certification identified in (2)(a) and (b) above is considered to have successfully completed the required Utah training and examination requirements for a navigator license in accordance with Section 31A-23b-205.

(3) An applicant for the crop insurance license class who has satisfactorily completed a national crop adjuster program is exempt from an examination requirement under Section 31A-26-207.

R590-244-9. Renewal and Non-renewal of an Active License.

(1) An active license shall be renewed on or before the license expiration date by submitting a resident or non-resident license renewal application online via SIRCON or NIPR.

(2) A new individual license shall expire on the last day of the licensee's birth month following the two-year anniversary of the license issue date, unless renewed, except as shown in (4) below.

(3) A renewed individual license shall expire on the last day of the licensee's birth month every two years, unless renewed, except as shown in (4) below.

(4) An individual navigator license shall expire annually on the last day of the month from the most recent license issue or renewal date, unless renewed.

(5) An agency license shall expire on the last day of the month every two years from the most recent license issue or renewal date, unless renewed, except as shown in (6) below.

(6) A bail bond agency license shall expire annually on August 14th, unless renewed.

(7) Renewal Notice.

(a) Prior to the license expiration date, the commissioner may, as a courtesy, send a renewal notice to the licensee's business email address as shown on the records of the Department.

(b) A renewal notice sent by the commissioner to the business email address, as shown on the records of the department, shall be considered received by the licensee.

(c) A licensee who fails to properly submit to, and maintain with, the commissioner a valid business email address may be subject to administrative penalties.

(8) A license shall non-renew effective the license expiration date if it is not renewed on or before the expiration date, and:

(a) the non-renewed license shall be inactivated;

(b) all agency designations and insurer appointments shall be terminated; and

(c) a lapse license notice will be sent to the affected licensee.

(9) An active licensee who fails to renew a license shall not engage in the business of insurance during the period of time from the expiration date of the license until the date the inactive license is reinstated or a new license is issued.

R590-244-10. Reinstatement of Inactive License.

(1) An inactive license that has been inactive for a period of one year or less following the license expiration date can be reinstated as stated in (3) through (7) below.

(2) An inactive license that has not been reinstated within one year following its expiration date shall not be reinstated and the inactive licensee shall apply as a new license applicant.

(3) A reinstatement applicant shall:

(a) comply with all requirements for renewal of a license, including any applicable continuing education or examination requirements if the reinstatement applicant is an individual; and

(b) pay a reinstatement fee as shown in R590-102.

(4) A resident or non-resident license application for reinstatement of an inactive license shall be submitted using either SIRCON or NIPR, except as stated in (5) below.

(5) The following license applications for reinstatement of an inactive license must be submitted to the department via facsimile or as a PDF attachment to an email using a form available through the department's website, until such time that an electronic application becomes available from SIRCON or NIPR:

(a) a non-resident reinstatement application for a person whose license has been inactivated for failure to maintain an active license in the person's home state;

(b) a resident or non-resident reinstatement application for a person whose license has been voluntarily surrendered; and

(c) a resident or non-resident reinstatement application for a person whose license has been inactivated due to an incomplete renewal application, except as stated in (i) below.

(i) If a resident license has been inactivated due to a renewal application that was incomplete solely for failure to meet the continuing education requirements, a resident reinstatement application must be submitted to the department:

(A) during the first 30 days after a license expiration date as a facsimile or as a PDF attachment to an email using a form available through the department's website; or

(B) 31 days to one year after a license expiration date through SIRCON or NIPR.

(7) A license that has been voluntarily surrendered:

(a) may be reinstated:

(i) during the license period in which the license was surrendered; and

(ii) no later than one year from the date the license was surrendered; and

(b) must comply with the reinstatement requirements stated in (3) above, except that no continuing education requirement will apply for an individual license applicant because the reinstatement is within the current license period.

(8) A reinstated license shall expire on the same date it would have expired had the license not become inactive.

(9) A person with a reinstated license must complete any required insurer contracts and appointments or agency designations before the reinstated licensee can resume doing business.

R590-244-11. Appointments and Termination of Appointments by Insurers.

(1) Initial Appointments.

(a) An insurer shall electronically appoint an individual or agency licensee with whom the insurer has a contract.

(b) Appointments are continuous until terminated by the insurer or canceled by the department.

(c) It is not necessary for an insurer to appoint an individual who is listed as a designee on an appointed agency's license.

(d) To appoint a person, an insurer shall:

(i) identify the date the appointment is to be effective; and

(ii) submit the electronic appointment to the commissioner no later than 15 days from the date the producer contract is executed or receipt of the first insurance application, using SIRCON or NIPR, except as stated in (iii) below.

(iii) A motor club insurer must submit the appointment to the commissioner via facsimile or as a PDF attachment to an email using a form available through the department's website, until such time that an electronic appointment becomes available from SIRCON or NIPR.

(2) Termination of Appointment.

(a) An insurer shall electronically terminate the appointment of any previously appointed individual or agency no longer authorized to conduct business on behalf of the insurer in this state.

(b) To terminate a person's appointment an insurer shall:

(i) identify the date the termination of appointment is to be effective; and

(ii) submit the termination of appointment to the

department no later than 30 days after the identified effective date of termination, using SIRCON or NIPR, except as stated in (iii) below.

(iii) A motor club insurer must submit the termination of appointment as a facsimile or as a PDF attachment to an email using a form available through the department's website, until such time that an electronic termination of appointment becomes available from SIRCON or NIPR.

(3) Termination for Cause.

(a) In addition to electronically terminating the individual or agency licensee's appointment, an insurer that terminates an individual or agency licensee for cause must send the following information to the department via facsimile or as a PDF attachment to an email:

(a) the insurer must state that the termination was for cause; and

(b) provide the specific circumstances causing the termination for cause.

R590-244-12. Designations and Termination of Designations by Agencies.

(1) Designations.

(a) An agency shall electronically designate a licensed individual to the agency license to do business on behalf of the agency in this state.

(b) Designations are continuous until terminated by the agency or canceled by the department.

(c) To designate an individual on its license, an agency shall:

(i) identify the date the designation is to be effective; and

(ii) submit the designation to the commissioner no later than 15 days after the identified effective date of designation using SIRCON or NIPR.

(2) Termination of designations.

(a) An agency shall electronically terminate the designation of any previously designated individual no longer authorized to conduct business on behalf of the agency in this state.

(b) To terminate an individual's designation an agency shall:

(i) identify the date the termination of designation is to be effective; and

(ii) submit the termination of designation to the department no later than 30 days after the identified effective date of termination using SIRCON or NIPR.

(3) Termination for Cause.

(a) In addition to electronically terminating the individual licensee's designation, an agency that terminates an individual licensee for cause must send the following information to the department via facsimile or as a PDF attachment to an email:

(a) the agency must state that the termination was for cause; and

(b) provide the specific circumstances causing the termination for cause.

R590-244-13. Miscellaneous License Amendments and Changes to an Agency's Employer Identification Number (EIN).

(1) All miscellaneous license amendments shall be submitted electronically.

(2) The following four miscellaneous license amendments shall be submitted via SIRCON or NIPR:

(a) a change of residence, business, or mailing address within the same state;

(b) a change of email address;

(c) a change of telephone number; or

(d) a change of an individual licensee's name.

(3) The following six miscellaneous license amendments shall be submitted electronically via facsimile or as a PDF attachment to an email, except that a license amendment identified in (d), (e) and (f) shall be submitted via SIRCON or NIPR once the amendment becomes available electronically from SIRCON or NIPR:

(a) a voluntary surrender of a license or line or authority;

(b) a clearance letter request;

(c) a change of an agency name;

(d) a change of residence, business, or mailing address from one state to another state;

(e) a change of position or title of an owner, partner, officer, or director of an agency; or

(f) a change of the licensed individual designated as the person responsible for the regulatory compliance of the agency.

(4) A miscellaneous license amendment submitted in accordance with this section shall contain:

(a) the name and title of the individual submitting the amendment;

(b) the relationship to the licensee of the individual submitting the amendment; and

(c) the following attestation made by the individual submitting the amendment: "I hereby attest that all of the information submitted is true and correct, and that I am the individual licensee for whom the requested change is being submitted, or an authorized responsible representative of the individual or agency licensee for whom the requested change is being submitted."

(5) A change of Employer Identification Number (EIN):

(a) cannot be processed as a miscellaneous license amendment; and

(b) the entity must apply as a new license applicant.

R590-244-14. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-244-15. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule on the effective date of the rule.

R590-244-16. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance licensing requirements

January 12, 2015	**31A-2-201**
Notice of Continuation June 16, 2014	**31A-23a-102(10)**
	31A-23a-104
	31A-23a-108
	31A-23a-110
	31A-23a-111
	31A-23a-115
	31A-23a-302
	31A-23b-102
	31A-23b-102(7)
	31A-23b-203
	31A-23b-205
	31A-23b-207
	31A-23b-208
	31A-23b-209
	31A-23b-401

31A-25-201
31A-25-208
31A-26-202
31A-26-207
31A-26-210
31A-26-213
31A-35-104
31A-35-301
31A-35-401
31A-35-406

R595. Judicial Conduct Commission, Administration.
R595-1. General Provisions.
R595-1-1. Definitions.

In addition to terms defined in Section 78A-11-102 et seq. of the Utah Code:

A. "Chair" means the chair of the Commission and includes the vice chair or acting chair.

B. "Confidential hearing" means a hearing at which allegations of misconduct or disability are presented to a hearing panel or masters for resolution.

C. "Contract investigator" means a person with whom a contract exists for the performance of investigative services.

D. "Examiner" means a lawyer designated by the Commission to present evidence at a confidential hearing.

E. "Formal charges" means the specific allegations of misconduct or disability identified by the Commission at the conclusion of a full investigation and upon which further proceedings will be conducted.

F. "Formal complaint" means the written document that formally charges a judge with misconduct or disability.

G. "Full investigation" means that portion of an investigation in which the judge is invited to respond in writing to specific allegations identified by the Commission. A full investigation may also include, but is not limited to: examination of documents, correspondence, court records, transcripts or tapes; interviews of the complainant, counsel, court staff, the judge and other witnesses; and inspection of physical facilities or objects.

H. "Hearing panel" means a panel of at least six members of the Commission designated to conduct a confidential hearing.

I. "Masters" means the special masters appointed by the Commission to conduct a confidential hearing.

J. "Misconduct" means a violation of the Utah Code of Judicial Conduct or Section 78A-11-105(1)(a), (b), (c), or (e) of the Utah Code.

K. "Preliminary investigation" means that portion of an investigation conducted upon receipt of a written complaint or upon authorization of the Commission. A preliminary investigation may include, but is not limited to: examination of documents, correspondence, court records, transcripts or tapes; interviews of the complainant, counsel, court staff and other witnesses; and inspection of physical facilities or objects.

L. "Presiding master" means the special master designated to preside over any hearing conducted by masters.

M. "Proceeding" means all steps in the Commission's discipline and disability process.

N. "Record" means all documents required by statute to be submitted to the Utah Supreme Court.

O. "Supreme Court" means the Utah Supreme Court.

R595-1-2. Jurisdiction.

A. Judges. The Commission has jurisdiction over judges in evaluating allegations that misconduct occurred before or during service as a judge and in evaluating allegations of disability during service as a judge.

B. Former judges. The Commission has continuing jurisdiction over former judges regarding allegations that misconduct occurred during the judicial appointment process or during service as a judge if a complaint is received before the judge left office.

R595-1-3. Confidentiality.

Confidentiality of Commission proceedings and records is governed by the Constitution of Utah and applicable state statute.

R595-1-4. Ex Parte Communications.

Commissioners shall not, individually or collectively, engage in ex parte communications about proceedings with complainants, witnesses, or judges.

R595-1-5. Attendance at Commission Meetings.

Commission members may attend Commission meetings in person, by telephone, by videoconference, or by other means approved in advance by the chair.

R595-1-6. Records Classification and Retention.

(Reserved.)

KEY: judicial conduct commission
February 1, 2005 Art. VIII, Sec. 13
Notice of Continuation January 12, 2015 78A-11-101 through 78A-11-113

R595. Judicial Conduct Commission, Administration.
R595-2. Administration.
R595-2-1. Executive Committee.

A. There is hereby established an executive committee of the Commission, comprised of the following three members of the Commission, all elected by the Commission: one legislator, one judge or member of the Utah State Bar, and one public member. The Commission chair shall serve as one of the members of, and as chair of, the executive committee.

B. The terms of committee members shall be two years. Committee members may be elected to subsequent terms.

C. The executive committee may:

1. recommend to the Commission the hiring or termination of the executive director;

2. hire and terminate the employment of other Commission staff;

3. approve the contracts of contract investigators;

4. recommend to the Commission salary increases for the executive director and other Commission staff;

5. investigate and resolve complaints against the executive director or Commission staff; and

6. perform other administrative duties as assigned by the Commission.

R595-2-2. Terms of Commission Chair and Vice Chair.

The terms of the Commission chair and vice chair shall be two years. The chair and vice chair may be elected to subsequent terms.

R595-2-3. Duties of Executive Director.

A. The executive director shall:

1. receive, acknowledge receipt of, and review complaints, refer complaints as provided by statute, conduct preliminary investigations, notify complainants about the status and disposition of their complaints, make recommendations to the Commission regarding further proceedings or the disposition of complaints, conduct full investigations or file formal charges when directed to do so by the Commission, and act as examiner;

2. maintain records of the Commission's operations and actions;

3. compile statistics to aid in the administration of the Commission's operations and actions;

4. prepare and distribute an annual report of the Commission's operations and actions;

5. prepare the Commission's budget for submission to the Commission and the Legislature, and administer the funds;

6. subject to the approval of the Commission or the executive committee, hire and terminate Commission staff and enter into contracts with contract investigators;

7. direct the operations of the Commission's office, and supervise other members of the Commission's staff and contract investigators;

8. with the Commission's approval, engage experts in connection with proceedings;

9. make available to the public, the laws, rules and procedures affecting the Commission and its operations;

10. consider requests for extensions of time periods established by Commission rule, and may, upon a showing of good cause, grant such requests for a period of time not to exceed 60 days in the aggregate; and

11. perform other duties at the direction of the Commission.

B. Subject to the duty to direct and supervise, the executive director may delegate any of the foregoing duties to other members of the Commission's staff or contract investigators.

KEY: judicial conduct commission
September 1, 2007 Art. VIII, Sec. 13

Notice of Continuation January 1, 2015 78A-11-101 through 78A-11-113

R595. Judicial Conduct Commission, Administration.
R595-3. Procedure.
R595-3-1. Proof.

Formal charges shall be established by a preponderance of the evidence.

R595-3-2. Applicability of Other Rules.

Except as otherwise provided in Commission rule, the Utah Rules of Evidence apply in all proceedings. Except as otherwise provided in Commission rule, the Utah Rules of Civil Procedure do not apply in Commission proceedings.

R595-3-3. Right to Counsel.

A judge shall be entitled to retain and have the assistance of counsel at every stage of the proceedings.

R595-3-4. Service.

Service of a formal complaint shall be made by personal service or certified mail upon the judge or judge's counsel. Service of all other papers or notices shall be made by regular mail with the envelope marked "confidential."

R595-3-5. Subpoena Power.

The issuance and service of subpoenas for Commission proceedings is governed by Section 78A-11-113 of the Utah Code.

R595-3-6. Effect of Judge's Resignation or Retirement during Proceedings.

If a judge resigns or retires during the proceedings, the Commission shall determine whether to proceed or dismiss the proceedings.

R595-3-6a. Effect of Request to Withdraw Complaint.

At any time prior to the filing of formal charges, a complainant may request to withdraw his or her complaint. The Commission shall then determine, at its sole discretion, whether to proceed or grant the request and dismiss the proceedings.

R595-3-7. Investigation.

A. Preliminary Investigation.

1. The executive director shall review all written complaints, and shall, regardless of whether the allegations contained therein would constitute misconduct or disability if true, conduct a preliminary investigation.

2. When any other complaint is received, the executive director shall summarize and submit the complaint in writing to the Commission, but shall not conduct a preliminary investigation unless authorized to do so by the Commission.

3. The scope of the preliminary investigation shall be determined by Commission rule and the assigned investigator, subject to the direction of the executive director.

4. Upon completion of the preliminary investigation, the investigator shall recommend a full investigation if there is reasonable cause to support a finding of misconduct or disability. In all other cases, the investigator shall recommend that the proceedings be dismissed.

B. Full Investigation. Within ten days after a full investigation is authorized by the Commission, the executive director shall notify the judge that a full investigation has been authorized. The notice shall:

1. inform the judge of the allegations being investigated and the canons or statutory provisions allegedly violated;

2. inform the judge that the investigation may be expanded if appropriate;

3. invite the judge to respond to the allegations in writing within 20 days; and

4. include a copy of the complaint, the preliminary investigation report(s), and any and all other documentation reviewed by the Commission in determining whether to authorize a full investigation.

R595-3-8. Formal Charges.

The Commission may, upon reasonable cause to support a finding of misconduct or disability, direct the executive director to file a formal complaint. The formal complaint shall give fair and adequate notice of the nature of the alleged misconduct or disability. The executive director shall file the formal complaint with the Commission, cause a copy to be served upon the judge or judge's counsel, and file proof of service with the Commission.

R595-3-9. Pre-Hearing Procedures.

A. Answer. Within 20 days after service, the judge may file an answer to the formal complaint.

B. Scheduling of Confidential Hearing. After receipt of the judge's answer or after expiration of the time to answer, the hearing panel or masters shall schedule a confidential hearing and notify the judge of the date, time, and place of the confidential hearing.

C. Witnesses and Exhibits. Not later than 20 days before the confidential hearing, the examiner and the judge shall: confer and attempt to agree upon uncontroverted and refuted facts and uncontested and contested issues of law; and exchange all proposed exhibits and a list of all potential witnesses.

D. Exculpatory Evidence. The examiner shall provide the judge with exculpatory evidence relevant to the formal charges.

E. Duty of Supplementation. Both parties have a continuing duty to supplement information required to be exchanged under this rule.

F. Failure to Disclose. The hearing panel chair or presiding master may preclude either party from calling a witness at the confidential hearing if the party has not provided the opposing party with the witness's name and address, any statements taken from the witness, or summaries of any interviews with the witness.

R595-3-10. Discipline by Consent.

At any time after the filing of formal charges and before final disposition by the Commission, the judge may, with the consent of the examiner, admit to any or all of the formal charges in exchange for a stated sanction. The agreement shall be submitted to the Commission for action.

R595-3-11. Confidential Hearing.

A. Authority of Hearing Panel Chair or Presiding Master. The hearing panel chair or presiding master shall rule on all motions and objections raised at the confidential hearing, may limit the time allowed for the presentation of evidence and arguments, may bifurcate any and all issues to be presented, and may make any and all other rulings regarding the procedure not contrary to statute or Commission rule.

B. Hearing Procedures.

1. All testimony shall be under oath.

2. The examiner and the judge shall be permitted to present evidence and produce and cross-examine witnesses, present rebuttal evidence and produce and cross-examine rebuttal witnesses, and summarize the evidence and legal issues.

3. Confidential hearings shall be recorded by a certified court reporter or other means used or allowed by courts of record in this state.

4. Panel hearing members or masters may ask questions of any witness or the judge.

5. Immediately following the conclusion of the evidence and arguments, the hearing panel or masters shall

deliberate and make a decision. Any such decision shall require a majority of the hearing panel or masters participating in the confidential hearing.

C. Post-Hearing Procedures if the Decision is to Dismiss the Formal Charges. The hearing panel chair or presiding master shall prepare and sign an order of dismissal, and shall serve the same upon the judge.

D. Post-Hearing Procedures if the Decision is to Impose any Level of Sanction or Involuntary Retirement.

1. Within 60 days from the conclusion of deliberations:

a. the hearing panel chair or presiding master shall prepare a memorandum decision, which must be approved by a majority of the hearing panel or masters participating in the confidential hearing, then signed by the hearing panel chair or presiding master and served on the examiner and the judge;

b. The examiner shall prepare findings of fact, conclusions of law, and an order consistent with the memorandum decision; and

c. The findings of fact, conclusions of law, and order shall be approved and signed by the hearing panel chair or presiding master, and served on the judge.

2. The judge shall have ten days, after service of the findings of fact, conclusions of law, and order, to lodge any objections with the Commission. If no objections are lodged, the executive director shall submit the record to the Supreme Court upon the expiration of the objection period. If objections are lodged, the Commission may either resolve the objections or refer them to the Supreme Court without resolution, along with the record.

3. A copy of the record shall be provided to the judge at no cost.

R595-3-12. Amendments to Formal Complaint or Answer.

At any time before the hearing panel chair or presiding master signs the findings of fact, conclusions of law, and order, the formal complaint or answer may be amended to conform to the proof or to allege additional facts. If the formal complaint is amended, the judge shall be given reasonable time to answer and present evidence in defense of the amended charges.

R595-3-13. Reinstatement of Proceedings after Dismissal.

A. Reinstatement upon Request by Complainant.

1. If the Commission dismisses the proceedings at any time prior to the commencement of a confidential hearing, the complainant may, within 30 days of the date of the letter notifying the complainant of the dismissal, file a written request that the Commission reinstate the proceedings. The request shall include the specific grounds upon which reinstatement is sought.

2. The request shall be presented to the Commission at the next available meeting of the Commission, at which time the Commission shall determine whether to reinstate the proceedings.

3. A determination not to reinstate the proceedings is not appealable.

B. Reinstatement upon Request by Executive Director.

1. If the Commission dismisses the proceedings at any time prior to the filing of formal charges, the executive director may, at any time upon the receipt of newly discovered evidence, request that the Commission reinstate the proceedings. The request shall include the specific grounds upon which reinstatement is sought.

2. The request shall be presented to the Commission at the next available meeting of the Commission, at which time the Commission shall determine whether to reinstate the proceedings.

R595-3-14. Proceedings Involving Allegations of Mental or Physical Disability.

A. Initiation of Disability Proceeding. A disability proceeding may be initiated: by written complaint; by a claim of inability to defend in a disciplinary proceeding; by an order of involuntary commitment or adjudication of incompetency; or upon authorization by the Commission upon the receipt of an unwritten complaint as provided in statute or Commission rule.

B. Proceedings to Determine Disability Generally. All disability proceedings shall be conducted in accordance with Commission rule, except:

1. the purpose of disability proceedings shall be to determine whether the judge suffers from a physical or mental condition that adversely affects the judge's ability to perform judicial functions; and

2. all of the proceedings shall be confidential.

KEY: judicial conduct commission
September 18, 2013 Art. VIII, Sec. 13
Notice of Continuation January 21, 2015 78A-11-101 through 78A-11-113

R595. Judicial Conduct Commission, Administration.
R595-4. Sanctions.
R595-4-1. Dismissals with Warning or on Conditions.

A. The Commission may dismiss a complaint or formal complaint with a warning or on conditions of no further misbehavior if:

1. the judge stipulates that the conduct complained of has occurred;

2. the Commission finds that the stipulated conduct constitutes misconduct; and

3. the Commission finds that the misconduct is troubling but relatively minor misbehavior and that no public sanction is warranted.

B. The Commission will not dismiss a complaint or formal complaint with a warning or on conditions of no further misbehavior if:

1. the Commission finds that a public sanction is warranted;

2. the Commission has previously dismissed a complaint or formal complaint against the judge on conditions of no further misbehavior and the current misconduct violates such conditions; or

3. the Commission finds that the current misconduct is the same or similar to misconduct established from a previous complaint or formal complaint that was dismissed with a warning or on conditions of no further misbehavior.

R595-4-2. Sanctions Guidelines.

In determining an appropriate sanction for misconduct, the Commission shall consider the following non-exclusive factors:

A. the nature of the misconduct;

B. the gravity of the misconduct;

C. the extent to which the misconduct has been reported or is known among court employees, participants in the judicial system or the public, and the source of the dissemination of information;

D. the extent to which the judge has accepted responsibility for the misconduct;

E. the extent to which the judge has made efforts to avoid repeating the same or similar misconduct;

F. the length of the judge's service on the bench;

G. the effect the misconduct has had upon the confidence of court employees, participants in the judicial system or the public in the integrity or impartiality of the judiciary;

H. the extent to which the judge profited or satisfied his or her personal desires as a result of the misconduct; and

I. the number and type of previous sanctions imposed against the judge.

KEY: judicial conduct commission
February 10, 2006 Art. VIII, Sec. 13
Notice of Continuation January 12, 2015 78A-11-101 through 78A-11-113

R651. Natural Resources, Parks and Recreation.
R651-214. Temporary Registration.
R651-214-1. Temporary Registration.

(1) A vessel dealer may apply to the Division of Motor Vehicles for temporary registrations to be used on motorboats or sailboats sold by his business.

(2) Each temporary registration will be valid for a period not to exceed 30 days from date of issue.

(3) A temporary registration will not be valid on any motorboat or sailboat held in the dealer's inventory for sale or any motorboat or sailboat not sold by the same dealer who issued the registration.

(4) A dealer shall not issue more than one temporary registration for any motorboat or sailboat.

(5) A dealer who obtains temporary registrations will be responsible for their issuance and is required to maintain records of each registration obtained and issued. Dealer records will contain a description of the vessel sold, the name and address of the purchaser, and the date issued.

(6) Temporary registration records kept by the dealer shall be made available for inspection and audit by authorized agents of the Division of Motor Vehicles during regular business hours.

(7) If the Division of Motor Vehicles has reasonable grounds to believe that a dealer has failed to comply with any of the above provisions, after notice to the dealer and a hearing, temporary registration issuance privileges may be canceled. Upon cancellation, the dealer will surrender all unissued temporary registrations to the Division of Motor Vehicles within 15 days.

(8) Temporary Operating Authority

(a) The division, or its authorized representatives, may grant a temporary permit to operate a vessel for which:

(i) application for registration has been made, or, in the case of a newly purchased vessel, will be made

(ii) evidence of ownership is provided; and

(iii) the proper fees have been paid.

(b) The temporary permit allows the vessel to be operated pending complete registration by displaying the temporary permit.

(c) If a vessel is operated on a temporary permit issued under this section, that vessel is subject to all other statutes, rules, and regulations intended to control the use and operation of vessels on the waterways.

(9) Relocation Permit

(a) Under rules made by the administrator, relocation permits may be issued by the division or its authorized representatives.

(b) Relocation permits allow use of the waterways for a time period not to exceed 96 hours.

(c) The division or its authorized representative may issue relocation permits without requiring a property tax clearance for the vessel on which the permit is to be used.

(d) Relocation permits allow for the purpose of testing for mechanical or seaworthiness of vessels.

(e) If a vessel is operated on a relocation permit under this section, that vessel is subject to all other statutes, rules, and regulations intended to control the use and operation of vessels on the waterways.

KEY: boating
January 22, 2015 73-18-7(18)(d)
Notice of Continuation February 10, 2011

R651. Natural Resources, Parks and Recreation.
R651-223. Vessel Accident Reporting.
R651-223-1. Notification Required.

An operator shall immediately and by the quickest means of communication available notify the nearest state park ranger or other law enforcement officer of an accident that involves a vessel or its equipment when one of the following occurs: a person dies or disappears from a vessel under circumstances that indicate death; a person is injured and receives medical treatment beyond first aid; or property is damaged in excess of $2,000.

This notification shall include:

(a) the date, time, and location of the occurrence;
(b) the name of each person who died or disappeared;
(c) the assigned number of the vessel; and
(d) the name and address of the owner and operator.

R651-223-2. Other Notification.

If the operator cannot provide this notification, then another person on board shall make the notification required in rule R651-223-1.

R651-223-3. Report Required.

The operator, owner, or other person on board shall submit a completed and signed Owner/Operator Boating Accident Report (PR-53A) to the division within 10 days of the accident.

KEY: accidents, boating
August 15, 2002 73-18-13
Notice of Continuation January 23, 2015

R651. Natural Resources, Parks and Recreation.
R651-412. Curriculum Standards for OHV Education Programs Offered by Non-Division Entities.
R651-412-1. Rulemaking Authority.

Section 41-22-31 UCA states that the Board shall develop curriculum standards for a comprehensive OHV education program designed to instill the necessary knowledge, attitudes, skills necessary for safe OHV operation, and that the Division shall cooperate with the appropriate public and private organizations in the implementation of this program.

R651-412-2. Course Approval Process.

Outside providers wishing to have OHV education courses approved by the Division as adequate for meeting Utah's OHV education standard shall submit a copy of their proposed curricula to the OHV Education Specialist for evaluation. The OHV Education Specialist shall evaluate the proposed curricula against the standard specified in this rule and shall issue a letter of approval to providers who present curriculum packages that meet the standard.

R651-412-3. Course Completion.

Individuals who complete a training course approved under this rule shall be issued an OHV Education Certificate in accordance with 41-22-31 UCA.

R651-412-4. Curriculum Standards.

At a minimum, all courses approved by the Division shall provide the following course content and shall be presented at a level appropriate for the average fourth grade student. The method of course content delivery is not specified.

(a) Description of OHV riding in Utah.
(b) Utah State Parks regulatory responsibilities.
(c) OHV terminology including, but not imited, to: throttle, fuel shut-off valve, brakes, shift leer, engine stop switch, choke, spark arrestor/muffler, headlights, engine, footrest, ignition switch.
(d) Utah State Laws.
(e) Riding positions, turning and stopping.
(f) Hypothermia, wind chill and cold weather survival.
(g) Riding on different types of terrain.
(h) Pre-ride inspections.
(i) Towing a trailer.
(ii) Crossing roads and highways.
(iii) Dangers of drugs and alcohol.
(i) Ethics, responsible riding and trail etiquette.
(j) Tread Lightly
(k) Proper safety equipment.
(l) Snowmobile courses will also include avalanche safety information.
(m) Any hands-on training provided by an authorized provider shall be conducted in accordance with R651-408(1) and all applicable state and federal law.

KEY: OHV education standards, parks
April 21, 2010 41-22-30
Notice of Continuation January 22, 2015

R651. Natural Resources, Parks and Recreation.
R651-634. Nonresident OHV User Permits and Fees.
R651-634-1. User Permits and Fees.

Except as provided below, any nonresident owning an off-highway vehicle, who operates or gives another person permission to operate the off-highway vehicle on any public land, trail, street or highway in this state, shall pay an annual off-highway vehicle user fee.

1. A decal will be issued which proves payment has been made. The decal will then be displayed on the off-highway vehicle as follows: On snowmobiles, the decal shall be mounted on the left side of the hood, pan or tunnel. On motorcycles, the decal shall be mounted on the left fork, or on the left side body plastic. On all-terrain vehicles, the decal shall be mounted on the rear of the vehicle. Vehicle types are defined in 41-22-2 UCA. In all instances, the decal shall be mounted in a visible location. The decal shall be non-transferable.

2. A receipt will be issued with the decal indicating the fee paid, the Vehicle Identification Number (VIN) of the off-highway vehicle, and the off-highway vehicle owner's name and address. This receipt shall remain with the off-highway vehicle at all times.

3. Fees charged will be in accordance with S.B. 14 (1999 Utah Laws 1, effective July 1, 1999), and H.B. 51 (2004 Utah Laws, Chapter 314, effective July 1, 2004) which state that the off-highway vehicle user annual fee will be $30 per year.

4. Nonresident OHV user permits shall continue in effect for a period of 12 months beginning with the first day of the calendar month of purchase, and shall not expire until the last day of the same month in the following year.

Applicants for a nonresident OHV user permit shall provide evidence that the applicant is the owner of the off-highway vehicle, and is not a resident of Utah. Such evidence shall include:

a. A government issued identification card showing the state of residency of the off-highway vehicle owner, and one of the following:

(1) A title or certificate of registration from a state other than Utah.

(2) An original bill of sale; or

b. A sworn affidavit stating that the off-highway vehicle is owned by a nonresident of the State of Utah. The affidavit must state the name and address of the vehicle owner, and a description of the off-highway vehicle, including the Vehicle Identification Number (VIN).

Off-highway vehicles currently registered in a state offering reciprocal operating privileges to Utah residents shall be exempt from the nonresident user fee requirements of this rule. The Division shall maintain a list of states offering reciprocal operating privileges to Utah residents. This list shall be updated at least annually.

Provisions of this rule shall not apply to off-highway vehicles exempt under 41-22-35(1)(b)(i), or to off-highway vehicles participating in scheduled competitive events sponsored by a public or private entity, or in noncompetitive events sponsored in whole or in part by any governmental entity; or to Street Legal All-terrain Vehicles as defined in 41-6a-102(61), and registered for highway use in a state that offers reciprocal highway operating privileges to Utah residents operating Street Legal All-Terrain vehicles.

Provisions of this rule shall not apply to off-highway vehicles owned by an off-highway vehicle manufacturer and being operated exclusively for the purpose of an off-highway vehicle manufacturer sponsored event; provided that the operator of the vehicle has in his or her possession a letter or certificate issued by the manufacturer which contains the following information:

(1) The name, address and contact information of the off-highway vehicle manufacturer; and

(2) A physical description of the vehicle, including the vehicle identification number or another number assigned by the manufacturer for identification purposes; and

(3) A brief description of the manufacturer sponsored event, including the dates thereof; and

(4) The name of the authorized operator(s) and

(5) An authorized signature of a manufacturer's representative.

KEY: parks
December 26, 2013 41-22-35
Notice of Continuation January 22, 2015 79-4-304

R652. Natural Resources; Forestry, Fire and State Lands.
R652-160. Department of Natural Resources Wilderness Rules.
R652-160-100. Authority and Purpose.

These rules implement Subsection 63L-7-101, the "Utah Wilderness Act," which authorizes the Department of Natural Resources to make rules to govern the protection of wilderness. These regulations adopted by the Division of Forestry, Fire, and State Lands are enacted under the direction of the Department of Natural Resources.

R652-160-200. Definitions.

1. "Access" means the physical ability of property owners and their successors in interest to have ingress to and egress from State or private inholdings, valid mining claims, or other valid occupancies.

2. "Acquisition date" means the day on which the state received title to land.

3. "Conservation area" means an area that potentially has wilderness characteristics.

4. "DNR" means the Department of Natural Resources.

5. "Executive Director" means the Executive Director of the Department of Natural Resources or his or her designee.

6. "Inholding" means state-owned or privately-owned land that is completely surrounded by a protected wilderness area.

7. "PLPCO" means the Public Lands Policy Coordination Office.

8. "Protected wilderness area" means an area of wilderness that has been designated under this chapter as part of the Utah wilderness preservation system.

9. "Road" means a road classified as either a class B road, as described in Section 72-3-103, or a class D road, as described in Section 72-3-105.

10. "Roadless area" means an area without a road, as defined in Subsection (6).

11. "Wilderness" means a roadless area of undeveloped state-owned land, other than land owned by the School and Institutional Trust Lands Administration, that:

(a) is acquired by the state from the federal government through purchase, exchange, grant, or any other means of conveyance of title after May 13, 2014;

(b) retains its primeval character and influence, without permanent improvements or human habitation;

(c) generally appears to have been affected primarily by the forces of nature, with minimal human impact;

(d) has at least 5,000 contiguous acres of land, or is of sufficient size as to make practicable its preservation and use in an unimpaired condition;

(e) has outstanding opportunities for solitude, or a primitive and unconfined type of recreation; and

(f) may contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

12. "Valid occupancy" means an occupancy under a current permit, lease or other written authorization from the State of Utah to occupy land.

R652-160-300. Objectives.

1. Except as otherwise provided in the regulations in this part, wilderness shall be so administered as to meet the public purposes of recreation, including hunting, trapping, and fishing; conservation; and scenic, scientific, educational, and historical uses; and it shall also be administered for such other purposes for which it may have been established in such a manner as to preserve and protect its wilderness character. In carrying out such purposes, wilderness shall be managed to promote, perpetuate, and, where necessary, restore the wilderness character of the land and its specific values of solitude, physical and mental challenge, scientific study, inspiration, and primitive recreation. To that end:

(a) Natural ecological succession will be allowed to operate freely to the extent feasible,

(b) Wilderness will be made available for human use to the optimum extent consistent with the maintenance of primitive conditions,

(c) In resolving conflicts in resource use, wilderness values will be dominant to the extent not limited by the Wilderness Act, subsequent establishing legislation, or the regulations in this part.

R652-160-400. Gifts, Bequests, and Contributions.

1. The Executive Director may accept gifts or bequests of land:

(a) within protected wilderness areas designated pursuant to this chapter for preservation as wilderness; and

(b) adjacent to designated protected wilderness areas, if the executive director of DNR gives 60 days advance notice to the governor.

2. Land accepted by the executive director of DNR under this section:

(a) shall become part of the protected wilderness area involved; and

(b) is subject to:

(i) the same regulations prescribed herein; and

(ii) any conditions that were made at the time the gift or bequest was made that are consistent with the regulations.

R652-160-500. Wilderness Surveys.

1. The Executive Director shall develop and conduct surveys of wilderness areas:

(a) on a planned, recurring basis;

(b) in a manner consistent with wildlife management and preservation principles;

(c) in order to determine the mineral values, if any, that may be present in wilderness areas; and (d) make a completed survey available to the public, the governor, and the Legislature.

R652-160-600. Control of Uses.

All wilderness areas will be open to uses consistent with the Utah Wilderness Act and consistent with the preservation of their wilderness character and their future use and enjoyment as wilderness. To the extent not limited by the Utah Wilderness Act, subsequent legislation establishing a particular unit, or the regulations in this part, the Executive Director may prescribe measures necessary to control fire, insects, and disease and measures which may be used in emergencies involving the health and safety of persons or damage to property and may require permits for, or otherwise limit or regulate, any use of wilderness, including, but not limited to camping, campfires, recreation, and grazing of livestock.

R652-160-700. Commercial Enterprises, Roads, Motor Vehicles, Motorized Equipment, Motorboats, Aircraft, Aircraft Landing Facilities, Airdrops, Structures, and Cutting of Trees.

1. Except as otherwise provided in the Wilderness Act or in these rules, and to support uses consistent with the rules, there shall be no commercial enterprises; no temporary or permanent roads; no aircraft landing strips; no heliports or helispots; no use of motor vehicles, motorized equipment, motorboats, or other forms of mechanical transport; no landing of aircraft; no structures or installations; and no cutting of trees for nonwilderness purposes.

(a) Mechanical transport, as herein used, shall include any contrivance which travels over ground, snow, or water on

wheels, tracks, skids, or by floatation and is propelled by a non-living power source contained or carried on or within the vehicle.

(b) Motorized equipment, as herein used, shall include any machine activated by a nonliving power source, except that small battery-powered, hand-carried devices such as flashlights, shavers, and Geiger counters are not classed as motorized equipment.

(c) The Executive Director may authorize occupancy and use of State land by officers, employees, agencies, or agents of the Federal, State, and county governments to carry out the purposes of the Wilderness Act and will prescribe conditions under which motorized equipment, mechanical transport, aircraft, aircraft landing strips, heliports, helispots, installations, or structures may be used, transported, or installed by the State and its agents and by other Federal, State, or county agencies or their agents, to meet the minimum requirements for authorized activities to protect and administer the Wilderness and its resources. The Executive Director may also prescribe the conditions under which such equipment, transport, aircraft, installations, or structures may be used in emergencies involving the health and safety of persons, damage to property, or other purposes.

(d) The Executive Director may permit, subject to such restrictions as he deems desirable, the landing of aircraft and the use of motorboats at places within any Wilderness where these uses were established prior to the date the Wilderness was designated. The Executive Director may also permit the maintenance of aircraft landing strips, heliports, or helispots which existed when the Wilderness was designated.

R652-160-800. Authorized Motor Vehicle, Aircraft, and Motorboat Use.

1. The use of a motor vehicle, aircraft, or motorboat is authorized under the following circumstances.

(a) Where the use of a motor vehicle, aircraft, or motorboat is already established.

(b) Where the motor vehicle, aircraft, or motorboat is used by the Division of Wildlife Resources in furtherance of its wildlife management responsibilities as described in Title 23.

(c) Where the use of a motor vehicle, aircraft, or motorboat is necessary for emergency services or law enforcement purposes.

R652-160-900. Grazing.

1. The grazing of livestock, where such use was established before the designation of wilderness shall be permitted to continue under the general regulations covering grazing of livestock in the State of Utah and in accordance with any special provisions covering grazing use in units of wilderness which the Executive Director may prescribe for general application in such units or may arrange to have prescribed for individual units.

2. The Executive Director may permit, subject to such conditions as he deems necessary, the maintenance, reconstruction, or relocation of those livestock management improvements and structures which existed within a wilderness area. Additional improvements or structures may be built when necessary to protect wilderness value.

3. The Commissioner of the Department of Agriculture and Food may make regulations as necessary to govern the grazing of livestock on a wilderness area.

R652-160-1000. Structures.

Motels, summer homes, stores, resorts, organization camps, hunting and fishing lodges, electronic installations, and similar structures and uses are prohibited in wilderness. The Executive Director may permit temporary structures and commercial services within wilderness to the extent necessary for realizing the recreational or other wilderness purposes, which may include, but are not limited to, the public services generally offered by packers, outfitters, and guides.

R652-160-1100. Jurisdiction Over Wildlife.

The Division of Wildlife Resources shall have jurisdiction and responsibility with respect to wildlife and fish.

R652-160-1200. Access to Surrounded State and Private Land.

1. In any case where privately owned land is completely surrounded by lands within areas designated by this chapter as protected wilderness:

(a) the private landowner shall be given rights as may be necessary to ensure adequate access to the privately owned land by the private owner and any successors in interest; or

(b) the privately owned land shall be exchanged for state-owned land of approximately equal value.

2. If the School Institutional Trust Lands Administration owns land that is completely surrounded by lands within areas designated by this chapter as protected wilderness:

(a) the School Institutional Trust Lands Administration shall be given rights as may be necessary to ensure adequate access to the land owned by the School Institutional Trust Lands Administration and any successors in interest; or

(b) the land owned by the School Institutional Trust Lands Administration may be exchanged for state-owned land of approximately equal value.

3. If a valid mining claim or other valid occupancy is located wholly within a protected wilderness area, the Executive Director shall, by reasonable regulations consistent with the preservation of the area as wilderness, permit ingress and egress to such surrounded areas by means which have been, or are being, customarily enjoyed with respect to other similarly situated areas.

R652-160-1300. Mineral Leases and Mining.

1. Notwithstanding any other provision of this chapter, until midnight December 31, 2034:

(a) state laws pertaining to mining and mineral leasing shall, to the extent applicable before May 13, 2014, extend to wilderness areas designated under this chapter, subject to reasonable regulation governing ingress and egress as may be prescribed by the executive director of DNR, consistent with the use of the land for:

(i) mineral location and development;

(ii) exploration, drilling, and production; and

(iii) use of land for transmission lines, waterlines, telephone lines, or facilities necessary in exploring, drilling, producing, mining, and processing operations, including the use of mechanized ground or air equipment when necessary, if restoration of the disturbed land is practicable and performed as soon as the land has served its purpose; and

(b) mining locations lying within the boundaries of a protected wilderness area that existed as of the date of acquisition shall be held and used solely for mining or processing operations, and uses that are reasonably related to an underlying mining or processing operation.

(c) Any newly issued mineral lease, permit, or license for land within a wilderness area shall contain stipulations, as may be determined by the executive director of DNR in consultation with the director of the Division of Oil, Gas, and Mining, for the protection of the wilderness character of the land, consistent with the use of the land for the purpose for which it is leased, permitted, or licensed.

(d) Subject to valid rights then existing, effective January 1, 2015, the minerals in all lands designated by this

chapter as wilderness areas are withdrawn from disposition under all laws pertaining to mineral leasing.

(e) Mineral leases shall not be permitted within protected wilderness areas.

(f) Permits shall not be issued for the removal of mineral materials commonly known as common varieties.

R652-160-1400. Gathering Information and Water Resources Prospecting.

1. The Executive Director shall allow any activity, for the purposes of gathering information about resources, other than minerals, in wilderness, except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment. Prospecting for minerals or any activity for the purpose of gathering information about minerals in wilderness is subject to applicable rules.

2. Any person desiring to use motorized equipment, to land aircraft, or to make substantial excavations for the purpose of gathering information about resources, other than minerals, shall apply in writing to the Executive Director. Excavations shall be considered substantial which singularly or collectively exceed 200 cubic feet within any area which can be bounded by a rectangle containing 20 surface acres. Such use or excavation may be authorized by a permit issued Executive Director. Such permits may provide for the protection of resources, including wilderness values, protection of the public, and restoration of disturbed areas, including the posting of performance bonds.

3. Within wilderness, prospecting for water resources and the establishment and maintenance of new reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in developing water resources or in the public interest, including road construction may be authorized by the Governor of the State of Utah.

KEY: wilderness
January 27, 2015 **63L-7-101**

R657. Natural Resources, Wildlife Resources.
R657-69. Turkey Depredation.
R657-69-1. Purpose and Authority.

(1) Under authority of Section 23-17-5.1, 23-17-5.2, this rule provides:

(a) the procedures for responding to and verifying reports of material damage caused by turkey;

(b) the procedures, standards, requirements, and limits for addressing instances of material damage caused by turkeys; and

(c) a description of the various hunts that may be held to minimize future instances of material damage caused by turkeys.

R657-69-2. Definitions.

(1) As used in this rule, "turkey" means a wild, free-ranging turkey and does not include a privately-owned wild turkey, domestic turkey, or wild-domestic hybrids.

(2) "Alternate limited entry drawing list" means a chronological list, based upon the permit drawing procedures described in the Upland Game and Turkey Guidebook, of those persons who were unsuccessful in drawing a limited entry turkey hunting permit and would have been successful were additional permits available.

(3) "Control permit" means a nontransferable turkey hunting permit issued by the division under R657-69-6 or R657-69-7 that authorizes the holder to take a turkey for personal use within the described permit boundaries and described dates.

(4) "Control permit voucher" means a document issued to a landowner or lessee that may be retained for personal use or transferred to a third party, and which allows the holder to purchase a turkey control permit from the division.

(5) "Depredation Hunt" means a turkey hunt organized pursuant to R657-69-5, the Wildlife Code, and proclamations of the Wildlife Board.

(6) "Employee" means an individual regularly employed by the landowner or lessee for purposes unassociated with hunting on the private property owned or managed by the landowner or lessee.

(7) "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, and grandchild.

(8) "Landowner" means any person, partnership, or corporation who owns private property in Utah and whose name appears on a deed as the owner or whose name appears as the purchaser on a contract for sale of private property.

(9) "Lessee" means any person, partnership, or corporation whose name appears as the lessee on a written lease, for at least a one-year period, of private property, and who is in actual physical control of the private property.

(10) "Material damage" means physical impacts to private property caused by turkeys that are visible, persistent, and detrimental to the landowner or lessee's use of the private property.

(11) "Personal property" means any moveable and tangible thing owned by the landowner or lessee.

(12) "Private property" means land in private fee ownership, structures located thereon, and personal property of the landowner or lessee on or adjacent to the land of the landowner or lessee, but not including tribal trust lands.

R657-69-3. Responding to Reports of Material Damage by Turkeys.

(1) Upon discovering material damage to private property attributable to turkeys, a landowner or lessee may request that the division take action to mitigate that damage.

(2) A request for action shall be delivered to a division representative in the appropriate regional office.

(3) A request for action may be made:

(a) orally to expedite a field investigation; or

(b) in writing.

(4)(a) The division will investigate a request for action within 72 hours after receiving the request.

(b) If after completing its investigation the division confirms that material damage did occur and it appears that material damage may continue, the division shall:

(i) remove or drive off turkeys causing material damage; or

(ii) with the written approval of the landowner or lessee, implement a damage mitigation and prevention plan in accordance with R657-69-4.

(5) A landowner or lessee may not harass, hunt, or otherwise take a turkey on private property unless:

(a)(i) they possess a valid turkey hunting permit authorizing them to hunt turkeys; or

(ii) a damage mitigation and prevention plan authorizes them to undertake such actions; and

(b) the landowner or lessee's actions are otherwise consistent with the Wildlife Code, its implementing regulations, and proclamations of the Wildlife Board.

R657-69-4. Turkey Damage Mitigation and Prevention Plans.

(1) A damage mitigation and prevention plan may authorize the division to undertake any or all of the following actions:

(a) provide educational materials regarding turkeys and turkey damage to the landowner or lessee, including strategies on how to alleviate damage;

(b) use, or allow the landowner or lessee to use, nonlethal methods to haze turkeys on private property experiencing material damage and, if necessary, provide the landowner or lessee equipment and supplies necessary to carry out hazing;

(c) exclude turkeys from areas in which material damage has occurred and is expected to continue to occur, using fencing, tarpaulins, or other similar materials;

(d) capture and relocate any turkeys causing, or reasonably likely to cause, material damage to the property to a location on the Wildlife Board approved turkey transplant list;

(e) allow expanded harvest of turkeys by:

(i) increasing permit numbers during limited entry or general season hunts;

(ii) expanding or increasing the areas for turkey hunts;

(iii) enrolling the property in the division's Walk-In Access Program in accordance with R657-56;

(iv) enrolling the property in the division's Cooperative Wildlife Management Unit Program in accordance with R657-37;

(v) schedule and hold a depredation hunt pursuant to R657-69-5;

(vi) issue control permits pursuant to R657-69-6; or

(vii) issue control permit vouchers pursuant to R657-69-7;

(f) allow landowners or lessees to capture and relocate turkeys causing, or reasonably likely to cause, material damage to the property to a location on the Wildlife Board approved turkey transplant list;

(g) allow landowners or lessees to use weapons or methods otherwise prohibited to take a turkey if traditional weapons are unsuitable for the location of the property; and

(h) other reasonable measures aimed at reducing instances of material damage to the private property in question.

(2) Damage mitigation and prevention plans shall have:

(a) a description of the private property covered by

the plan;

(b) a specific effective date and effective term for the plan;

(c) a description of the verified instances of material damage and the dates of occurrence; and

(d) an assurance by the landowner or lessee that members of the public holding a control permit or a turkey depredation permit may access the private property at no charge during the hunts for which they hold a permit.

(3) Damage mitigation and prevention plans may be amended or renewed with written consent of the division and the landowner or lessee during their effective term.

(4)(a) The landowner or lessee may unilaterally revoke and withdraw from a damage mitigation and prevention plan by providing the division 30 days prior written notice.

(b) A landowner or lessee's revocation of approval of a damage mitigation and prevention plan eliminates the division's obligations described in the plan.

(c) A landowner or lessee may not revoke approval of a damage mitigation and prevention plan after a depredation hunt has been scheduled on their private property until after the depredation hunt has taken place.

(4) The division may unilaterally revoke and withdraw from a damage mitigation and prevention plan if:

(a) the landowner or lessee fails to exercise reasonable care and diligence to avoid loss or minimize the damage caused by turkeys;

(b) the landowner or lessee fails to comply with the terms of the damage mitigation and prevention plan; or

(c) in the division's discretion, the damage mitigation and prevention plan is not necessary.

(5) The expiration or revocation of a damage mitigation and prevention plan does not preclude the landowner or lessee from making future requests for action.

(6) The division shall not be financially liable for damage to private property caused by:

(a) turkeys;

(b) its efforts to remove or drive off turkeys in response to a request for action; or

(c) actions taken or authorized by a damage mitigation and prevention plan.

(7) A landowner or lessee shall have a copy of the damage prevention and mitigation plan in their possession while undertaking any action authorized in the plan that otherwise violates the Wildlife Code, including, but not limited to, the hazing, capturing, and transplanting of turkeys.

R657-69-5. Depredation Hunts for Turkey.

(1) Turkey depredation hunts are intended to:

(a) mitigate verified reports of material damage by turkeys and prevent future instances of material damage in the vicinity of the hunt area;

(b) be a focused response to verified reports of material damage;

(c) be a rapid response mechanism to verified reports of material damage; and

(d) have limited permit numbers.

(2) Turkey depredation hunts shall operate consistent with the following guidelines:

(a) turkey depredation hunts may be held August 1 through March 14;

(b) parameters for a turkey depredation hunt must comply with the provisions established in the current Wild Turkey Management Plan approved by the Wildlife Board; and

(c) the boundaries of the hunts, specific season dates, bag limits, sex of birds that may be taken, and allowable weapon types will be further defined in a depredation hunt plan by the division Regional Supervisor.

(3) Hunters will be selected to receive a depredation permit in the following order, based on permit availability:

(a) randomly selected individuals in the depredation hunter pool; and

(b) individuals on the alternate limited entry drawing list, in chronological order.

(4)(a) The turkey hunter depredation pool provides hunters an opportunity to be placed on a wait-list and become eligible to receive a depredation permit as the availability for depredation permits allows.

(b) Applications for the turkey hunter depredation pool must be submitted pursuant to instructions in the current year's Upland Game and Turkey Guidebook of the Wildlife Board for wild turkey.

(c) Applications must be received by the date published in the Upland Game and Turkey Guidebook of the Wildlife Board for wild turkey.

(d) Applications received after the date published in the proclamation Upland Game and Turkey Guidebook of the Wildlife Board for wild turkey may be used after the list of individuals within the depredation hunter pool and the alternate limited entry drawing list has been exhausted.

(5) If a hunter is successful in the depredation permit drawing and possesses a valid unfilled turkey permit for a hunt in the same calendar year as the depredation hunt, that hunter may receive a depredation permit at no cost.

(6) Hunters selected to receive a depredation permit who do not possess a valid unfilled turkey permit must purchase the appropriate permit prior to participating in the depredation hunt.

(7) Hunters selected to receive a depredation permit will not lose bonus points associated with the limited entry application process.

(8) Hunters with depredation permits for turkey may not possess any other turkey permit for that season, except as otherwise provided in this Rule, Rule R657-54, or by proclamation of the Wildlife Board.

(9) Depredation permits may be withheld from persons who have violated this rule, any other wildlife rule, the Wildlife Resources Code, or who are otherwise ineligible to receive a permit.

R657-69-6. Control Permits for Turkey.

(1)(a) As part of a damage mitigation and prevention plan, the division may issue a turkey control permit at no cost directly to the affected landowner or lessee, or to their immediate family member or employee.

(b) No more than two control permits may collectively be issued per calendar year under each damage prevention and mitigation plan.

(2) A control permit allows the permit holder to take a single turkey of either sex within the boundaries designated in the damage mitigation and prevention plan.

(3) Control permit turkey hunts may be held August 1 through March 14.

(4)(a) In the event that the landowner or lessee, or the landowner or lessee's immediate family member or employee, who receives the control permit does not possess a valid hunting or combination license, the division may issue a special turkey control license at no cost to the designated permit holder for the purposes of obtaining a control permit.

(b) A special turkey control license does not authorize the license holder to take any other protected wildlife or to obtain any other permit other than a turkey control permit.

(5) Hunters who receive a control permit will not lose any bonus points accrued as part of the limited entry turkey application process.

(6) Control permits may be withheld from persons who have violated this rule, any other wildlife rule, the Wildlife Resources Code, or who are otherwise ineligible to receive a

permit.

R657-69-7. Control Permit Vouchers for Turkey.

(1)(a) As part of the damage mitigation and prevention plan, the division may issue turkey control permit vouchers to the landowner or lessee.

(b) The number of control permit vouchers shall not exceed 10% of the documented turkeys on the private property or fifteen vouchers per calendar year, whichever is less.

(2)(a) Control permit vouchers do not allow turkey hunting and must be redeemed for a control permit prior to going afield.

(b) Control permit vouchers may be redeemed for a turkey control permit at a division office prior to the closing date of the control permit turkey hunt for which the voucher was issued.

(c) Individuals shall pay the required fee in order to redeem a control permit voucher for a turkey control permit.

(3)(a) A landowner or lessee may retain and redeem control permit vouchers as turkey control permits if they have not met their control permit quota identified in R657-69-6(1)(b).

(b) A landowner or lessee transferring control permit vouchers to another individual may not receive any form of compensation or remuneration for the transfer or for allowing access to the private land for turkey hunting under a control permit on the landowner or lessee's private property.

(c) Turkey control permit vouchers are only transferable between the landowner or lessee and an individual redeeming that voucher for a turkey control permit.

(d) An individual receiving a transferred control permit voucher may only receive one control permit voucher per calendar year.

(4) Individuals redeeming a control permit voucher for a control permit will not lose accrued bonus points for limited entry turkey hunting as a result of redeeming the voucher.

R657-69-8. Hunt Areas for Depredation and Control Permit Hunts.

(1) The hunt area for depredation hunts and control permit hunts may include a buffer zone of up to 2 miles around the parcels of private property experiencing material damage.

(2) Buffer zones, if any, will be defined in the damage mitigation and prevention plan.

(3) Buffer zones may partially encompass or be adjacent to lands experiencing material damage.

(4) If a buffer zone includes the private land of multiple landowners, each affected landowner must be a signatory to the damage mitigation and prevention plan.

R657-69-9. Appeal Procedures.

(1) Upon the petition of an aggrieved party to a final division action relative to material damage caused by turkeys 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.

R657-69-10. Hunting or Combination License Required.

(1)(a) A person must possess or obtain a valid Utah hunting or combination license, or a special turkey control license, to receive a turkey control permit pursuant to R657-69-6.

(b) A person must possess or obtain a valid Utah hunting or combination license to:

(i) receive a turkey depredation permit; or

(ii) or redeem a control permit voucher for the corresponding permit.

(2)(a) Special turkey control licenses are only issued to landowners or lessees, immediate family members, and employees that are designated to receive a turkey control permit under R657-69-6 and do not possess a valid Utah hunting or combination license.

(b) Special turkey control licenses may not be used in lieu of a hunting or combination license to obtain a depredation permit or a control permit under a control permit voucher.

KEY: wildlife, turkey, depredation
January 8, 2015 **23-17-5.1**
23-17-5.2

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-310. Regulation of Bail Bond Recovery and Enforcement Agents.
R722-310-1. Purpose.

The purpose of the rule is to establish procedures for the licensing of bail enforcement agents, bail bond recovery agencies, bail recovery agents, and bail recovery apprentices.

R722-310-2. Authority.

This rule is authorized by Subsection 53-11-103(5).

R722-310-3. Definitions.

(1) Terms used in this rule are defined in Section 53-11-102.

(2) In addition:

(a) "act involving moral turpitude" means conduct which:

(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another's property;

(b) "bureau" means the Bureau of Criminal Identification within the Department of Public Safety established by Section 53-10-201;

(c) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;

(d) "licensee" means an individual who has received a bail enforcement agent license, bail bond recovery agency license, bail recovery agent license or bail recovery apprentice license;

(e) "revocation" means the permanent deprivation of a bail bond recovery license, however revocation does not preclude an individual from applying for a new bail bond recovery license if the reason for revocation no longer exists; and

(f) "suspension" means the temporary deprivation, for a specified period of time, of a bail bond recovery license.

R722-310-4. Application for Licensure.

(1)(a) An applicant seeking to obtain a license as a bail bond agency, bail enforcement agent, bail recovery agent, or a bail recovery apprentice shall submit a completed application packet to the bureau.

(b) The application packet shall include:

(i) a written application form provided by the bureau with the applicant's residential or physical address and mailing or business address;

(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous three years;

(iii) a photocopy of a state-issued driver license or identification card;

(iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints;

(v) a non-refundable processing fee in the form of cash, check, money order, or credit card in the amount required by Section 53-11-115; and

(vi) documentation from an approved provider indicating that the applicant has completed the 16-hour training program, described in Subsection 53-11-108(4).

(2) If the applicant is applying for license as a bail enforcement agent, the applicant must also provide documentation indicating that the applicant has 2,000 hours of experience related to bail bond recovery and enforcement.

(3) If an applicant for license as a bail enforcement agent wishes to operate a bail bond recovery agency, the applicant shall also provide:

(a) the name under which the bail bond recovery agency will operate; and

(b) a certificate of workers' compensation insurance, if applicable.

(4) If the applicant is applying for license as a bail recovery agent, the applicant shall also provide:

(a) documentation indicating that the applicant has 1,000 hours of experience related to bail bond recovery and enforcement; and

(b) verification from a bail bond recovery agency indicating that the agency will employ or contract with the applicant.

(5) If the applicant is applying for license as a bail recovery apprentice, the applicant shall also provide verification from a bail bond recovery agency indicating that the agency will employ or contract with the applicant.

(6) If the applicant is seeking to carry a firearm as a licensee, the applicant shall comply with all of the requirements found in R722-300 and provide documentation from an approved bail enforcement firearms instructor indicating that the applicant has completed the 16-hour firearms training course required in Subsection 53-11-108(5).

(7)(a) Once the application packet is complete, the bureau shall submit it to the board for their review at the next regularly scheduled meeting.

(b) Application packets that are received or completed less than seven days prior to a scheduled board meeting may not be considered by the board until the next regularly scheduled board meeting.

R722-310-5. Training Program Requirements.

(1) The 16-hour training program described in Subsection 53-11-108(4), which is required for licensure, shall be provided by a training program provider approved by the board.

(2) Training program providers seeking to become approved by the board shall provide a detailed course curriculum for the board's review.

(3)(a) Training programs which are approved by the board shall be open to anyone who wishes to attend.

(b) If a training provider charges a fee for the training program, the same fee shall apply to all participants in the training program.

(4) Training program providers shall notify the bureau, at least five days in advance, of the dates, times, and location of all courses provided.

(5)(a) Bureau investigators shall periodically monitor approved training programs to ensure that the training program is providing instruction as required by Subsection 53-11-108(4).

(b) The training program may not charge an investigator a fee for monitoring the program.

(6) If the board receives information that a training program is not providing instruction as required by Subsection 53-11-108(4), the board may terminate its approval of the training program after notice and an opportunity for a hearing before the board.

R722-310-6. Verification of Experience.

(1) When verifying the experience necessary for licensure as a bail enforcement agent or a bail recovery agent, an applicant shall provide a written statement which lists, in detail, the number of hours and the type of bail bond recovery work performed by the applicant.

(2) The verification of experience shall be signed and notarized by the applicant's employer or by an individual who has personal knowledge of the bail bond recovery work

performed.

(3) The bail bond recovery work shall have been performed within ten years from the date of the application.

R722-310-7. Credit for Specified Training.

(1) An applicant who wishes to receive credit towards the experience requirement for licensure, shall provide documentation indicating that the applicant has a criminal justice bachelor's degree or has successfully completed a basic training course described in Subsections 53-11-114(1)(b) or 53-11-114(1)(c).

(2) An applicant may receive up to 1,000 hours of credit towards the experience requirement for licensure under Section 53-11-114.

(3) An applicant seeking credit under Section 53-11-114, is not exempt from completing the 16-hour training course required by Subsection 53-11-108(4).

R722-310-8. Renewal of a License.

(1)(a) A licensee seeking to renew a license as a bail bond agency, bail enforcement agent, bail recovery agent, or a bail recovery apprentice shall submit a completed renewal packet to the bureau.

(b) The renewal packet shall include:

(i) a written renewal form provided by the bureau with the licensee's residential or physical address and mailing or business address;

(ii) one recent color photograph of passport quality which contains the licensee's name written on the back of the photograph, unless the licensee submitted a photo which meets these requirements to the bureau within the previous three years;

(iii) a non-refundable processing fee in the form of cash, check, money order, or credit card in the amount required by Section 53-11-115;

(iv) evidence that the licensee has completed eight hours of continuing classroom instruction required by Subsection 53-11-111(2); and

(v) evidence that the licensee has a $10,000 surety bond which meets the requirements described in Subsection 53-9-110(3).

(2)(a) Once the renewal packet is complete, the bureau shall review it to determine if the licensee meets the requirements for renewal.

(b) If the bureau determines the licensee does not meet the requirements for renewal, the bureau shall submit the renewal packet to the board for their review at the next regularly scheduled meeting.

(c) Renewal packets that are received or completed less than seven days prior to a scheduled board meeting may not be considered by the board until the next regularly scheduled board meeting.

(3) A licensee whose license has been expired for more than 90 days, shall reapply and meet all requirements found in R722-310-4.

R722-310-9. Requirements for Continuing Classroom Instruction.

(1) A licensee who renews his or her license for the first time shall attend four hours of continuing classroom instruction provided by the bureau, which shall count towards the eight hours of continuing classroom instruction required by Subsections 53-11-111(2) and 53-11-109(2).

(2) The course provided by the bureau shall:

(a) provide updates on Utah law, administrative changes, and other pertinent information designed to enhance the licensee's knowledge of bail recovery; and

(b) be taught by the bureau twice yearly, with the dates posted on the bureau's website.

R722-310-10. Criteria for Certified Bail Enforcement Firearms Instructor.

(1) The 16-hour firearms training program described in Subsection 53-11-108(5), shall be provided by a bail enforcement firearms instructor approved by the bureau.

(2) A bail enforcement firearms instructor approved by the bureau shall be a certified Utah concealed firearm permit instructor under Subsection 53-5-704(8) and be in good standing with the bureau.

(3)(a) Each approved bail enforcement firearms instructor shall adhere to the curriculum adopted by the bureau.

(b) An instructor may supplement, but may not detract from the set curriculum.

R722-310-11. Notice to Commissioner.

A bail bond recovery agency may provide notice of a change in the name or address of a bail bond agency, or any change of employees or contract employees, to the commissioner as required by Subsection 53-11-116(5) by sending a written notice to the bureau that is signed by the licensee.

R722-310-12. Adjudicative Proceedings.

(1) All adjudicative proceedings shall be informal according to the provisions in Sections 63G-4-202 through 63G-4-203.

(2)(a) The board may deny a license application or renewal for failure to comply with the requirements in Sections 53-11-108 through 53-11-115, or for any of the reasons set forth in Section 53-11-118.

(b) The bureau may deny a license renewal for failure to comply with the requirements in Sections 53-11-108 through 53-11-115, or for any of the reasons set forth in Section 53-11-118.

(3) The board shall review all investigations presented by the bureau and may take disciplinary action against a licensee based on a violation of Section 53-11-119.

(4)(a) The board shall issue a written decision within ten days after the board meets to decide the matter.

(b) The board's written decision shall indicate that the applicant or licensee may appeal to the commissioner within 30 days from the date that the written decision is issued.

(5)(a) If an applicant or licensee appeals the board's decision, the commissioner, or his designee, shall review the materials in the bureau's file, the findings of the board along with any materials submitted by the applicant or licensee, and may affirm, adopt, modify, supplement, reverse, or reject the board's findings, or return the matter to the board for reconsideration.

(b) If the applicant or licensee requests a hearing, the commissioner, or his designee, shall schedule a hearing within 60 days from the receipt of the request for review.

R722-310-13. Identification of Licensees.

(1)(a) A licensee shall be issued an identification card by the bureau which identifies the licensee as a bail enforcement agent, bail bond recovery agency, bail recovery agent or bail recovery apprentice.

(b) The identification card shall indicate on its face if the licensee is authorized to carry a loaded and concealed firearm as provided in Subsection 53-11-108(5).

(2)(a) A bail enforcement agent or bail recovery agent may possess and display a badge that is identical to the badge depicted on the bureau's website in accordance with Section 53-11-121.

(b) A bail enforcement agent or bail recovery agent may obtain a badge from any source, so long as it complies with the following specifications:

(i) the badge shall be 2.55 inches high and 2.66

inches wide;

(ii) the badge shall be in the shape of a five-point star on a circle;

(iii) the star shall be gold in color and the circle must be silver in color;

(iv) the center of the star shall be black in color and contain a seal with the phrase "Liberty and Justice For All";

(v) the text of the badge shall be written in block lettering and must be black;

(vi) the silver circle shall contain two panels with writing to indicate whether the agent is a bail enforcement or bail recovery agent; and

(vii) the badge shall contain two gold panels with writing to indicate the word "Utah" on the top panel and the agent's license number on the bottom panel.

(3) The design approved by the board under Subsection 53-11-121(5) shall contain the words "bail enforcement agent" or "bail recovery agent" written on both the chest and back in writing which is:

(a) at least two inches in height on the back;

(b) at least one half of an inch in height on the front; and

(c) in a color that contrasts with the color of the item of clothing.

KEY: bail bond enforcement agents, bail bond recovery agents, bail bond recovery apprentices, licenses
November 21, 2014 53-11
Notice of Continuation January 7, 2015

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-330. Licensing of Private Investigators.
R722-330-1. Purpose.

The purpose of this rule is to establish procedures for the licensing of private investigator agencies, registrants, and apprentices.

R722-330-2. Authority.

This rule is authorized by Subsections 53-9-103(2)(c) and 53-9-103(6).

R722-330-3. Definitions.

(1) Terms used in this rule are defined in Section 53-9-102.

(2) In addition:

(a) "act involving moral turpitude" means conduct which:

(i) is done knowingly contrary to justice, honesty, or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another's property;

(b) "FBI" means the Federal Bureau of Investigation;

(c) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year;

(d) "legal resident of this state" means a person who has established a domicile in Utah, as that term is defined in Section 41-1a-202;

(e) "license" means a license for a private investigator agency, registrant, or apprentice;

(f) "revocation" means the permanent deprivation of a private investigator license, however revocation of a private investigator license does not preclude an individual from applying for a new private investigator license if the reason for revocation no longer exists; and

(g) "suspension" means the temporary deprivation, for a specified period of time, of a private investigator license.

R722-330-4. Application for Licensure.

(1)(a) An applicant seeking to obtain a license shall submit a completed application packet to the bureau.

(b) The application packet shall include:

(i) a written application form provided by the bureau with the applicant's residential or physical address and mailing or business address;

(ii) one recent color photograph of passport quality which contains the applicant's name written on the back of the photograph, unless the applicant submitted a photo which meets these requirements to the bureau within the previous three years;

(iii) a photocopy of a driver license or identification card issued by the state of Utah;

(iv) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints; and

(v) the non-refundable license and registration fee in the amount indicated in Section 53-9-111 plus the FBI fingerprint processing fee, in the form of cash, check, money order, or credit card.

(2) If an applicant is applying for an agency license, the applicant shall also provide:

(a) the name under which the applicant intends to do business;

(b) a completed Verification of Investigative Experience Form which documents that the applicant has performed 10,000 hours of investigative experience as provided in Subsection 53-9-108(3);

(c) a certificate of liability insurance for the applicant in an amount of not less than $500,000 as described in Subsection 53-9-109(3); and

(d) a certificate of workers' compensation insurance, if applicable.

(3) If the applicant is applying for a registrant license, the applicant shall also provide:

(a) the name of the licensed agency for which the applicant will be an employee or independent contractor;

(b) authorization from a licensed agency indicating that the agency will employ or contract with the applicant;

(c) a completed Verification of Investigative Experience Form which documents that the applicant has performed 2,000 hours of investigative experience as provided in Subsection 53-9-108(3); and

(d) a surety bond for the applicant in an amount of not less than $10,000 as described in Subsection 53-9-110(3).

(4) If the applicant is applying for an apprentice license, the applicant shall also provide:

(a) the name of the licensed agency for which the applicant will be an employee or independent contractor;

(b) authorization from a licensed agency indicating that the agency will employ or contract with the applicant; and

(c) a surety bond for the applicant in an amount of not less than $10,000 as described in Subsection 53-9-110(3).

R722-330-5. Verification of Investigative Experience.

(1)(a) When completing the Verification of Investigative Experience Form for an agency or registrant license, the applicant shall describe, in detail, the number of hours and the type of investigative work which the applicant performed.

(b) The investigative experience shall have been performed within ten years from the date of the application while the applicant was working as a licensed private investigator or an investigator for a governmental entity.

(c)(i) The Verification of Investigative Experience Form shall be certified by the private investigator or governmental employer for whom the applicant performed the investigative work.

(ii) If the applicant is unable to provide certification from a private investigator or governmental employer, the applicant may provide certification from the individual for whom the applicant performed the investigative work.

(2) An applicant seeking to receive credit towards the investigative experience requirement for licensure under Subsection 53-9-108(5), shall provide written documentation of the degree or certification for which the applicant is seeking credit.

R722-330-6. Issuance of License.

(1)(a) Upon receipt of a completed application packet, the bureau shall conduct a thorough background investigation to determine if the applicant meets the requirements for licensure.

(b) Once the background check is complete, the bureau shall submit the completed application packet to the board for review, unless the application is for an apprentice license.

(c)(i) The bureau shall review all applications for apprentice licenses to determine whether the applicants meet the requirements for licensure.

(ii) If the bureau finds that an applicant for an apprentice license meets the requirements for licensure, the bureau shall issue the apprentice license within five days.

(iii) If the bureau finds that an applicant for an apprentice license does not meet the requirements for licensure, the bureau shall submit the application to the board.

(2)(a) The board shall review all application packets submitted by the bureau to determine whether an applicant

meets the requirements for licensure.

(b) If the board determines that an applicant meets the requirements for licensure, the board shall direct the bureau to issue the license.

(3) If the background check indicates that an applicant does not meet the qualifications set forth in Subsection 53-9-108(1)(b), the board shall consider any mitigating circumstances submitted by the applicant.

(4)(a) If the board determines that an applicant does not meet the qualifications for licensure the board shall deny the application.

(b) The board shall issue a written denial which states the reasons why the license was denied and indicates that the applicant may request a hearing before the board by filing a written request within 30 calendar days from the date the board's written denial was issued.

(5)(a) If the applicant requests a hearing, the board shall conduct an informal hearing during which the applicant may present evidence and testimony in response to evidence and testimony presented by the bureau.

(b) The board shall issue a written decision, within ten business days of the hearing, which states the reason for the decision and indicates that the decision may be reviewed by the commissioner if the applicant files a written request for review with the commissioner within 30 calendar days.

(6)(a) If the applicant requests review of the board's decision, the commissioner or his designee shall review the materials in the bureau's file, any materials submitted by the applicant, and the findings of the board.

(b) The commissioner shall issue a written decision, within 30 calendar days from the date of the request for review, which states the reasons for the decision and indicates that the applicant may appeal to the district court by complying with the requirements found in Section 63G-4-402.

R722-330-7. Renewal of a License.

(1)(a) The bureau shall mail a renewal notice to a licensee at the last provided address, approximately 90 days prior to the expiration of the licensee's license.

(2)(a) A licensee seeking to renew a license shall submit a completed renewal packet to the bureau.

(b) The renewal packet shall include:

(i) a written renewal form provided by the bureau with the licensee's residential or physical address and mailing or business address;

(ii) one recent color photograph of passport quality which contains the licensee's name written on the back of the photograph, unless the licensee submitted a photo which meets these requirements to the bureau within the previous three years;

(iii) a photocopy of a driver license or identification card issued by the state of Utah; and

(iv) a non-refundable processing fee in the form of cash, check, money order, or credit card in the amount required by Section 53-9-111.

(3) If the licensee has an agency license, the licensee must also provide evidence that the licensee has a valid certificate of:

(a) liability insurance for the licensee in an amount of not less than $500,000 as described in Subsection 53-9-109(3); and

(b) workers' compensation insurance, if applicable.

(4) If the licensee has a registrant or an apprentice license, the licensee must provide evidence that the licensee has a valid surety bond for the licensee in an amount of not less than $10,000 as described in Subsection 53-9-110(3).

(5) A licensee whose license has been expired for more than 90 days, shall reapply and meet all requirements found in R722-330-4.

(6) If the licensee meets the qualifications for renewal the bureau shall renew the license.

(7)(a) If the bureau determines that the licensee does not meet the qualifications for renewal the bureau shall deny the renewal.

(b) The bureau's written denial shall state the reasons why the renewal was denied and indicate that the licensee may request a hearing before the board by filing a written request within 30 calendar days from the date the bureau's written denial was issued.

(8)(a) If the licensee requests review by the board, the board shall conduct an informal hearing during which the licensee may present evidence and testimony in response to evidence and testimony presented by the bureau.

(b) The board shall issue a written decision, within ten business days of the hearing, which states the reason for the decision, and indicates that the decision may be reviewed by the commissioner if the licensee files a written request for review with the commissioner within 30 calendar days.

(9)(a) If the licensee requests review of the board's decision, the commissioner or his designee shall review the materials in the bureau's file, any materials submitted by the licensee, and the findings of the board.

(b) The commissioner shall issue a written decision, within 30 calendar days from the date of the request for review, which states the reasons for the decision and indicates that the licensee may appeal to the district court by complying with the requirements found in Section 63G-4-402.

R722-330-8. Suspension and Revocation of a License.

(1) The bureau shall conduct an investigation, as provided in Section 53-9-117, if the bureau is made aware of an allegation that a licensee has engaged in conduct in violation of Section 53-9-118.

(2) The bureau shall notify a licensee who is the subject of an investigation of the date and time of the board meeting where the board will consider the bureau's investigative findings.

(3) The board shall conduct an informal hearing during which the licensee may present evidence and testimony in response to the bureau's investigative findings and recommendations.

(4) The board shall issue a written decision, within ten business days after the hearing, which states the reasons for the board's decision, and indicates that the licensee may appeal to the commissioner by filing a written request within 15 calendar days from the date that the board's written decision was issued.

(5)(a) If the licensee requests review of the board's decision, the commissioner or his designee shall review the materials in the bureau's file, any materials submitted by the licensee, and the findings of the board.

(b) The commissioner shall issue a written decision, within 30 calendar days from the date of the request for review, which states the reasons for the decision and indicates that the licensee may appeal to the district court by complying with the requirements found in Section 63G-4-402.

R722-330-9. Records Access.

(1)(a) Information other than name and mailing or business address supplied to the division by an applicant or licensee, including a completed application or renewal form, shall be considered "private" information in accordance with Subsection 63G-2-302(2)(d).

(b) The names of licensees and their mailing or business address shall be considered public information.

(2)(a) Information gathered by the division in the course of investigating an application or complaint shall be considered "protected" information in accordance with Subsection 63G-2-305(10).

(b) If such information is used as the basis for the denial, suspension, or revocation of a license, the applicant or licensee shall be entitled to access the information.

KEY: private investigators, license
January 7, 2015 53-9-101 through 53-9-119
Notice of Continuation January 7, 2015

R728. Public Safety, Peace Officer Standards and Training.
R728-506. Canine Body Armor Restricted Account.
R728-506-1. Purpose.

The purpose of this rule is to establish the required documentation a law enforcement agency must provide when applying to the division to receive funds under Section 53-16-301.

R728-506-2. Authority.

This rule is authorized by Section 53-16-302 which provides that the department shall make rules prescribing information that a law enforcement agency shall include with its application to obtain funds from the account.

R728-506-3. Definitions.

(1) The terms used in this rule are defined in Section 53-1-102.

(2) In addition:

(a) "account" means the Canine Body Armor Restricted Account;

(b) "agency" means a law enforcement agency;

(c) "awarded funds" means the funds appropriated by the department from the account;

(d) "department" means the Utah Department of Public Safety;

(e) "POST" means the Division of Peace Officer Standards and Training;

(f) "law enforcement administrator" means a police chief, sheriff, public safety director, or superintendent of a law enforcement agency; and

(g) "law enforcement work" means patrol functions.

R728-506-4. Application Process.

(1) An agency that wishes to receive awarded funds may submit an application.

(2) The application must be addressed to POST and contain the following:

(a) the application form, which is available from POST;

(b) a written cost estimate prepared by the seller;

(c) proof of purchase;

(i) if proof of purchase is not available at the time the agency submits the application, the agency must submit it within 90 days of purchasing the armor;

(d) the signature of the law enforcement administrator certifying the following:

(i) the agency meets the requirements listed in Section 53-16-301(4)(a);

(ii) the police service canine is trained for law enforcement patrol duties; and

(iii) the police service canine is used or will be used in patrol functions.

(3)(a) All applications must be submitted before the first day of November in order to be eligible for awarded funds from the current fiscal year.

(b) If no applications are received before the first day of November, the award funds shall remain in the account until the next fiscal year.

KEY: Canine Body Armor Restricted Account
January 26, 2015 53-16-302

R746. Public Service Commission, Administration.
R746-341. Lifeline Rule.
R746-341-1. Applicability.

This Rule applies to each telecommunications corporation that is designated as an eligible telecommunications carrier (ETC) by the Commission, pursuant to 47 U.S.C. 214.

R746-341-2. Definitions.

A. "Account holder" -- means the person responsible to pay the Lifeline account bills.

B. "Applicant" -- means an ETC's customer, residing in an ETC's service area, who fills out an application for Lifeline service.

C. "ETC" -- means an eligible telecommunications carrier.

D. "Federal ETC" -- means an ETC that qualifies for, and participates in, only the federal Lifeline program.

E. "Federal Poverty Guidelines" -- means the poverty guidelines issued each year by the Department of Health and Human Services and published in the Federal Register.

F. "Household" -- means a single person or group of individuals who meet the definition of mutual support contained in the federal Lifeline rules established pursuant to 47 U.S.C. 214.

G. "Income" -- means income as defined in 47 CFR Section 54.400 and includes gross income, whether earned or unearned, received by all members of the household including, but not limited to, salary before deductions. Income shall not include student financial aid, military housing and cost-of-living allowances, or irregular income from occasional small jobs.

H. "Lifeline" -- means either federal or state programs defined by 47 CFR Section 54.401(a) and this rule.

I. "NLAD" -- means the National Lifeline Accountability Database as provided for in 47 CFR Section 54.404.

J. "Participant" -- means an ETC's customer currently receiving a Lifeline benefit.

K. "Program administrator" -- means the state government agency with which the Commission contracts to administer the initial eligibility verification and continued eligibility verification, of the State Lifeline participants.

L. "State ETC" -- means an ETC that participates in both the federal and state Lifeline programs.

R746-341-3. Eligibility Requirements.

A. Initial Program-Based Criteria -- An ETC shall provide Lifeline telephone service to an applicant's household which, using an approved application form, is verified by either the program administrator (for State ETCs), or by a federal ETC, in compliance with the procedures set forth in 47 CFR 54.410(c), to be eligible for public assistance under one of the following or its successor programs:

1. Medicaid;

2. Supplemental Nutrition Assistance Program (SNAP or Food Stamps);

3. Supplemental Security Income (SSI);

4. Federal Public Housing Assistance (Section 8);

5. Low-Income Home Energy Assistance Program (LIHEAP);

6. Temporary Assistance to Needy Families (TANF); or

7. National School Lunch Program's Free Lunch Program.

B. Tribal Residents -- A consumer who lives on Tribal lands is eligible for Lifeline service as a "qualifying low-income consumer" as defined by Section 54.400(a) and as an "eligible resident of Tribal lands" as defined by Section 54.400(e) if that consumer meets the qualifications for Lifeline specified Section A. or if the consumer, one or more of the consumer's dependents, or the consumer's household participates in one of the following Tribal-specific federal assistance programs:

1. Bureau of Indian Affairs General Assistance;

2. Tribally-Administered Temporary Assistance for Needy Families (TTANF);

3. Head Start (if income eligibility criteria are met); or

4. Food Distribution Program on Indian Reservations (FDPIR).

C. Initial Income-Based Criteria -- An ETC shall provide Lifeline telephone service to an applicant who certifies via supporting documentation (to either the ETC for federal ETC customers, or the program administrator for state ETC customers), under penalty of perjury, that the applicant's household income is at or below 135 percent of the then applicable Federal Poverty Guidelines.

1. Income-based eligibility is based on family size and actual income; therefore, an applicant shall certify, under penalty of perjury, the number of individuals residing in the household.

2. An applicant shall certify, under penalty of perjury, that the documentation presented accurately represents the applicant's annual household income. The following documents, or any combination of these documents, are acceptable for Lifeline certification;

a. Prior year's state, federal, or tribal tax return;

b. Current year-to-date earnings statement from an employer or three consecutive months of paycheck stubs within the previous twelve months;

c. Social Security statement of benefits;

d. Veterans Administration statement of benefits;

e. Retirement/pension statement of benefits;

f. Unemployment/Workers Compensation statement of benefits;

g. Federal or tribal notice letter of participation in Bureau of Indian Affairs General Assistance; or

h. Divorce decree or child support wage assignment statement.

D. In order to be approved as a qualifying low-income consumer, an applicant must not already be receiving a Lifeline service, and there must not be anyone else in the applicant's household subscribed to a Lifeline service.

E. Eligibility Certification -- The application form for participation shall be supplied by the ETC or the program administrator and shall be consistent with both the federal requirements, then in effect, and any additional information requirements of the program administrator, and shall include:

1. a statement, under penalty of perjury, as to whether the person is participating in one of the programs listed in Subsection R746-341-3(A) or qualifies under other federal eligibility criteria; or a statement, under penalty of perjury, as to whether the person's household income is at or below 135 percent of the current Federal Poverty Guidelines;

2. if qualified by income-based criteria, a statement, under penalty of perjury, that identifies the number of individuals residing in the household and affirms that the documentation presented to support eligibility accurately represents the applicant's household income;

3. a statement that if the applicant is later shown to have submitted false information in an attempt to qualify for the Lifeline program, the applicant shall be responsible to re-pay the benefits received; and

4. the signature of applicant, either physical or electronic.

F. False Certification Penalties -- A participant who does not qualify, but who has submitted false documentation or statements to qualify for the Lifeline program, is responsible to re-pay the value of the benefits received to the state Lifeline

program, and is subject to whatever penalties are then current for the federal Lifeline program.

G. Tribal Land Lifeline Discounts - This rule does not govern or otherwise affect the Tribal Land Lifeline Discount program.

R746-341-4. Duties of the Program Administrator.

A. Initial Eligibility

1. The program administrator shall process all applications submitted for participation in the state Lifeline telephone service program. The program administrator shall check the NLAD for pre-existing participation if possible. The program administrator shall inform the applicant and the state ETC of the results of the application process.

B. Annual Eligibility Verification

1. The program administrator shall verify on an annual basis the continuing eligibility status of state ETC Lifeline telephone service participants. The annual eligibility verification shall be performed on the participant list as defined by the FCC in its May 22, 2013 Public Notice in Docket No. 11-42 and any subsequent FCC guidance.

2. The annual eligibility verification shall be performed by the program administrator using the same process as outlined in the de-enrollment process in R746-341-4.C. and in accordance with 47 CFR Section 54.410(f)(3).

3. The program administrator shall provide results of the annual recertification efforts to the ETCs pursuant to 47 CFR Section 54.410(f)(4) and will provide all necessary FCC Form 555 information to ETCs by December 31 of the year in which the annual verification was performed.

C. De-Enrollment Process

1. The program administrator shall manage the de-enrollment process for state ETC Lifeline telephone service participants who are no longer eligible for the program. Upon an initial finding that a Lifeline recipient is no longer eligible to participate in the state the Lifeline program, the program administrator shall send a notice to the participant explaining the participant's Lifeline telephone service benefit will be discontinued after 30 days unless the participant verifies continuing eligibility before that date. The notice shall include the reason(s) for the recipient being ineligible and a description of the options available to the recipient to demonstrate eligibility.

2. At the end of thirty days, if the participant has not demonstrated continuing eligibility, the program administrator shall notify the relevant state ETC to discontinue the ineligible participant's Lifeline telephone service benefit. The benefit must be discontinued in the month following notification; thus the next month's benefit cannot be provided.

3. Ineligible past participants may reapply for the Lifeline program, but must do so by submitting a completed application to the program administrator for state program participation, or to a federal ETC for federal only participation, in accordance with the application process in R746-341-3.

D. Participants Switching Between ETCs -- When a current Lifeline telephone service participant desires to change to a different ETC's Lifeline telephone service, the participant and ETCs shall follow the established NLAD procedures. A participant who is not able to complete the switch due to unresolved problems may seek the assistance of the Division of Public Utilities requesting help in resolving the issue.

E. Documentation Retention -- The program administrator shall retain income and program eligibility certification documentation, in electronic format, for as long as required by then current federal Lifeline policies. Copies of the relevant documentation shall be made available on request to auditors from either the federal Lifeline telephone service program or the state Lifeline telephone service program.

R746-341-5. Duties of ETCs.

A. State ETCs

1. Each state ETC shall, monthly, send to the program administrator changes in the status of the Lifeline participants to whom the state ETC provides Lifeline telephone service, including, but not limited to:

a. participants changing residence locations (addresses);

b. participants switching carriers; or

c. customers who no longer receive telephone service.

2. The records sent shall contain the full identifying information for each participant as required by the program administrator's policies.

3. Each state ETC shall provide information to potential applicants regarding how to receive an application from the program administrator. This information shall be provided in person, on the phone, in written format at the ETC's offices, and online at the ETC's website.

4. Each state ETC shall add the Lifeline discount to a customer's account, as directed by the program administrator, within five business days.

5. Each state ETC shall remove the Lifeline discount from a participant's account as directed by the program administrator within five business days of notification of the participant's ineligible status.

6. Each state ETC shall update the NLAD whenever it implements changes in a participants' Lifeline status in accordance with the requirements for NLAD updates found in 47 CFR Section 54.404.

7. If a Lifeline participant seeks to switch service to a different ETC, the program administrator shall be notified by the participant of their desire to switch Lifeline providers. Once informed by the program administrator of the applicant's eligibility, the involved ETCs shall follow all applicable NLAD procedures to accomplish the participant's desired switch.

8. Annually, each state ETC shall send the program administrator the participant list as defined by the FCC in its May 22, 2013 Public Notice in Docket No. 11-42 and any subsequent FCC guidance. The list shall be provided to the program administrator by May 1 of each year. The list shall contain the identifying information as required by the program administrator's policies.

9. If a state ETC has a reasonable basis to believe a Lifeline telephone service participant no longer qualifies for Lifeline service, the ETC shall promptly inform the program administrator and provide the documentation, or reason, for its belief.

10. A state ETC shall cooperate with the Division of Public Utilities to resolve Lifeline service complaints the Division brings to the state ETC's attention.

B. Federal ETCs

Each designated federal ETC shall operate in the State of Utah subject to the conditions outlined in the commission order granting ETC status, the applicable provisions of this rule, and in accordance with the federal Lifeline program requirements.

1. Each federal ETC shall update the NLAD to reflect the ETC's initial eligibility verification decision and the participant's Lifeline status whenever the federal ETC adds or removes a Lifeline customer.

2. Each federal ETC shall update the NLAD with all changes in the ETC's participants' Lifeline status.

3. If a Lifeline participant seeks to switch service to a different ETC the ETCs shall follow all applicable NLAD procedures to accomplish the participant's desired switch.

4. A federal ETC shall cooperate with the Division of Public Utilities to resolve Lifeline service complaints the Division of Public Utilities brings to a federal ETC's attention.

R746-341-6. State Lifeline Telephone Service Features.

A. Discounts -- Lifeline telephone service provided by state ETCs shall consist of dial tone line, usage charges or their equivalent, and authorized Extended Area Service (EAS) charges, less a discount of $3.50 and all other matching funds established by the Federal Communication Commission.

B. Service Characteristics -- State Lifeline telephone service shall include all features listed in Utah Code Ann. Section 54-8b-2(2).

C. Deposits -- When customer security deposits are otherwise required they shall be waived for Lifeline telephone service participants if the customer voluntarily elects to receive toll blocking.

D. Nonrecurring Charge Waiver -- Lifeline telephone service participants shall receive a waiver of the nonrecurring service charge for changing the type of local exchange usage service to Lifeline service, or changing from flat rate service to message rate service, or vice versa, but only one such waiver shall be allowed during a given 12-month period.

E. Disconnection -- Lifeline telephone service shall not be disconnected for nonpayment of toll service.

F. Restrictions -- Lifeline telephone service shall be subject to the following restrictions:

1. Lifeline telephone service shall only be provided to the applicant's principal residence.

2. A Lifeline telephone service participant shall only receive a Lifeline discount on one single residential access line.

G. Other Services -- A Lifeline telephone service participant may not be required to purchase other services from the state ETC, nor prohibited from purchasing other services unless the participant has failed to comply with the state ETC's terms and conditions for those services.

R746-341-7. Federal Lifeline Telephone Service Features.

Federal Lifeline telephone service consists of those features and conditions set forth in the applicable commission docket in which the federal ETC status was granted, as modified by subsequent orders and R746-341.E

R746-341-8. State ETC Reporting Requirements.

Reporting Requirements -- State ETCs shall submit, to the Division of Public Utilities, a semi-annual report, for the periods through June 30 and December 31, of each year, containing a description of the state ETC's Lifeline program. The reports shall also contain monthly information on:

A. the forgone revenue resulting from the discounts provided to Lifeline participants, if any;

B. the amounts of administrative expenses;

C. interest accrual amounts on Lifeline funds, if any;

D. the number of Lifeline telephone service participants by exchange area per month; and

E. a detailed report of outreach efforts.

R746-341-9. Funding of Lifeline.

Cost Recovery -- The total cost of providing the state portion of Lifeline telephone service, including commission approved administrative costs of the state ETCs and the costs incurred by the program administrator, shall be recovered and funded as provided in Utah Code Ann. Section 54-8b-15.

R746-341-10. Collection and Disbursement of Lifeline Funds.

State ETC Payment -- Within 30 days after the review audit of a state ETC's semi-annual report by the Division of Public Utilities results in a favorable recommendation, the Public Service Commission shall disburse an amount equal to the ETC's semi-annual Lifeline program expenses and Lifeline discounts granted. For amounts the Division of Public Utilities disallows, the state ETC may petition the Commission to open a docket to examine the reasonableness of the denied amounts.

KEY: telephone, telecommunications, rules and procedures, lifeline rates

January 7, 2015 54-4-1

Notice of Continuation October 18, 2010 54-4-4

R982. Workforce Services, Administration.
R982-700. Employment Opportunities Website.
R982-700-100. Employment Opportunities to be Posted on Department Website.

The Department will maintain a website dedicated to providing information regarding employment opportunities available throughout the state allowing employers to post job vacancy information in accordance with 35A-2-203.

KEY: website
January 29, 2015 35A-2-203

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided by an eligible provider approved by the Department and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) when the client is working in a residential setting. CC may be approved where the client is working for an approved child care center, regularly watches children other than her own, and does not have an ownership interest in the child care center. CC will not be paid to a client for the care of his or her own child(ren) if the client is a stockholder, officer, director, partner, manager or member of a corporation, partnership, limited liability partnership or company or similar legal entity providing the CC.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Care About Child Care agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) that the client is no longer in an approved training or educational program;

(c) if the client's and/or child's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;

(d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;

(e) the client is separated from his or her employment;

(f) a change of address;

(g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or

(h) a change in the child care provider, including when care is provided at no cost.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) The Department is authorized to release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) information contained on the Form 980;
(c) the date the child care subsidy was issued;
(d) the subsidy amount for that provider;
(e) the subsidy deduction amount;
(f) the date a two party check was mailed to the client;
(g) a copy of the two party check on a need to know basis;
(h) the month the client is scheduled for review or reestablishment,
(i) the date the client's application was received; and
(j) general information about what additional information and/or verification is needed to approve CC such as the client's work schedule and income.

(9) Unused child care funds issued on the client's electronic benefit transfer (EBT) card will be removed from ("aged off") the EBT card 90 days after those funds were deposited onto the EBT card. Aged off funds will no longer be available to the client.

R986-700-704. Establishment of Paternity.

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

(a) providers regulated through Department of Health Child Care Licensing (CCL):
(i) licensed homes;
(ii) licensed child care centers; and
(iii) homes with a residential certificate.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers as defined in R430-8-3. Programs or centers must have a current letter of exempt status from CCL and have at least one person who is trained in first aid and infant/child CPR who must be with the children at all times including when the children are being transported in a vehicle. Current verification of first aid and CPR training must be provided to CCL prior to Department approval; or

(ii) DWS Family, Friend and Neighbor providers (FFN) as approved by CCL. The requirements for FFN approval are provided in subsection (3) of this section and in Department policy.

(2) The following providers are not eligible for receipt of a CC payment:

(a) a provider living in the same home as the parent client unless the provider is caring for a child who has special needs who cannot be otherwise accommodated;
(b) a sibling of the child living in the home can never be approved, even for a special needs child;
(c) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;
(d) undocumented aliens;
(e) persons under age 18;
(f) a provider providing care for the child in another state;
(g) a provider who has committed an IPV as a provider, or as a recipient of any funds from the Office of Child Care including subsidy and grant payments, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run and the provider is otherwise eligible including meeting the requirements of background checks under R986-700-753;
(h) any provider disqualified under R986-700-718;
(i) a provider who does not cooperate with a Department investigation of a potential overpayment;; or
(j) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment.

(3) FFN providers will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed and verification has been provided to CCL:

(a) complete, sign and submit an application to CCL;
(b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy as explained in the orientation;
(c) pass a home inspection as provided in Department policy;
(d) complete an infant/child CPR training;
(e) complete first aid training; and,
(f) the provider and all individuals 12 years old or older living in the home where care is provided must submit to and pass a background check as provided in R986-700-751 et seq.

(4) A FFN provider must also comply with all Department policy including abiding by the ratio requirements.

(5) FFN approval must be renewed annually. Renewal information is found in Department or CCL policy. The FFN CC provider must complete and submit a renewal application, together with any information, verifications or releases required or requested by the Department or CCL, 30 calendar days before the expiration date of the current approval.

(6) FFN CCL provider approval is for the provider and the location(s) and is not assignable or transferable.

(7) A FFN provider or applicant has a right to file an appeal when an adverse action has been taken against him or her in regards to FFN approval status or health and safety compliance. Prior to filing an appeal, the provider or applicant must request a review with the CCL manager. If unresolved after that review, the provider may file an appeal by requesting a fair hearing with DWS in accordance with R986-1-123 et seq.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers must keep accurate records of subsidized child care payments, time and attendance. The Department has the right to investigate child care providers and audit their records. Time and attendance records for all subsidized clients must be kept for at least one year. If a provider fails to cooperate with a Department investigation or audit, or fails to keep records for one year, the provider will no longer be an approved provider.

(4) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution and will no longer be an approved provider following the procedure outlined in section R986-700-718. This is true even if the funds were authorized under R986-700-718.

(5) If an overpayment is established and it is determined that the provider was at fault in the creation of the overpayment, the provider is responsible for repayment of the overpayment.

(6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received.

R986-700-707. Subsidy Deduction and Transitional Child Care.

(1) "Subsidy deduction" means a dollar amount which is deducted from the standard CC subsidy for

Employment Support CC. The deduction is determined on a sliding scale and the amount of the deduction is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the subsidy deduction directly to the child care provider.

(3) If the subsidy deduction exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The full monthly subsidy deduction is taken even if the client receives CC for only part of the month.

(5) There is no subsidy deduction during transitional child care. Transitional child care is available during the six months immediately following a FEP or FEPTP termination if the termination was due to increased income and the parent is otherwise eligible for ESCC. The subsidy deduction will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not.

(6) A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-708. FEP CC.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the subsidy deduction.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning $500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify that incapacity in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) 100% disabled by VA; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted. Recipients of SSI benefits are included in the household assistance unit.

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted;

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted; and

(iii) earned and unearned income of SSI recipients is counted with the exception of the SSI benefit.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) $100 for each person with countable earned income; and

(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The

percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the subsidy deduction amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24- month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship and income eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

R986-700-713. Amount of CC Payment.

CC will be paid at the lower of the following levels:

(1) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(2) the rate established by the provider for services; or

(3) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

R986-700-714. CC Payment Method.

(1) CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name, except as noted in paragraph (2) below. The check is mailed to the client.

(2) CC payments will be made by electronic benefit transfer (EBT) either through a point of sale (POS) machine or interactive voice recording (IVR) system to authorized provider types as determined by the Department. The provider may elect which option of EBT to use. The provider must complete the application process and sign an agreement with the Department's contractor in order to be eligible to receive CC payments. If the provider elects to use the POS method of payment, the provider must lease a POS machine at the provider's own expense. Providers that completed the application process prior to August 1, 2011 need to provide additional information to the Department contractor. If the provider does not provide this additional information, the provider will not be eligible for CC payments as of January 1, 2012.

(3) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the original check has been redeemed, a copy of the check will be reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice to the client if:

(a) the Department has determined that the client was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the parent: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider

received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) If a parent or provider commits an IPV, as defined in R986-100-117, the parent or provider will be responsible for repayment of the overpayment and will be disqualified from receipt of any funds from the Office of Child Care, including subsidy funds, grants and funds as a provider:

(a) for a period of one year for the first IPV;

(b) for a period of two years for the second IPV; and

(c) for life for the third IPV.

(3) If the client was at fault in the creation of an overpayment for any reason other than an IPV as provided in paragraph (2) above, the client will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(4) All CC overpayments must be repaid to the Department.

Overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct $10 from each month's CC payment unless the client requests a larger amount.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. A maximum of seven hours per day will be approved for sleep time.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following agencies documenting the child's disability or special child care needs;

(a) Social Security Administration showing that the child is a SSI recipient,

(b) Division of Services for People with Disabilities,

(c) Division of Mental Health,

(d) State Office of Education, or

(e) Baby Watch, Early Intervention Program.

(3) Verification to support that the child is disabled or has a special need must be dated and signed by the preparer and include the following;

(a) the child's name,

(b) a description of the child's disability, and

(c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

R986-700-718. Provider Disqualification.

(1) A child care provider removing child care subsidy funds from a client's account by way of electronic benefit transfer (EBT) and interactive voice response (IVR), can only remove those funds from a client's account that are authorized by the Department for that provider. All providers receiving payment for child care services through an EBT may learn the exact amount authorized for that provider for each client by accessing the Department's Provider Payment Authorization website. Providers who remove more funds than authorized will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds as follows;

(a) if the provider has never removed unauthorized CC subsidy funds before, the Department will send a notice of agency action to the provider's last known address informing the provider of the unauthorized access and establishing an overpayment in the amount of the excess funds. If the provider repays the overpayment within six months of the date of the notice of agency action, no further action will be taken on that overpayment. If the provider does not repay the overpayment in full within six months of the notice of agency action the overpayment will become an IPV and the provider will be disqualified as a provider for one year;

(b) if the provider removes funds in excess of those authorized by the Department a subsequent time, there is no outstanding balance on any previous provider overpayment and the provider has never been disqualified, the subsequent overpayment is treated as a first overpayment. The provider will be given six months from the notice of agency action to repay the overpayment under these circumstances. If the subsequent overpayment is not repaid in full within six months of the notice

of agency action, the provider will be disqualified for one year. If the provider was previously disqualified, the provider will be given 30 days from the notice of agency action to repay all outstanding overpayments in full, including all prior and subsequent overpayments. If the overpayment/s is/are not paid within 30 days, the provider will be disqualified for a period of two years. If the provider has never been disqualified but has a balance due on a previous overpayment, the provider will be given six months to repay the overpayment but may be disqualified if the first overpayment is not paid in time.

(c) a CC provider that removes unauthorized funds after having been disqualified for a two year period due to unauthorized removal of funds in paragraph (1)(b) of this subsection will be given 30 days from the notice of agency action to repay all outstanding overpayments in full. If the overpayment/s is not paid in full within 30 days, the provider will be permanently disqualified.

(d) each time a provider removes unauthorized funds is a separate offense even if the removal occurs on the same day. If, for instance, a provider removed funds from three separate clients on the same day, it would be three offenses. Likewise, if the provider removed unauthorized funds from the same client three times in different months, it would be three offenses.

(2) Even if CC funds are authorized under this section, a CC provider cannot remove, accept and/or retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds were accepted from a client or removed from a client's account as provided in this section but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds in the same manner as provided in subsection (1) of this section.

(3) CC providers disqualified under subsections (1) or (2) of this section will be ineligible for receipt of quality grants awarded by the Department during the period of disqualification.

(4) A CC provider overpayment not paid in full within the time limits specified in subsection (1) of this section will be referred to collection and will be collected in the same manner as all public assistance overpayments. Payment of provider overpayments must be made to the Department and not to the client.

(5) A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment or disqualification. A provider who has been found ineligible may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ. If the provider fails to file an appeal within 30 days of the date of the notice of agency action and the Department issues a default decision, and the provider files a request to set aside the default, CC subsidy funds will not continue unless or until the default is set aside by the ALJ. If the request to set aside the default is denied, the provider will be disqualified pending appeal of the denial to set aside the default unless the provider is within the six month or 30 day grace period allowed under subsection (1) of this section.

(6) A provider is ineligible for CC subsidy funds after a disqualification until all overpayments established in conjunction with the disqualification have been paid in full even if the disqualification period has ended.

(7) A provider that intentionally breaches any program rule as provided in R986-100-117, except as provided in subsection (1) of this section, or violates CC rule R986-700-706(2) through (5) or who assumes a client's identity in order to gain access to client information or payment of Department funds will be disqualified for one year for the first offense, two years for the second offense and for life for the third offense.

(8) All disqualification periods run consecutively.

(9) A disqualification issued to a provider, including a child care center, under this subsection will follow both the provider, the principal provider, and any successor center or provider.

(a) A "successor" provider, including a child care center, that acquires the business or acquires substantially all of the assets of the provider or child care center. This includes a provider who changes from one status to another like a provider who was disqualified as a licensed family provider who then changes to be a license exempt provider.

(b) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(c) "Assets" are commonly defined to include any property, tangible or intangible, which has value. Assets may also include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(d) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(f) A "principal" is the individual or individuals who were responsible for the day to day business of the child care center provided that individual had an ownership interest in the center. An ownership interest includes a shareholder, director or officer of a corporation and a partner, member or manager of a limited liability partnership or company.

R986-700-719. Job Search Child Care (JS CC).

(1) JS CC is available to a client who is otherwise eligible for child care but is separated from his or her job and meets the eligibility criteria.

(2) JS CC is available for a maximum of two additional months provided the client:

(a) was employed at least 32 hours per week and was separated from his or her job;

(b) was receiving ES CC or Transitional Child Care (TR CC) in the month of the job separation and;

(c) reports the job loss within 10 days and requests continued child care payments while searching for a job. In that case, the client will be eligible for one additional month of child care. The month of the job loss does not count.

(3) If the client verifies the job loss in a timely manner, as directed by the Department, a second month of CC will be paid while the client looks for a job.

(4) The JS CC extension is only available once in a rolling 12 month period even if the client received only one month of JS CC assistance.

(5) A client is not eligible for JS CC if the client has two or more jobs and is separated from one or more of them but still has one job working 15 hours per week or more.

(6) Two parent households are not eligible for JS CC.

(7) JS CC will be paid at the same rate the client was receiving in the month of the job separation unless the client changes his or her child care provider.

(8) A client who is receiving TR CC when the job separation occurs, and meets the requirements of this section, can be eligible for a maximum of two months of JS CC but those two months will count against the six month maximum

under TR CC as provided in R986-700-707. If the job separation occurs in the last month of TR CC, the client can be eligible for JS CC which would be in addition to the TR CC.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1).

(2) The provider and each person age 12 years old or older living in the household where the child care is provided must submit to a background check.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and the provider or any person age 12 years old or older living in the household where the child care is provided has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-752. Definitions.

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(f) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

R986-700-753. Criminal Background Screening.

(1) The Department will contract with the CCL to perform a criminal background screening, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, CCL will submit the fingerprint card and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(2) Each client requesting approval of a covered child care provider must submit to CCL a form, which will include a waiver and certification, completed and signed by the child care provider as part of the DWS FFN approved provider process. Additional household members must give permission to run the background check. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an exception is granted under subsection (4) of this section.

(3) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, CCL will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to CCL regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(4) Fingerprint cards are not required if the Department or CCL is reasonably satisfied that the covered individual has resided in Utah for the last five years or is a refugee who settled directly to Utah. A fingerprint card may be required, even if the individual has resided in Utah for the last five years or is a refugee who settled directly to Utah, if requested by the Department or CCL.

(5) If CCL takes an action adverse to any covered individual based upon the background screening, CCL will send a denial letter to the provider and the covered individual.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor and

(m) any class A misdemeanor where the conviction occurred more than ten years ago and the offense would be an excludable offense listed in this section.

(3) The Executive Director or designee may consider and approve individual cases where a covered individual will be allowed to provide child care who would otherwise be excluded by this section.

(4) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(5) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within ten calendar days of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.

If CCL determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) CCL will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records. The juvenile court records need only be accessed as provided in 35A-3-310.5(2)(c).

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department or CCL may revoke any existing approval and refuse to permit child care in the home until the Department or CCL is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department or CCL denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify CCL. Failure to notify CCL may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

R986-700-775. High Quality School Readiness Grant Program.

(1) The Office of Child Care (OCC) administers this program pursuant to the authority granted in Utah Code Section 53A-1b-106.

(2) The OCC will solicit proposals from eligible private providers and eligible home-based educational technology providers and make recommendations to the School Readiness Board (SRB) as provided in 53A-1b-106(3).

(3) Eligible private providers and eligible home-based educational technology providers must submit an application, together with a proposal to the OCC by the date provided in the application.

(4) The proposal must contain the components outlined in 53A-1b-105(1) or (2) and details as required in 53A-1b-106(7).

(5) A grant recipient must report annually to the OCC the information required in 53A-1b-106(12) in addition to other information as required by the OCC.

(6) The OCC will monitor each grant recipient to ensure compliance with the High Quality School Readiness Grant Program and share information received from grant recipients annually with the SRB.

(7) Grant recipients must cooperate with the OCC to satisfy the monitoring and reporting requirements of the grant. Cooperation will include allowing onsite visits, providing information, including documentary evidence and written statements, when requested by the OCC, returning telephone calls from an OCC representative when requested to do so, and reporting, at a designated time and place, for an in-person interview with an OCC representative if so requested.

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