

R81. Alcoholic Beverage Control, Administration.**R81-3. Package Agencies.****R81-3-1. Definition.**

Package agencies are retail liquor outlets operated by private persons under contract with the department for the purpose of selling packaged liquor from facilities other than state liquor stores for off premise consumption. Package agencies are classified into five types:

Type 1 - A package agency under contract with the department which is operated in conjunction with a resort environment (e.g., hotel, ski lodge, summer recreation area).

Type 2 - A package agency under contract with the department which is in conjunction with another business where the primary source of income to the operator is not from the sale of liquor.

Type 3 - A package agency under contract with the department which is not in conjunction with another business, but is in existence for the main purpose of selling liquor.

Type 4 - A package agency under contract with the department which is located within a facility approved by the commission for the purpose of selling and delivering liquor to tenants or occupants of specific rooms which have been leased, rented, or licensed within the same facility. A type 4 package agency shall not be open to the general public. A type 4 package agency may also sell liquor other than in a sealed container (i.e. by the drink) as part of room service.

Type 5 - A package agency under contract with the department which is located within a winery, distillery, or brewery that has been granted a manufacturing license by the commission.

The commission may grant type 4 package agency privileges to a type 1 package agency.

R81-3-2. Change of Location.

Any change of package agency location must be requested in writing and approved in advance by the commission.

R81-3-3. Bonds.

(1) No part of any surety bond required in Section 32B-2-604, may be withdrawn during the time the package agency contract is in effect. If the package agent fails to maintain a valid surety bond, the package agency contract 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 an automatic rescission of the package agency contract.

(2) A bond will be issued through the department for type 2 and 3 agencies.

R81-3-4. Change of Package Agent.

Pursuant to Section 32B-2-605(2), any change of the package agent designated in the department's package agency agreement is a violation of these rules and shall result in the immediate termination of the package agency contract.

R81-3-5. Special Orders of Liquor by Public.

(1) Purpose. A special order product is any product not listed on the department's product/price list. This rule outlines the procedures for accepting, processing, ordering and disbursing special orders.

(2) Application of Rule.

(a) Only type 2 and 3 package agencies may process special order requests.

(b) Any individual may place a special order at any type 2 or 3 package agency. Special orders may be placed by groups of individuals, organizations, or retail licensees either at a type 2 or 3 package agency or with the purchasing division of the department. A special order shall be processed as follows:

(i) A special order form must be filled out and signed by

the customer for each special order product purchased. The package agency shall forward the form to the department's purchasing division.

(ii) Special orders may be ordered only by the case, not by the bottle. There is no handling fee on special orders.

(iii) Customers should be advised to allow at least two months between processing and delivery of a special order.

(iv) Special orders for beer will be subject to availability and according to the distributor's shipping criteria.

(v) If a group, organization, or retail licensee places a special order, they may designate a particular package agency or state store to which they want the special order items to be sent. They shall include the name and telephone number of the individual who will pick up and pay for the special order product at that location.

(vi) A special order must include the product name and distributor or shipper.

(vii) The department's special order buyer shall obtain a retail bottle price and call the customer and/or package agent for clearance to proceed with the order.

(viii) When the special order arrives, the package agency or state store to which the special order has been sent shall immediately notify the customer, and the customer shall pick up the order as soon as possible after notification. The customer shall pay for and pick up the entire special order. The package agency or state store is not allowed to warehouse special ordered products. All merchandise must be cleared from the system before a reorder on that special order item is allowed.

(ix) Special orders may only be placed by customers. Package agencies may not place a special order unrelated to a particular customer as a means to sell unlisted products to the general public.

(x) Special orders of beer, wine or spirits with lower prices than quoted to the department on products handled by or similar to products handled by the department will be allowed only on two conditions:

(A) the department has the opportunity to purchase the same product at the same price; or

(B) the individual, group of individuals, organization, or retail licensee name is part of the design of the front label found on the product.

R81-3-6. Liquor Returns, Refunds and Exchanges.

(1) Purpose. This rule establishes guidelines for accepting liquor returns, refunds and exchanges.

(2) Application of Rule.

(a) Unsaleable Product. Unsaleable product includes product that is spoiled, leaking, contains foreign matter, or is otherwise defective. The department will accept for refund or exchange, liquor merchandise that is unaleable subject to the following conditions and restrictions:

(i) Returns of unaleable merchandise are subject to approval by the package agent to verify that the product is indeed defective.

(ii) The product must be returned within a reasonable time of the date of purchase. Discontinued products may not be returned. Vintages of wine that are not currently being retailed by the department may not be returned.

(iii) No refunds shall be given for wines returned due to spoilage such as corkiness, oxidation, and secondary fermentation, or due to the customer's unfamiliarity with the characteristics of the product. Such wines may only be exchanged for another bottle of the same product. Wine will not be accepted for refund or exchange if the return is a result of improper extraction of the cork.

(v) Unsaleable product shall be held at the package agency and accounted for in the same manner as breakage.

(b) Saleable Product. Package agents are authorized to accept saleable returned merchandise from licensees, single

event permit holders, convention groups, and individual customers, subject to the following conditions and restrictions:

(i) Returns of saleable merchandise are subject to approval by the package agent. The customer may receive a refund or exchange of product for the return. Large returns will be accepted from licensees, single event permittees, convention groups and other organizations only if prior arrangements have been made with the package agent.

(ii) Returns should be made within a reasonable amount of time from the date of purchase, and all returned merchandise must be in good condition. Returns of \$50.00 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a receipt for all purchases of \$50.00 or more. Signs should be posted at each cash register informing customers of this requirement. Merchandise shall be refunded at the price paid by the customer, or the current price, whichever is lower.

(iii) Wine and beer, due to their perishable nature and susceptibility to temperature changes, should be accepted back with caution. These products can only be returned if the package agent has personal knowledge of how they have been handled and stored.

(iv) If the total amount of the return is more than \$500 the package agent shall fill out a "Returned Merchandise Acknowledgment Receipt" (LQ-45), and submit a copy to the office. A refund check will be processed at the office and mailed to the customer. Customers need to be informed that it generally takes three to six weeks to process payment.

(v) If the total value of the returned merchandise is more than \$1,000, a 10% restocking fee shall be charged on the total amount.

(c) Unreturnable Products. The following items may not be returned:

(i) All limited item wines - wines that are available in very limited quantities.

(ii) Any products that have been chilled, over-heated, or label-damaged.

(iii) Outdated (not listed on the department's product/price list) and discontinued products.

(iv) Merchandise purchased by catering services.

(v) Unsaleable product shall be held at the package agency and accounted for in the same manner as breakage.

(d) A cash register return receipt shall be completed for each product return. The following information must be on the receipt: the customer's name, address, telephone number, driver's license number, and signature. The cashier must attach the receipt to the cash register closing report.

R81-3-7. Warning Sign.

All package agencies shall display in a prominent place a "warning sign" as defined in R81-1-2.

R81-3-8. Identification Guidelines to Purchase Liquor.

All package agencies shall accept only four forms of identification to establish proof of age for the purchase of liquor by customers:

(1) A current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act or in accordance with the laws of another state;

(2) A current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, Identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(3) A current valid military identification card that includes date of birth and has a picture affixed; or

(4) A current valid passport.

If a person's age is still in question after presenting proof of

age, the package agency may require the person to also sign a "statement of age" form as provided in 32B-1-405. The form shall be filed alphabetically by the close of business day, and shall be maintained on file for a period of three years.

R81-3-9. Promotion and Listing of Products.

(1) An operator or employee of a Type 1, 2, or 3 package agency, as defined in R81-3-1, may not promote a particular brand or type of liquor product while on duty at the package agency. An operator or employee may inform a customer as to the characteristics of a particular brand or type of liquor, provided the information is linked to a comparison with other brands or types.

(2) A package agency may not advertise alcoholic beverages on billboards except:

(a) a Type 1 package agency, as defined in R81-3-1, may provide informational signs on the premises of the hotel or resort directing persons to the location of the hotel's or resort's Type 1 package agency;

(b) a Type 2 package agency, as defined in R81-3-1, may provide informational signs on the premises of its business directing persons to the location of the Type 2 package agency within the business; and

(c) a Type 5 package agency, as defined in R81-3-1, may advertise the location of the winery, distillery, or brewery and the Type 5 package agency, and may advertise the alcoholic beverage products produced by the winery, distillery, or brewery and sold at the Type 5 package agency under the guidelines of R81-1-17 for advertising alcoholic beverages.

(3) A package agency may not display price lists in windows or showcases visible to passersby except:

(a) a Type 1 package agency, as defined in R81-3-1, may provide a price list in each guest room of the hotel or resort containing the code, number, brand, size and price of each item it carries for sale at the Type 1 package agency;

(b) a Type 4 package agency, as defined in R81-3-1, may provide a price list of the code number, brand, size, and price of each item it carries for sale to the tenants or occupants of the specific leased, rented, or licensed rooms within the facility; and

(c) a Type 5 package agency, as defined in R81-3-1, may provide a price list on the premises of the winery, distillery, or brewery, authorized tasting room, and at the entrance of the Type 5 package agency of the code, number, brand, size, and price of each liquor item it carries for sale at the Type 5 package agency.

R81-3-10. Non-Consignment Inventory.

Type 1, 4 and 5 package agencies shall be on a non-consignment inventory status where the agency owns the inventory.

R81-3-11. Application.

An application for a package agency shall be included in the agenda of the monthly commission meeting for consideration for issuance of a package agency contract when the requirements of Sections 32B-1-304 to 307, 32B-2-602 and -604 have been met, a completed application has been received by the department, and when the package agency premises have been inspected by the department. No application fee is required for type 2 and 3 package agency applicants.

R81-3-12. Evaluation Guidelines of Package Agencies.

(1) The commission, after considering information from the applicant for the package agency and from the department, shall determine whether the package agency shall be classified and operated as a Type 1, 2, 3, 4, or 5 package agency,

(2) After a package agency has been classified and issued, a package agent or the department may request that the commission approve a change in the classification of the

package agency. Information shall be forwarded to aid in its determination. If the commission determines that the package agency should be reclassified, it shall approve the request.

(3) Type 2 and 3 package agencies shall:

(a) serve a population of at least 6,000 people comprised of both permanent residents and tourists; and

(b) not be established or maintained within a one mile radius of another type 2 or 3 package agency unless it can be clearly demonstrated that it is in the best interest of the state to establish and maintain the outlet at that location.

(4) The department shall report to the commission on package agency operations as a regular agenda item at each monthly commission meeting. Any significant issues with respect to the operations of a particular package agency shall also be reported to the commission. Recommended closure by the department of a package agency due to payment delinquencies over 30 working days, significant inventory shortages, or any other significant operational deficiencies shall be calendared for the commission's consideration at its next regular monthly meeting or at a special meeting.

R81-3-13. Operational Restrictions.

(1) Hours of Operation.

(a) Type 1, 2, and 5 package agencies may operate from 10:00 a.m. until 12:00 midnight, Monday through Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department. Type 2 agencies shall be open for business at least seven hours a day, five days a week, except where closure is otherwise required by law. Type 5 package agencies may, in the discretion of the package agent, be open as early as 8:00 a.m. for sales to licensees with the approval of the department. Type 5 package agencies may also be open on Sundays and state and federal holidays if the package agency is located at a manufacturing facility licensed by the commission and the manufacturing facility holds a full-service restaurant license, a limited-service restaurant license, a beer-only restaurant license, or a dining club license.

(b) Type 3 package agencies may operate from 10:00 a.m. until 10:00 p.m., Monday through Saturday, but may remain closed on Mondays in the discretion of the package agent. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department, provided the agency operates at least seven hours a day.

(c) Type 4 package agencies may operate from 10:00 a.m. until 1:00 a.m., Monday through Friday, and 10:00 a.m. until 12:00 midnight on Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department. A Type 4 package agency in a resort that is licensed under 32B-8, may operate 24 hours a day, Monday through Sunday to provide room service to guests of the resort.

(d) Any change in the hours of operation of any package agency requires prior department approval, and shall be submitted in writing by the package agent to the department.

(e)(i) A package agency shall not operate on a Sunday or legal holiday except to the extent authorized by 32B-2-605(13) which allows the following to operate on a Sunday or legal holiday:

(A) a package agency located in certain licensed wineries, breweries, and distilleries; and

(B) a package agency held by a resort that is licensed under 32B-8 that does not sell liquor in a manner similar to a state store which is limited to a Type 4 package agency.

(ii) If a legal holiday falls on a Sunday, the following Monday will be observed as the holiday by a Type 2 and 3 package agency.

(2) Size of Outlet. The retail selling space devoted to

liquor sales in a type 2 or 3 package agency must be at least one hundred square feet.

(3) Inventory Size. Type 2 and 3 package agencies must maintain at least fifty code numbers of inventory at a retail value of at least five thousand dollars and must maintain a representative inventory by brand, code, and size.

(4) Access to General Public. Type 1, 2, and 3 package agencies must be easily accessible to the general consuming public.

(5) Purchase of Inventory. All new package agencies, at the discretion of the department, will purchase and maintain their inventory of liquor.

R81-3-14. Type 5 Package Agencies.

(1) Purpose. A type 5 package agency is for the limited purpose of allowing a winery, distillery, or brewery to sell at its manufacturing location the packaged liquor product it actually produces to the general public for off-premise consumption. This rule establishes guidelines and procedures for type 5 package agencies.

(2) Application of Rule.

(a) The package agency must be located on the winery, distillery, or brewery premises at a location approved by the commission.

(b) The package agency may only sell products produced at the winery, distillery, or brewery, and may not carry the products of other alcoholic beverage manufacturers.

(c) The product produced by the winery, distillery, or brewery and sold in the type 5 package agency need not be shipped from the winery, distillery, or brewery to the department warehouse and then back to the package agency. The bottles for sale may be moved directly from the manufacturer's storage area to the package agency provided that proper record-keeping is maintained on forms provided by the department. Records required by the department shall be kept current and available to the department for auditing purposes. Records must be maintained for at least three years. The package agency shall submit to the department a completed monthly sales report form which specifies the variety and number of bottles sold from the package agency. This report must be submitted to the department within the first five working days of the month. A club or restaurant purchases form must be filled out for every licensee purchase.

(d) Direct deliveries to licensees are prohibited. Products must be purchased and picked up by the licensees or their designated agents at the Type 5 package agency.

(e) The type 5 package agency shall follow the same laws, rules, policies, and procedures applicable to other package agencies as to the retail price of products.

(f) The days and hours of sale of the type 5 package agency shall be in accordance with 32B-2-605(13) and R81-3-13.

R81-3-15. Refusal of Service.

An employee of the package agency may refuse to sell liquor to any person whom the employee has reason to believe is purchasing or attempting to purchase liquor in violation of the Utah Alcoholic Beverage Control laws. The employee may also detain the person and hold the person's form of identification in a reasonable manner and for a reasonable length of time for the purpose of informing a peace officer of a suspected violation.

R81-3-16. Minors on Premises.

No person under the age of 21 years may enter a package agency unless accompanied by a parent, legal guardian, or spouse that is 21 years of age or older. Signs notifying the public of this rule shall be posted in a prominent place on the doors or windows of the package agency.

R81-3-17. Consignment Inventory Package Agencies.

(1) Purpose. At the discretion of the department, liquor may be provided by the department to a Type 2 and Type 3 package agency for sale on consignment pursuant to 32B-2-605(5). This rule provides the procedures for such consignment sales.

(2) Application of the Rule.**(a) Consignment Inventory.**

(i) The initial amount of consignment inventory furnished to the package agency shall be established by the department's audit manager.

(ii) The consignment inventory amount shall be posted to the department's accounting system as "Consignment Inventory Account."

(iii) The consignment inventory amount shall be stated in the department's contract with the package agency.

(iv) Any adjustment to the consignment inventory amount shall be done through the use of a transfer, shipment, or payment of money. A copy of the transfer, adjusting shipment, or evidence of payment shall be included in the package agency's file.

(v) The consignment inventory amount may be adjusted from time to time based on the package agency's monthly average sales. Any adjustment shall be made by a properly executed amendment to the department's contract with the package agency.

(b) Payments.

(i) All agencies receiving shipments or transfers are required to have an ACH (Automated Clearing House) payment system set up with the department.

(ii) Statements showing all unpaid debts and unapplied credits will be generated and mailed to the agencies on the 20th or the next available working day of each month. It is the agent's responsibility to review the statement and contact the department with any discrepancies prior to due date of payment.

(iii) Agents will remit payment to the department on the 19th or next available working day of the following month after the last statement was generated. Payment will be for the statement total. Payment will be automatically drawn through the ACH process on the due date unless prior arrangements have been made between the agent and the department.

(iv) Insufficient funds, returned checks, and unpaid balances from a previous statement are all past due. The department may assess the legal rate of interest on the amount owed. Also, the package agency may be referred to the commission for possible termination of the contract and closure.

(v) All delivery discrepancies shall be resolved through the use of the LQ9 form. Debits or credits shall be issued based on proper completion and submission of the LQ9 form to the department. Payment shall be made in accordance with the agency's statement by the due date whether or not any discrepancies have been resolved.

(c) Transfers.

(i) Transfers (+ or -) shall be adjusted to the package agency's next payment due the department.

(ii) Transfer in will add to the amount owed to the department on the next check due to the department.

(iii) Transfer out will subtract from the amount owed to the department on the next check due to the department.

(d) Credit and Debit Card Credits.

(i) Credit for credit and debit cards processed at the agency will be posted to the agency's statement.

(ii) It is the agent's responsibility to mail in their settlement report and individual receipts to the department in order to receive credit.

(e) Audits.

(i) Any package agency that is on a consignment contract shall keep a daily log of sales.

(ii) The auditing division shall audit the package agency at

least twice each fiscal year.

(iii) The package agency is subject to a department audit at any time.

R81-3-18. Type 4 Package Agency Room Service - Mini-Bottle/187 ml Wine Sales.

(1) Purpose. Pursuant to 32B-2-303, the department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters, except as otherwise allowed by the commission. The commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine as one form of room service sales by Type 4 package agencies located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms, and are not offered to the general public.

(2) Application of Rule.

(a) The department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from a Type 4 package agency. Special orders may be placed with the department's purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The Type 4 package agency must order in full case lots, and all sales are final.

(c) If the hotel/resort has a Type 1 package agency with Type 4 privileges, the smaller bottle sized products must be stored in a secure area separate from the Type 1 agency inventory.

(d) Sale and use of alcohol in the smaller bottle sizes is restricted to providing one form of room service to guests in sleeping rooms in the hotel/resort, and may not be used for other purposes, or be sold to the general public.

(e) Failure of the Type 4 package agency to strictly adhere to the provisions of this rule is grounds for the department to terminate its contract with the Type 4 package agency.

R81-3-19. Credit Cards.

(1) Purpose. This rule explains the procedures to be followed by consignment package agents in accepting credit cards for the purchase of alcoholic beverages.

(2) Application of Rule.

(a) Licensee purchases may not be paid by credit card. The department will accept only checks and cash from licensees.

(b) Refunds, or exchanges of products of unequal value, will be handled by crediting the customer's credit card account. The cash register must be balanced by doing a return at the register.

(c) The cashier, when applicable, shall examine the security features of the card such as signatures, account numbers, expiration date, hologram, etc., before accepting any card.

(d) No sale may be made without the credit card. Merely having the credit card number available is not acceptable.

(e) All credit cards must be signed by the card holder.

(f) Customers may not use another person's credit card, including their spouse's card.

(g) Credit card receipts contain confidential information that needs to be safeguarded. Cashiers should not throw them in the trash. Consignment package agents and their employees should consult their audit manager concerning proper storage and disposal of such receipts. Package agents will mail all receipts to the department on a weekly basis for long term storage.

(h) If for any reason the credit card cannot be scanned, the credit card number should be hand keyed into the credit card machine keyboard. Validate the card with an ID and have the customer sign the printout or electronic pad.

R81-3-20. Type 4 Package Agency Room Service - Dispensing.

(1) A Type 4 package agency that sells liquor other than in a sealed container (i.e. by the drink) as part of room service, shall dispense liquor in accordance with Section 32B-5-304 and Section R81-1-9 (Liquor Dispensing Systems).

(2) A Type 4 package agency located in a hotel or resort facility that has a retail license or sublicense may provide room service of liquor in other than a sealed container through the dispensing outlet of the retail license or sublicense under the following conditions:

(a) point of sale control systems must be implemented that will record the amounts of alcoholic beverage products sold by the retail license or sublicense on behalf of the Type 4 package agency;

(b) the alcoholic beverage product cost must be allocated to the Type 4 package agency on at least a quarterly basis pursuant to the record keeping requirements of Section 32B-5-302;

(c) dispensing of alcoholic beverages from a retail license or sublicense location may not be made at prohibited hours pertinent to that license or sublicense type;

(d) A Type 4 package agency held by a resort licensee that operates seven days a week, 24 hours per day, must have a separate dispensing outlet for use during the times that a sublicense is not allowed to sell liquor.

KEY: alcoholic beverages

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Notice of Continuation May 10, 2011

R81. Alcoholic Beverage Control, Administration.**R81-4D. On-Premise Banquet License.****R81-4D-1. Licensing.**

(1) An on-premise banquet license may be issued only to a hotel, resort facility, sports center or convention center as defined in this rule. An on-premise banquet sublicense may be issued to a resort licensee pursuant to 32B-6-601 to -604. Any reference in the rules in this chapter 4D to an on-premise banquet license or licensee shall be interpreted as including an on-premise banquet sublicense or sublicensee.

(a) "Hotel" is a commercial lodging establishment:

(i) that offers temporary sleeping accommodations for compensation;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the hotel to provide complete meals; and

(iv) that has at least 1000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 75 people, provided that in cities of the third, fourth or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(b) "Resort facility" is a publicly or privately owned or operated commercial recreational facility or area:

(i) that is designed primarily to attract and accommodate people to a recreational or sporting environment;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the resort to provide complete meals; and

(iv) that has at least 1500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(c) "Sports center" is a publicly or privately owned or operated facility:

(i) that is designed primarily to attract people to and accommodate people at sporting events;

(ii) that has a fixed seating capacity for more than 2,000 persons;

(iii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iv) that has adequate kitchen or culinary facilities on the premises of the sports center to provide complete meals; and

(v) that has at least 2500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(d) "Convention center" is a publicly or privately owned or operated facility:

(i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;

(ii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals;

(iii) that is in total at least 30,000 square feet or until October 31, 2011 the facility is a "grandfathered facility" under 32B-6-603(4); and

(iv) that has at least 3000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate

a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated counties, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(2)(a) A "banquet contract" as used in this rule means an agreement between an on-premise banquet licensee and a host of a banquet to provide alcoholic beverage services at a meal, reception, or other private banquet function at a defined location on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(b) Each "banquet contract" shall:

(i) clearly define the location of the private banquet function;

(ii) require that the private banquet function be separate from other areas of the facility that are open to the general public; and

(iii) require signage at or near the entrance to the private banquet function to indicate that the location has been reserved for a specific group.

(3) On-premise banquet 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.

R81-4D-2. Application.

(1) A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of an on-premise banquet license when the requirements of Sections 32B-1-304, 32B-5-204, and 32B-6-604 have been met, a completed application has been received by the department, and the on-premise banquet premises have been inspected by the department.

(2)(a) The application shall include a floor plan showing the locations of function space in or on the applicant's business premises that may be reserved for private banquet functions where alcoholic beverages may be stored, sold or served, and consumed. Hotels shall also indicate the number of sleeping rooms where room service will be provided and include a sample floor plan of a guest room level. No application will be accepted that merely designates the entire hotel, resort, sports center or convention center facility as the proposed licensed premises.

(b) Pursuant to 32B-6-604(6) after an on-premise banquet license has been issued, the licensee may apply to the department for approval of additional locations in or on the premises of the hotel, resort, sports center or convention center that were not included in the licensee's original application. The additional locations must:

(i) be clearly defined;

(ii) be configured to ensure separation between any private banquet function and other areas of the facility that are open to the general public; and

(iii) be configured to ensure compliance with all operational restrictions with respect to the sale, storage, and consumption of alcoholic beverages required by 32B-5-301 to -308 and 32B-6-605.

R81-4D-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-604(5)(d), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate 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.

R81-4D-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.

R81-4D-5. On-Premise Banquet Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when an on-premise banquet 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 serve 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.

R81-4D-6. On-Premise Banquet Licensee Operating Hours.

Allowable hours of alcoholic beverage sales shall be in accordance with Section 32B-6-605(8). However, the licensee may open the alcoholic beverage storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4D-7. Sale and Purchase of Alcoholic Beverages.

(1) The on-premise banquet licensee shall maintain at least 50% of its total business from the sale of food pursuant to Section 32B-6-605(9).

(a) The on-premise banquet licensee 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.

(b) If any inspection or audit discloses that the sales of food are less than 50% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next

quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 50%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(2) Liquor dispensing shall be in accordance with Section 32B-5-304 and Section R81-1-9 (Liquor Dispensing Systems) of these rules.

R81-4D-8. Liquor Storage.

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 of the on-premise banquet licensee as approved by the department.

R81-4D-9. Alcoholic Product Flavoring.

On-premise banquet 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 under the on-premise banquet license. 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 on-premise banquet licensee employee under the age of 21 years may handle alcoholic product flavorings.

R81-4D-11. Menus; Price Lists.

(1) An on-premise banquet licensee shall have readily available for any host of a contracted banquet a printed alcoholic beverage price list, or menu containing 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.

(2) 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.

(3) Any host of a contracted banquet 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.

(4) The on-premise banquet licensee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4D-12. Identification Badge.

Each employee of the licensee 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 licensee 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.

R81-4D-13. On-Premise Banquet Licensee Room Service - Mini-Bottle/187 ml Wine Sales.

(1) Purpose. Pursuant to 32B-2-303, the department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters, except as otherwise allowed by the commission. The commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine as one form of room service sales by on-premise banquet licensees located in hotels and resorts. The following

conditions are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms, and are not offered to the general public.

(2) Application of Rule.

(a) The department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from an on-premise banquet licensee. Special orders may be placed with the department's purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The on-premise banquet licensee must order in full case lots, and all sales are final.

(c) Sale and use of alcohol in the smaller bottle sizes is restricted to providing one form of room service to guests in sleeping rooms in the hotel/resort, and may not be used for other banquet catering services, or be sold to the general public.

(d) Failure of the on-premise banquet licensee to strictly adhere to the provisions of this rule is grounds for the department to take disciplinary action against the on-premise banquet licensee.

R81-4D-14. Reporting Requirement.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to 32B-6-605(3).

(2) Purpose. This rule implements the requirement of 32A-4-406(21) that requires the commission to provide by rule procedures for on-premise banquet licensees or sublicensees to report scheduled banquet events to the department to allow random inspections of banquets by authorized representatives of the commission, the department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) An on-premise banquet licensee and an on-premise banquet sublicense licensed under 32B-8 shall file with the department at the beginning of each quarter a report containing advance notice of events that have been scheduled as of the reporting date for that quarter to be held under a banquet contract as defined in R81-4D-1.

(b) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered or submitted by mail or electronically.

(c) Each report shall include the name and specific location of each event.

(d) The department shall make copies of the reports available to a commissioner, authorized representative of the department, and any law enforcement officer upon request to be used for the purpose stated in Section (2).

(e) The department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee or sublicensee submitting the information, and the licensee or sublicensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to 63G-2-305 and -309;

(ii) any report filed shall be classified by the department as protected pursuant to 63G-2-305; and

(iii) any report filed shall be used by the department and law enforcement only for the purposes stated in this rule.

(g) Failure of an on-premise banquet licensee or

sublicensee to timely file the quarterly reports may result in disciplinary action pursuant to 32B-3-201 to -207, and R81-1-6 and -7.

KEY: alcoholic beverages

December 1, 2011

Notice of Continuation July 31, 2008

32B-2-202

R81. Alcoholic Beverage Control, Administration.**R81-10C. Beer-Only Restaurant Licenses.****R81-10C-1. Licensing.**

(1) Beer-only restaurant licenses are issued to persons as defined in Section 32B-1-102(74). The department must be immediately notified of any action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued to ensure there is no violation of Sections 32B-5-310.

R81-10C-2. Application.

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a beer-only restaurant license when the requirements of Sections 32B-1-304, 32B-5-201, -204 and 32B-6-905 have been met, and a completed application has been received by the department and the restaurant premises have been inspected by the department.

R81-10C-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-904(4) may be withdrawn during the time the license is in effect. If the beer-only restaurant licensee fails to maintain a valid corporate 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.

R81-10C-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.

R81-10C-5. Identification Badge.

Each employee of the licensee 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 licensee 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.

R81-10C-6. Sale and Purchase of Beer.

(1) 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, as provided in Section 32B-6-905(4), 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 shall maintain at least 70% of its total business from the sale of food pursuant to Section 32B-6-905(7).

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

(b) If any inspection or audit discloses that the sales of food are less than 70% for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

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

R81-10C-7. Alcoholic Product Flavoring.

Beer Only Restaurant licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) 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 restaurant employee under the age of 21 years may handle alcoholic product flavorings.

R81-10C-8. Table, Counter, and "Grandfathered Bar Structure" Service.

(1) Beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

R81-10C-9. Consumption at Patron's Table, Counter, and "Grandfathered Bar Structure".

(1) A patron's table, counter, or "grandfathered bar structure" 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, counter, or "grandfathered bar structure" so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

R81-10C-10. Grandfathered Bar Structures.

(1) Authority and Purpose.

(a) This rule is pursuant to 32B-6-902 which provides that:

(i) a bar structure, as defined in 32B-1-102(7), located in an establishment licensed as an on-premise beer retailer and operational as of August 1, 2011, may be "grandfathered" to allow beer to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;

(b) This rule is also pursuant to 32B-6-902 which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "remodels the grandfathered bar structure" for purposes of 32B-6-902(1)(b) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to

the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to 32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

**KEY: alcoholic beverages
December 1, 2011**

32B-2-202

R105. Attorney General, Administration.**R105-2. Records Access and Management.****R105-2-1. Purpose.**

This rule provides information about submitting requests and appeals to the Attorney General's Office under the Government Records Access and Management Act.

R105-2-2. Requests for Access.

All requests for records shall be directed to:

TABLE

(If by hand delivery)

GRAMA Information Officer
Office of the Attorney General
Utah State Capitol Complex
350 North State Street Suite 230
Salt Lake City, Utah 84114

(If by mail)

GRAMA Information Officer
Office of the Attorney General
PO Box 142320
Salt Lake City, Utah 84114-2320

(If by email)

GRAMA Information Officer
AGG10@utah.gov

R105-2-3. Appeals.

Appeals regarding questions of access to records shall be directed to:

TABLE

(If by hand delivery)

GRAMA Appeal
Office of the Attorney General
Utah State Capitol Complex
350 North State Street Suite 230
SLC UT 84114

(If by mail)

GRAMA Appeal
Office of the Attorney General
PO Box 142320
SLC UT 84114-2320

(If by email)

GRAMA Information Officer
AGG10@utah.gov

R105-2-4. Records of Client Agencies.

Requesters seeking copies of records of client agencies of the Attorney General's Office must make their request directly to the client agency. See 67-5-15(1).

R105-2-5. Record Sharing.

For the purpose of record sharing between governmental entities as provided in 63G-2-206, the Attorney General's Office is one governmental entity and all divisions in the office are part of that entity.

KEY: public records, government documents, records access, GRAMA

October 25, 2011

63-2-204

Notice of Continuation November 7, 2011

63-2-904

R151. Commerce, Administration.**R151-2. Government Records Access and Management Act Rule.****R151-2-1. Purpose and Authority.**

This rule is made pursuant to Section 63G-2-204, which allows agencies to specify where and to whom requests for access to records shall be directed; Subsection 63A-12-104 (2), which allows an agency to specify at which levels certain requirements shall be undertaken; and Section 63G-2-603, concerning requests to amend a record.

R151-2-2. Duties of Divisions within the Department.

Each division director shall comply with Section 63A-12-103 and shall appoint a records officer to perform, or to assist in performing, the following functions:

- (1) the duties set forth in Section 63A-12-103; and
- (2) responding to requests for access to division records.

R151-2-3. Requests for Access.

(1) Waiver of Written Requests: Notwithstanding Subsection 63G-2-204 (1) requiring written requests for records, a division may at its discretion waive the requirement for a written request if the records requested are public, the records are readily accessible, and the request is filled promptly by allowing access or copying at the time the request is made.

(2) To whom directed: All requests for access to records shall be directed to the records officer of the particular division which the requester believes generated or possesses the records.

(3) Fees: A fee shall be charged for copies of records provided. That fee shall be established pursuant to Title 63J, Chapter 1 and Subsection 63G-2-203 (1). Fees must be paid at the time of the request or before the records are provided to the requester.

R151-2-4. Forms.

(1) The forms described as follows, or a written document containing substantially similar information to that requested in the forms, shall be completed by requesters in connection with records requests, unless a division waives written requests.

(a) Form 2-204(1), "Request for Records", is intended to assist persons who request records to comply with the requirements of Subsection 63G-2-204 (1) regarding the contents of a request. The form requires the requester's name, address, telephone, organization, if any, a description of the records requested, and information regarding the requester's status, for records which are not public.

(b) Form 2-206(5), "Disclosure and Agreement", is to be used when another governmental entity requests controlled, private or protected records, pursuant to Subsection 63G-2-206 (5). This form discloses to the governmental entity certain information regarding restrictions on access and obtains the written agreement of the governmental entity to abide with those restrictions.

(2) The department or its divisions may use forms to respond to requests for records.

R151-2-5. Designation of Authorized Officers.

(1) The determinations or weighing of interests permitted or required under the following sections by a "governmental entity" or the "head of a governmental entity" shall be made by the division director which has custody or control of the records, or his designee:

- (a) Subsection 63G-2-201 (5) (b), which governs disclosure of certain private or protected records;
- (b) Section 63G-2-309, which governs business confidentiality claims;
- (c) Subsection 63G-2-202 (8), which governs disclosure for research purposes;
- (d) Subsection 63G-2-201 (10) (a), which governs

intellectual property rights.

(2) The "chief administrative officer of the governmental entity" for purposes of appeals under Sections 63G-2-401 and 63G-2-603 shall be the Executive Director of the Department of Commerce or the Executive Director's designee.

R151-2-6. Designation of Requests to Amend Record.

Requests to amend a record under Section 63G-2-603 are hereby designated as informal proceedings.

KEY: government documents, freedom of information, public records

July 8, 2008

Notice of Continuation November 3, 2011

63G-2-204

63G-2-201(5)(b)

63G-2-201(10)(a)

63G-2-202(8)

63G-2-308

63G-2-401

63G-2-603

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

This rule (R151-4) is:

- (1) known as the "Department of Commerce Administrative Procedures Act Rule;" and
- (2) organized into the following Parts:
 - (a) Part 1, General Provisions (R151-4-101 through R151-4-114);
 - (b) Part 2, Pleadings (R151-4-201 through R151-4-205);
 - (c) Part 3, Motions (R151-4-301 through R151-4-305);
 - (d) Part 4, Filing and Service (R151-4-401 through R151-4-402);
 - (e) Part 5, Discovery - Formal Proceedings (R151-4-501 through R151-4-516);
 - (f) Part 6, Depositions - Formal Proceedings (R151-4-601 through R151-4-611);
 - (g) Part 7, Hearings (R151-4-701 through R151-4-712);
 - (h) Part 8, Orders (R151-4-801 through R151-4-803); and
 - (i) Part 9, Agency Review and Judicial Review (R151-4-901 through R151-4-907).

R151-4-102. Definitions.

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

- (1) "Agency head" means the executive director of the department or the director of a division.
- (2) "Applicant" means a person who submits an application.
- (3) "Application" means a request for:
 - (a) licensure;
 - (b) certification;
 - (c) registration;
 - (d) permit; or
 - (e) other right or authority granted by the department.
- (4) "Department" means:
 - (a) the Utah Department of Commerce; or
 - (b) a division of the department.
- (5) "Division" means a division of the department.
- (6) "Electronic" means a:
 - (a) facsimile transmission; or
 - (b) PDF file attached to an email.
- (7) "Intervenor" means a person permitted to intervene in an adjudicative proceeding before the department.
- (8) "Motion" means a request for any action or relief in an adjudicative proceeding.
- (9) "Party in interest:"
 - (a) includes:
 - (i) a party;
 - (ii) a relative of a party; or
 - (iii) an individual with a financial interest in the outcome of the proceeding; and
 - (b) does not include:
 - (i) a party's counsel; or
 - (ii) an employee of a party's counsel.
- (10) "Petition" means the charging document setting forth:
 - (a) statement of jurisdiction;
 - (b) statement of one or more allegations;
 - (c) statement of legal authority; and
 - (d) request for relief.
- (11) "Pleadings" include the following along with any response:
 - (a) notice of agency action or request for agency action;
 - (b) the petition, motions, briefs or other documents filed by the parties to an adjudicative proceeding;
 - (c) a request for agency review or agency reconsideration;
 - (d) motions, briefs or other documents filed by the parties on agency review; and

- (e) a response submitted to a pleading.

R151-4-103. Authority.

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

R151-4-104. Supplementing Provisions.

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

R151-4-105. Purpose and Scope.

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

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

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

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

R151-4-107. Computation of Time.

- (1) Periods of time in department proceedings shall:
 - (a) exclude the first day of the act, event, or default from which the time begins to run; and
 - (b) include the last day unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- (2) When a period of time is less than seven days, Saturdays, Sundays, and legal holidays are excluded.
 - (3)(a)(i) When a period of time runs after the service of a document by mail, three days shall be added to the end of the prescribed period.
 - (ii) Except as provided in R151-4-107(1)(b), these three days include Saturdays, Sundays, and legal holidays.
 - (b) No additional time is provided if service is accomplished by electronic means.

R151-4-108. Timeliness of Administrative Proceedings.

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

- (1) the notice of agency action is issued; or
- (2) the initial decision with respect to a request for agency action is issued.

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

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

- (a) whether there is good cause for granting the extension or continuance;
- (b) the number of extensions or continuances the requesting party has already received;
- (c) whether the extension or continuance will work a significant hardship upon the other party;
- (d) whether the extension or continuance will be prejudicial to the health, safety or welfare of the public; and
- (e) whether the other party objects to the extension or continuance.

(2)(a) Except as provided in R151-4-109(2)(b), an extension of a time period or a continuance of a hearing may not result in the hearing being concluded more than 240 calendar

days after the day on which:

- (i) the notice of agency action was issued; or
- (ii) the initial decision with respect to a request for agency action was issued.

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

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

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

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

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

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

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

R151-4-110. Representation of Parties.

(1) A party may:

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

(b) represent oneself individually; or

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

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

R151-4-111. Review of Emergency Orders.

Unless otherwise provided by statute or rule:

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

(i) the division has previously:

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

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

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

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

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

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

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

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

(4)(a) Within 15 calendar days after the day on which the hearing to consider the emergency order concludes, the

presiding officer shall issue an order in accordance with Section 63G-4-208.

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

R151-4-112. Declaratory Orders.

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

(b) The petition shall:

(i) set forth:

(A) the question to be answered;

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

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

and

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

(ii) comply with Part 2, Pleadings.

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

(i) a review of the petition;

(ii) oral argument, if any;

(iii) laws and rules applicable to the petition;

(iv) applicable records maintained by the department; and

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

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

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

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

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

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

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

(e) questions that are addressed by statute;

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

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

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

(4) The recipient of a declaratory order may request agency review.

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

The record of an adjudicative proceeding includes:

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

(2) the recording of a hearing;

(3) a transcript of a hearing; and

(4) orders or other documents issued:

(a) by a presiding officer; or

(b) on agency review or reconsideration.

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

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

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

R151-4-201. Docket Number and Title.

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

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

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

- (i) CORP-Corporations;
- (ii) CP-Consumer Protection;
- (iii) DOPL-Occupational and Professional Licensing, including additional designations that division may implement for diversion, lien recovery fund, or other programs;
- (iv) NAFA-New Automobile Franchise Act;
- (v) PVFA-Powersport Vehicle Franchise Act;
- (vi) RE-Real Estate;
- (vii) AP-Real Estate Appraisers;
- (viii) MG-Mortgage; and
- (ix) SD-Securities;

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

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

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

TABLE I

BEFORE THE (DIVISION)
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

In the Matter of
(the application,
petition or license
of John Doe)

(Notice of Agency Action)
(Request for Agency Action)

No. AA-2000-001

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

Pleadings shall:

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

(2) contain:

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

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

R151-4-203. Signing of Pleadings.

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

(2) The signature is a certification that:

(a) the signer has read the pleading; and

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

R151-4-204. Amendments to Pleadings.

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

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

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

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

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

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

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

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

(2)(a) A respondent in an informal adjudicative proceeding

may file a response to a notice of agency action.

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

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

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

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

R151-4-301. General Provisions.

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

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

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

(a) failure to prosecute;

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

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

(d) other good cause basis.

R151-4-302. Time for Filing a Motion to Dismiss.

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

R151-4-303. Memoranda and Affidavits.

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

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

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

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

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

R151-4-304. Oral Argument.

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

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

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

(b) the party who made the motion:

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

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

R151-4-305. Ruling on a Motion.

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

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

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

(a) oral argument; or

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

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

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

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

R151-4-401. Filing.

(1)(a) Pleadings shall be filed with:

(i) the department or division in which the adjudicative proceeding is being conducted, which:

(A) maintains the official file and should receive original documents; and

(B) shall provide the pleading to the applicable board or commission; and

(ii) an administrative law judge who is conducting all or part of the adjudicative proceeding, whose copy is a courtesy copy.

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

(2)(a)(i) A filing may be accomplished by hand delivery or by mail to the department or division in which the adjudicative proceeding is being conducted.

(ii) a filing by hand delivery or mail is complete when it is received and date stamped by the department.

(b)(i) A filing may be accomplished by electronic means if the original document is also mailed to the department or division the same day, as evidenced by a postmark or mailing certificate.

(ii) Filing by electronic means is complete upon transmission if transmission is completed and received during the department's operating hours; otherwise, filing is complete on the next business day.

(iii) A filing by electronic means is not effective unless the department or division receives all pages of the document transmitted.

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

R151-4-402. Service.

(1)(a) Pleadings filed by the parties and documents issued by the presiding officer shall be concurrently served on all parties.

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

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

(2)(a) Service may be made:

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

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

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

(3)(a) Service may be accomplished by hand delivery or by mail to the last known address of the intended recipient.

(b) Service by mail is complete upon mailing.

(c) Service may be accomplished by electronic means.

(d) Service by electronic means is complete on transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.

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

TABLE II

CERTIFICATE OF SERVICE

I certify that I have this day served the

foregoing document on the parties of record in this proceeding set forth below (by delivering a copy thereof in person) (by mailing a copy thereof, properly addressed by first class mail with postage prepaid, to) (by electronic means and first class mail to):

(Name(s) of parties of record)
(Address(es))

Dated this (day) day of (month), (year).

(Signature)
(Name and Title)

R151-4-501. Applicability.

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

(2) Discovery is prohibited in informal adjudicative proceedings.

R151-4-502. Scope of Discovery.

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

(a) is not privileged;

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

(c) relates to a claim or defense of:

(i) the party seeking discovery; or

(ii) another party.

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) reasonable access.

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

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

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

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

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

- (i) the party has not fully completed the investigation of the case;
 - (ii) the party challenges the sufficiency of another party's disclosures; or
 - (iii) another party has not made disclosures.
- (4) Disclosures required under R151-4-503 shall be made in writing, signed, and served.

R151-4-504. Disclosures Otherwise Required.

(1)(a) A party shall:

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

(ii) provide a written report pursuant to the requirements for disclosure of expert testimony of Rule 26 of the Utah Rules of Civil Procedure.

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

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

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

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

- (i) shall exclude the expert testimony from the proceeding; and
- (ii) may not continue the hearing to allow additional time for the disclosures.

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

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

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

- (A) use of a deposition designated by another party; and
- (B) admissibility of materials identified under R151-4-504(2)(a).

(iii) An objection not timely made is waived.

R151-4-505. Other Discovery Methods.

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

- (1) depositions upon oral examination;
- (2) production of documents or things;
- (3) permission to enter upon land or other property for inspection and other purposes; and
- (4) physical and mental examinations.

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

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

- (1) the discovery sought is unreasonably cumulative, duplicative, or is obtainable from some other source that is:
 - (a) more convenient;
 - (b) less burdensome; or
 - (c) less expensive;
- (2) the party seeking discovery has had ample opportunity

by discovery in the action to obtain the information sought; or

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

- (a) the needs of the case;
- (b) the amount in controversy;
- (c) limitations on the parties' resources; and
- (d) the importance of the issues at stake in the litigation.

R151-4-507. Protective Orders.

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

(a) that the discovery not be had;

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

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

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

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

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

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

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

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

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

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

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

- (i) the notice of agency action was issued; or
- (ii) the initial decision with respect to a request for agency action was issued.

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

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

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

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

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

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

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

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

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

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

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

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

- (a) ordered by the presiding officer; or
- (b) a circumstance described in R151-4-509(2) or (3) exists.

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

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

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

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

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

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

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

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

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

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

(1) Each notice of agency action or initial decision with respect to a request for agency action:

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

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

- (i) cancellation of the prehearing conference; and
- (ii) a default order; and

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

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

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

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

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

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

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

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

(d) resolving discovery issues;

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

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

(g) dealing with other necessary matters.

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

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

(b) The presiding officer may:

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

(ii) schedule appropriate prehearing matters to occur concurrently.

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

(1)(a) Every disclosure shall:

(i) be signed by:

(A) at least one attorney of record; or

(B) the party if not represented; and

(ii) include the mailing address of the signer.

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

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

(i) be signed by:

(A) at least one attorney of record; or

(B) the party if not represented; and

(ii) include the mailing address of the signer.

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

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

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

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

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

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

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

(1) Unless otherwise ordered by the presiding officer:

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

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

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

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

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

R151-4-513. Subpoenas.

(1) Each subpoena:

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

(b) shall state the title of the action;

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

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

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

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

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

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

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

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

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

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

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

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

(5) Upon a motion made promptly to quash or modify a subpoena, but no later than the time specified in the subpoena for compliance, the presiding officer may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The request shall:

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

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

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

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

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

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

(B) an objection.

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

(A) objection;

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

(C) failure to permit inspection as requested.

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

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

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

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

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

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

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

(b) The order:

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

(ii) shall specify:

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

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

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

(ii)(A) After delivery, the party causing the examination is entitled, on request, to receive from the party against whom the order is made a like report of an examination, previously or

thereafter made, of the same condition unless, in the case of an examination of a person not a party, the party shows that the party is unable to obtain it.

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

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

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

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

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

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

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

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

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

(iii) a deponent fails to answer a question;

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

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

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

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

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

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

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

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

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

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

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

(D) striking out pleadings or portions of pleadings;

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

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

R151-4-601. Applicability - Scope.

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

(b) Discovery is prohibited in informal adjudicative proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The stipulation or order:

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

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

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

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

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

(i) any objections;

(ii) any changes made by the witness;

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

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

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

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

(a) a public or private corporation;

(b) a partnership;

(c) an association; or

(d) a government agency.

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

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

(1) Examination and cross-examination of witnesses may

proceed as permitted at a hearing under the Utah Administrative Procedures Act and pursuant to Rule 30 of the Utah Rules of Civil Procedure.

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

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

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

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

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

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

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

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

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

R151-4-609. Use of Depositions.

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

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

(b) had reasonable notice of the deposition.

(2) A party may use a deposition:

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

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

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

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

(a) the witness is dead;

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

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

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

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

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

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

R151-4-610. Objections to Admissibility.

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

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

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

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

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

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

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

R151-4-701. Hearings Required or Permitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Deliberations are closed to the public.

R151-4-704. Bifurcation of Hearing.

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

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

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

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

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

(3) case-in-chief of the party with the burden of proof and

cross examination of witnesses by opposing party;

- (4) case-in-chief of the opposing party and cross examination of witnesses by the party with the burden of proof;
- (5) if the presiding officer finds it to be necessary, rebuttal evidence by the party which has the burden of proof;
- (6) if the presiding officer finds it to be necessary, rebuttal evidence by the opposing party;
- (7) closing argument by the party with the burden of proof;
- (8) closing argument by the opposing party; and
- (9) final argument by the party with the burden of proof.

R151-4-706. Testimony Under Oath.

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

R151-4-707. Electronic Testimony.

(1) As used in this section (R151-4-707), electronic testimony includes testimony by telephone or by other audio or video conferencing technology.

(2)(a) Electronic testimony is permissible in a formal proceeding only:

- (i) on the consent of all parties; or
- (ii) if warranted by exigent circumstances.

(b) Expenses to produce in-person testimony do not constitute an exigent circumstance in a formal proceeding. (c) Electronic testimony generally is permissible in an informal proceeding on the request of a party.

(3)(a) When electronic testimony is to be presented, the presiding officer shall require identification of the witness.

- (b) The presiding officer shall provide safeguards to:
 - (i) assure the witness does not refer to documents improperly; and
 - (ii) reduce the possibility the witness may be coached or influenced during the testimony.

R151-4-708. Standard of Proof.

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

R151-4-709. Burden of Proof.

Unless otherwise provided by statute:

- (1) the department has the burden of proof in a proceeding initiated by a notice of agency action; and
- (2) the party who seeks action from the department has the burden of proof in a proceeding initiated by a request for agency action.

R151-4-710. Default Orders.

- (1) The presiding officer may enter a default order under Section 63G-4-209, with or without a motion from a party.
- (2) If a basis exists for a default order, the order may enter without notice to the defaulting party or a hearing.
- (3) A default order is not required to be accompanied by a separate order.

R151-4-711. Record of Hearing.

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

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

- (i) a certified court reporter licensed under Title 58, Chapter 74, Certified Court Reporters Licensing Act; or
- (ii) a digital audio or video recording in a commonly used file format.

(b) The presiding officer shall make record of a hearing in

an informal proceeding by:

- (i) a method required for a formal proceeding; or
- (ii) minutes or an order prepared or adopted by the presiding officer.

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

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

- (i) in a formal adjudicative proceeding, by a certified court reporter; or
- (ii) in an informal adjudicative proceeding, by:
 - (A) a certified court reporter; or
 - (B) a person who is not a party in interest.

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

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

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

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

R151-4-712. Fees.

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

- (i) \$18.50 for each day in attendance; and
- (ii) if traveling more than 50 miles to attend and return from the hearing, 25 cents per mile for each mile actually and necessarily traveled.

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

- (i) demand one day's witness fee and mileage in advance; and
 - (ii) be excused from appearance unless the fee is provided.
- (2) Interpreters and translators may receive compensation for their services.

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

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

R151-4-801. Requirements and Timeliness.

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

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

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

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

- (a) is not a basis for dismissal of the matter; and
- (b) may not be considered an automatic denial or grant of a motion.

R151-4-802. Effective Date.

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

R151-4-803. Clerical Mistakes.

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

- (a) its own initiative; or
- (b) the motion of a party.

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

- (a) at any time prior to the docketing of a petition for judicial review; or
- (b) as governed by Rule 11(h) of the Utah Rules of Appellate Procedure.

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

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

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

- (i) the Utah Motor Vehicle Franchise Advisory Board; or
- (ii) the Utah Powersport Vehicle Franchise Advisory Board.

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

- (i) Prelitigation proceedings under Title 78B, Chapter 3, the Utah Health Care Malpractice Act;
- (ii) a request for modification of a disciplinary order; or
- (iii) a request under Section 58-1-404(4) for entry into the Diversion Program.

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

- (i) refusal to file a document under the Utah Revised Business Corporations Act pursuant to Section 16-10a-126;
- (ii) revocation of a foreign corporation's authority to transact business pursuant to Section 16-10a-1532;
- (iii) refusal to file a document under the Utah Revised Limited Liability Company Act pursuant to Section 48-2c-211; or
- (iv) revocation of a foreign limited liability company's authority to transact business pursuant to Section 48-2c-1614.

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

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

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

(1) A request for agency review shall:

- (a) comply with Subsection 63G-4-301(1)(b) and this section (R151-4-902); and
- (b) include a copy of the order that is the subject of the request.

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

- (a) appropriate legal authority; and
- (b) the relevant portions of the record.

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

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

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

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

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

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

- (i) relevant authority; and
- (ii) the portions of the record relevant to the issue.

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

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

- (i) certify that the transcript has been ordered;
- (ii) notify the department when the transcript will be available; and

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

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

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

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

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

R151-4-903. Stay Pending Agency Review.

(1)(a) With a timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review.

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

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

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

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

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

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

(b) The department may issue:

- (i) an order granting the motion for a stay;
- (ii) a conditional stay imposing terms, conditions or restrictions on a party pending agency review;
- (iii) a partial stay; or
- (iv) an order denying the motion for a stay.

R151-4-904. Agency Review - Memoranda.

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

(b) Memoranda shall comply with:

- (i) this rule (R151-4); and
 - (ii) a scheduling order entered by the department.
- (2)(a) If a transcript is not necessary to conduct agency review, a memorandum supporting a request for agency review shall be concurrently filed with the request.
- (b) If a transcript is necessary to conduct agency review, a supporting memorandum shall be filed no later than 15 days after the filing of the transcript with the department.
- (3)(a) A response to a request for agency review and a memorandum supporting that response shall be filed no later than 30 days after the service of the memoranda supporting the request.
- (b) A final reply memorandum shall be filed no later than 10 days after the service of a response to the request for agency review.
- (4) If agency review involves more than two parties the department shall conduct a telephonic scheduling conference to address briefing deadlines.

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

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

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

- (1) The type of relief available on agency review shall be the same as the type of relief available on judicial review under Subsection 63G-4-404(1)(b).
- (2) The order on review constitutes final agency action for purposes of Subsection 63G-4-401(1).

R151-4-907. Stay and Other Temporary Remedies Pending Judicial Review.

- (1) Unless otherwise provided by statute, a motion for a stay of an order or other temporary remedy during the pendency of judicial review shall include:
- (a) a statement of the reasons for the relief requested;
 - (b) a statement of the facts relied upon;
 - (c) affidavits or other sworn statements if the facts are subject to dispute;
 - (d) relevant portions of the record of the adjudicative proceeding and agency review;
 - (e) a memorandum of law identifying the issues to be presented on appeal and supporting the aggrieved party's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, remand for a new hearing, or relief from the order entered;
 - (f) clear and convincing evidence that if the requested stay or other temporary remedy is not granted, the aggrieved party will suffer irreparable injury;
 - (g) clear and convincing evidence that if the requested stay or other temporary remedy is granted, it will not substantially harm other parties to the proceeding; and
 - (h) clear and convincing evidence that if the requested stay or other temporary remedy is granted, the aggrieved party will not pose a significant danger to public health, safety and welfare.
- (2) The executive director may grant a motion for a stay of an order or other temporary remedy during the pendency of judicial review if all of the criteria in R151-4-907 are met.

KEY: administrative procedures, adjudicative proceedings, government hearings
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13-1-6
63G-4-102(6)

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

(2) "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.

(3) "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.

(4) "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.

(5) "Central Order Entry" means a pharmacy where functions are performed at the request of another pharmacy to perform processing functions such as dispensing, drug review, refill authorizations, and therapeutic interventions.

(6) "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.

(7) "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.

(8) "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.

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

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

(11) "Dispense", as defined in Subsection 58-17b-102(23), 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.

(12) "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.

(13) "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.

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

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

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

(17) "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.

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

(19) "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.

(20) "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".

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

(22) "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 must 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".

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

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

(25) "NAPLEX" means North American Pharmacy

Licensing Examination.

(26) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (12), 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.

(27) "Parenteral" means a method of drug delivery injected into body tissues but not via the gastrointestinal tract.

(28) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug.

(29) "PIC", as used in this rule, means the pharmacist-in-charge.

(30) "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.

(31) "PTCB" means the Pharmacy Technician Certification Board.

(32) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-17b-309.

(33) "Refill" means to fill again.

(34) "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.

(35) "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.

(36) "Sterile products preparation facility" means any facility, or portion of the facility, that compounds sterile products using aseptic technique.

(37) "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 must 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".

(38) "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.

(39) "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 expiration date for the drug.

(40) "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.

(41) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 34-NF 29), 2011 edition, which is official from May 1, 2011 through Supplement 1, dated August 1, 2011, which is hereby adopted and incorporated by reference.

(42) "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.

(43) "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)(e), 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.

R156-17b-301. 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) medical gases providers;
- (b) analytical laboratories
- (c) durable medical equipment providers; and
- (d) central order entry pharmacies.

(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 pharmacy, if the additional Class A pharmacies are not open to provide pharmacy services simultaneously.

(8) The PIC shall comply with the provisions of Section R156-17b-603.

R156-17b-302. Licensure - Examinations.

(1) In accordance with Subsection 58-17b-303(1)(h), the examinations that must 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) In accordance with Subsection 58-17b-303(3)(j), an applicant applying by endorsement is required to pass the MPJE.

(3) In accordance with Subsection 58-17b-305(1)(g), the examinations which must be passed by an applicant applying for licensure as a pharmacy technician are:

(a) the Utah Pharmacy Technician Law and Rule Examination with a passing score of at least 75 and taken at the time of making application for licensure; and

(b) the PTCB or ExCPT with a passing score as established by the certifying body. The certificate must exhibit a valid date and that the certification is active.

(4) A graduate of a foreign pharmacy school shall obtain a passing score on the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination.

R156-17b-303. 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 2000 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-304. Licensure - Education Requirements.

(1) In accordance with Subsections 58-17b-303(2) and 58-17b-304(7)(c), 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(6), 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 must complete an approved program of education and training that meets the following standards:

(a) The didactic training program must be approved by the Division in collaboration with the Board and must address, at a minimum, the following topics:

- (i) legal aspects of pharmacy practice including federal and state laws and rules governing practice;
- (ii) hygiene and aseptic techniques;
- (iii) terminology, abbreviations and symbols;
- (iv) pharmaceutical calculations;
- (v) identification of drugs by trade and generic names, and

therapeutic classifications;

(vi) filling of orders and prescriptions including packaging and labeling;

(vii) ordering, restocking, and maintaining drug inventory;

(viii) computer applications in the pharmacy; and

(ix) non-prescription products including cough and cold, nutritional, analgesics, allergy, diabetic testing supplies, first aid, ophthalmic, family planning, foot, feminine hygiene, gastrointestinal preparations, and pharmacy care over-the-counter drugs, except those over-the-counter drugs that are prescribed by a practitioner.

(b) This training program's curriculum and a copy of the final examination shall be submitted to the Division for approval by the Board prior to starting any training session with a pharmacy technician in training. The final examination must include questions covering each of the topics listed in Subsection (3)(a) above.

(c) Approval must be granted by the Division in collaboration with the Board before a student may start a program of study. An individual who completes a non-approved program is not eligible for licensure.

(d) The training program must require at least 180 hours of practical training supervised by a licensed pharmacist in good standing with the Division and must include written protocols and guidelines for the teaching pharmacist outlining the utilization and supervision of pharmacy technicians in training that includes:

(i) the specific manner in which supervision will be completed; and

(ii) an evaluative procedure to verify the accuracy and completeness of all acts, tasks and functions performed by the pharmacy technician in training.

(e) An individual must complete an approved training program and successfully pass the required examinations as listed in Subsection R156-17b-302(3) within one year from the date of the first day of the training program, unless otherwise approved by the Division in collaboration with the Board.

(i) An individual who has completed an approved program, but did not seek licensure within the one year time frame must complete a minimum of 180 hours of refresher practice in a pharmacy approved by the Board if it has been more than six months since having exposure to pharmacy practice.

(ii) An individual who has been licensed as a pharmacy technician but allowed that license to expire for more than two years and wishes to renew that license must complete a minimum of 180 hours of refresher hours in an approved pharmacy under the direct supervision of a pharmacist.

(iii) An individual who has completed an approved program, but is awaiting the results of the required examinations may practice as a technician-in-training under the direct supervision of the pharmacist for a period not to exceed three months. If the individual fails the examinations, that individual can no longer work as a technician-in-training while waiting to retake the examinations. The individual shall work in the pharmacy only as supportive personnel.

(4) An applicant for licensure as a pharmacy technician is deemed to have met the qualification for licensure in Subsection 58-17b-305(f) 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 and passed the Utah law exam.

R156-17b-305. 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;

(b) submit a complete application for licensure as a pharmacist except the passing of the NABP 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) A pharmacist temporary license issued in accordance with this section cannot be renewed or extended.

R156-17b-306. Licensure - Pharmacist - Pharmacy Internship Standards.

(1) In accordance with Subsection 58-17b-303(1)(g), the standards for the pharmacy internship required for licensure as a pharmacist include the following:

(a) At least 1500 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.

(i) Internship hours completed in Utah shall include at least 360 hours but not more than 900 hours in a college coordinated practical experience program as an integral part of the curriculum which shall include a minimum of 120 hours in each of the following practices:

(A) community pharmacy;

(B) institutional pharmacy; and

(C) any clinical setting.

(ii) 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.

(b) 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.

(c) Pharmacy interns participating in internships may be credited no more than 50 hours per week of internship experience.

(d) No credit will be awarded for didactic experience.

(2) If a pharmacy intern is suspended or dismissed from an approved College of Pharmacy, the intern must notify the Division within 15 days of the suspension or dismissal.

(3) 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.

R156-17b-307. 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 State Board of Pharmacy for the purpose of evaluating the applicant's qualifications for

licensure.

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 PTCEB 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 or Injectable Weight Loss 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) In accordance with Subsection 58-17b-309(4)(c), 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), 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.

(4) 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), shall keep inventory records for each drug dispensed and a prescription dispensing medication profile for each patient receiving a drug dispensed by the prescribing practitioner or optometrist. 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 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 must 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 Section 58-17b-309; 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 Section 58-17b-309 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 (5).

(5) 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), 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.

(6) In accordance with Subsection 58-17b-309(4)(c), the medication storage standards that must be maintained by a prescribing practitioner or optometrist who dispenses a drug under Subsections (1) and (2) 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.

(7) In accordance with Subsection 58-17b-309(5), if a cosmetic drug or a weight loss drug listed in Subsections (1) and (2) 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.

(8) 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 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.

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:

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:

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:

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:
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:
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:
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:
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 to do so:
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:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000
- (10) Being in possession of a drug for an unlawful purpose:
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:
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:
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:
initial offense: \$100 - \$500
subsequent offense(s): \$1,000 - \$2,500
- (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:
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:
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:
initial offense: \$1,000 - \$5,000
subsequent offense(s): \$10,000
- (17) Accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503:
initial offense: \$1,000 - \$5,000
subsequent offense(s): \$10,000
- (18) 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:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000
- (19) Failure to follow USP-NF Chapter 797 guidelines:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,500 - \$10,000
- (20) Failure to follow USP-NF Chapter 795 guidelines:
initial offense: \$250 - \$500
subsequent offense(s): \$500 - \$750
- (21) Administering without appropriate guidelines or lawful order:
initial offense: \$500 - \$2,000
subsequent offense(s): \$2,000 - \$10,000
- (22) Disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law:
initial offense: \$100 - \$500
subsequent offense(s): \$500 - \$1,000
- (23) Engaging in the practice of pharmacy without a licensed pharmacist designated as the PIC:
initial offense: \$100 - \$500
subsequent offense(s): \$2,000 - \$10,000
- (24) Failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court:
initial offense: \$100 - \$500
subsequent offense(s): \$500 - \$1,000
- (25) Compounding a prescription drug for sale to another pharmaceutical facility:
initial offense: \$100 - \$500
subsequent offense(s): \$500 - \$1,000
- (26) 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:
initial offense: \$500 - \$1,000
subsequent offense(s): \$2,500 - \$5,000
- (27) Violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994:
initial offense: \$250 - \$500
subsequent offense(s): \$2,000 - \$10,000
- (28) Failing to comply with the continuing education requirements set forth in this rule:
initial offense: \$100 - \$500
subsequent offense(s): \$500 - \$1,000
- (29) Failing to provide the Division with a current mailing address within 10 days following any change of address:
initial offense: \$50 - \$100
subsequent offense(s): \$200 - \$300
- (30) Defaulting on a student loan:
initial offense: \$100 - \$200
subsequent offense(s): \$200 - \$500
- (31) Failing to abide by all applicable federal and state law regarding the practice of pharmacy:
initial offense: \$500 - \$1,000
subsequent offense(s): \$2,000 - \$10,000
- (32) Failing to comply with administrative inspections:

- initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (33) Abandoning a pharmacy and/or leaving drugs accessible to the public:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (34) Failure to return or providing false information on a self-inspection report:
 initial offense: \$100 - \$250
 subsequent offense(s): \$300 - \$500
- (35) Failure to pay an administrative fine:
 Double the original penalty amount up to \$10,000
- (36) Any other conduct which constitutes unprofessional or unlawful conduct:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (37) Failure to maintain an appropriate ratio of personnel:
 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
- (38) Unauthorized people in the pharmacy:
 Pharmacist initial offense: \$50 - \$100
 Pharmacist subsequent offense(s): \$250 - \$500
 Pharmacy initial offense: \$250 - \$500
 Pharmacy subsequent offense(s): \$1,000 - \$2,000
- (39) Failure to offer to counsel:
 Pharmacy personnel initial offense: \$500 - \$2,500
 Pharmacy personnel subsequent offense(s): \$5,000 - \$10,000
 Pharmacy: \$2,000 per occurrence
- (40) Violations of the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division:
 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
- (41) Practicing or attempting to practice as a pharmacist, pharmacist intern, or pharmacy technician or operating a pharmacy without a license:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (42) Impersonating a licensee or practicing under a false name:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (43) Knowingly employing an unlicensed person:
 initial offense: \$500 - \$1,000
 subsequent offense(s): \$1,000 - \$5,000
- (44) Knowingly permitting the use of a license by another person:
 initial offense: \$500 - \$1,000
 subsequent offense(s): \$1,000 - \$5,000
- (45) 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:
 initial offense: \$100 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (46) Violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (47) Violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (48) 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:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (49) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (50) Engaging in conduct, including the use of intoxicants or drugs, 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:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (51) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician when physically or mentally unfit to do so:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (52) 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:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (53) 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:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (54) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the individual's scope of competency, abilities or education:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (55) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the scope of licensure:
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
- (56) Verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice:
 initial offense: \$100 - \$1,000
 subsequent offense(s): \$500 - \$2,000
- (57) Failure to comply with the PIC standards:
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
- (58) Failure to resolve identified drug therapy management problems:
 initial offense: \$500 - \$2,500
 subsequent offense: \$5,000 - \$10,000
- (59) Dispensing a medication that has been discontinued by the FDA:
 initial offense: \$500 - \$1,000
 subsequent offense: \$2,500 - \$5,000
- (60) Failing to keep or report accurate records of training hours:
 initial offense: \$100 - \$500
 subsequent offense: \$200 - \$1,000
- (61) Failing to provide PIC information to the Division:
 initial offense: \$100 - \$500
 subsequent offense: \$200 - \$1,000
- (62) Requiring a pharmacist to operate a pharmacy with unsafe personnel ratio:
 initial offense: \$500 - \$2,000
 subsequent offense: \$2,000 - \$10,000

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) abandoning a pharmacy or leaving prescription drugs accessible to the public;
- (9) failing to identify licensure classification when communicating by any means;
- (10) the practice of pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-306(4)(d) or pharmacist to pharmacy technician ratio as established by Subsection R156-17b-601(3);
- (11) allowing any unauthorized persons in the pharmacy;
- (12) failing to offer to counsel any person receiving a prescription medication;
- (13) failing to pay an administrative fine that has been assessed in the time designated by the Division;
- (14) failing to comply with the PIC standards as established in Section R156-17b-603;
- (15) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3);
- (16) dispensing medication that has been discontinued by the FDA;
- (17) failing to keep or report accurate records of training hours;
- (18) failing to provide PIC information to the Division within 30 days of a change in PIC; and
- (19) 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.

R156-17b-601. Operating Standards - Pharmacy Technician.

In accordance with Subsection 58-17b-102(55), 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 R156-17b-304(3)(ix);

(k) accepting new prescription drug orders telephonically or electronically submitted for a pharmacist to review; and

(1) additional tasks not requiring the judgment of a pharmacist.

(2) The pharmacy technician shall not receive new verbal prescriptions or medication orders, clarify prescriptions or medication orders nor perform drug utilization reviews.

(3) Pharmacy technicians, including no more than one pharmacy technician-in-training, shall be supervised on-site by a pharmacist in accordance with Subsection R156-17b-603(19).

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(50), provided the pharmacy intern met the criteria as established in Subsection R156-17b-306.

R156-17b-603. Operating Standards - Pharmacist-in-charge.

The PIC shall have the responsibility to oversee the implementation and adherence to pharmacy policies that address the following:

(1) assuring that pharmacists and pharmacy interns dispense drugs or devices, including:

(a) packaging, preparation, compounding and labeling; and

(b) ensuring that drugs are dispensed safely and accurately as prescribed;

(2) 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;

(3) 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;

(4) 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;

(5) assuring that a reasonable effort is made to obtain, record and maintain patient medication records;

(6) education and training of pharmacy technicians;

(7) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the pharmacy;

(8) disposal and distribution of drugs from the pharmacy;

(9) bulk compounding of drugs;

(10) storage of all materials, including drugs, chemicals and biologicals;

(11) 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;

(12) establishment and maintenance of effective controls against theft or diversion of prescription drugs and records for such drugs;

(13) if records are kept on a data processing system, the maintenance of records stored in that system shall be in compliance with pharmacy requirements;

(14) 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;

(15) 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;

(16) 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;

(17) assuring that all relevant information is submitted to the Controlled Substance Database in the appropriate format and in a timely manner;

(18) assuring that all personnel working in the pharmacy have the appropriate licensure; and

(19) 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; and

(20) assuring that the PIC assigned to the pharmacy is recorded with the Division.

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(6) 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 must 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) 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 must 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 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 must be promptly transcribed;

(e) the inventory may be taken either as of 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 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 must 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; and

(j) if the pharmacy maintains a perpetual inventory of any of the drugs required to be inventoried, the perpetual inventory shall be reconciled on the date of the inventory.

(2) Requirement for taking the initial 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 none of the drugs specified in paragraph (2)(a) of this section on hand, the pharmacy shall record this fact as the initial inventory; and

(c) the initial inventory shall serve as the pharmacy's inventory until the next completed inventory as specified in Subsection (3) of this section.

(3) Requirement for 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 and drugs in automated pharmacy systems.

(4) 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).

(5) 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.

(6) Requirements specific to taking inventory in a Class B pharmacy shall include the following:

(a) all Class B pharmacies shall maintain a perpetual inventory of all Schedule II controlled substances which shall be reconciled according to facility policy; and

(b) the inventory of the institution shall be maintained in the pharmacy; if an inventory is conducted in other departments within the institution, the inventory shall be listed separately as follows:

(i) the inventory of drugs on hand in the pharmacy shall be listed separately from the inventory of drugs on hand in the other areas of the institution; and

(ii) the inventory of the drugs on hand in all other departments shall be identified by department.

(7) All out of date legend drugs and controlled substances shall be removed from the inventory at regular intervals and in correlation to the date of expiration imprinted on the label.

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 no more than two pharmacy interns during a working shift; 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. Reserved.

Reserved.

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) 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.

(2) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the drugs.

(3) A pharmacist shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such consultation.

(4) The offer to counsel shall be documented and said documentation shall be available to the Division. These records must be maintained for a period of five years and be available for inspection within 7-10 business days.

(5) Counseling shall be:

- (a) provided with each new prescription drug order, once yearly on maintenance medications, and if the pharmacist deems appropriate with prescription drug refills;
 - (b) provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent; and
 - (c) communicated verbally in person unless the patient or the patient's agent is not at the pharmacy or a specific communication barrier prohibits such verbal communication.
- (6) Only a pharmacist or pharmacy intern may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs.

(7) In addition to the requirements of Subsections (1) through (6) of this section, if a prescription drug order is delivered to the patient at the pharmacy, a filled prescription may not be delivered to a patient unless a pharmacist is in the pharmacy. However, an agent of the pharmacist may deliver a prescription drug order to the patient or the patient's agent if the pharmacist is absent for ten minutes or less and provided a record of the delivery is maintained and contains the following information:

- (a) date of the delivery;
- (b) unique identification number of the prescription drug order;

- (c) patient's name;
- (d) patient's phone number or the phone number of the person picking up the prescription; and

(e) signature of the person picking up the prescription.

(8) 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.

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 Section 58-17b-609, 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 must 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.

R156-17b-613. Operating Standards - Issuing Prescription Orders by Electronic Means.

In accordance with Subsections 58-17b-102(3) and 58-17b-601(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 - Operating Standards, Class A and B Pharmacy.

(1) In accordance with Subsection 58-17b-601(1),

standards for the operations for a Class A and Class B pharmacy 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 devices 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 permit detection of entry at all times when the facility is closed.

(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 extensive 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) must 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 must be component of FDA approved drugs listed in the approved drug products prepared by the Center for Drug Evaluation and Research of the FDA;

(d) compounding using drugs that are not part of a FDA approved drug listed in the approved drug products prepared by the Center for Drug Evaluation and Research of the FDA requires an investigational new drug application (IND). The IND approval shall be kept in the pharmacy for five years for inspection;

(e) 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;

(f) 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) expiration 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;
- (g) 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) expiration 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;
 - (h) the expiration 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", 13th Edition, 2004;
 - (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 expiration dates shall be documented; and
 - (i) 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 Rules 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 Rules;
 - (g) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USP DI Drug Reference Guides;
 - (h) current FDA Approved Drug Products (orange book); and
 - (i) 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 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 must 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) must be available to the Division whenever necessary.

(12) Pharmacists or other responsible individuals shall verify that the suppliers' invoices of legend drugs, including controlled substances, are listed on the invoices and were actually received by clearly recording their initials and the actual date of receipt of the controlled substances.

(13) The pharmacy facility must maintain a record of suppliers' credit memos for controlled substances and legend drugs.

(14) A copy of inventories required under Section R156-17b-605 must be made available to the Division when requested.

(15) The pharmacy facility must maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.

R156-17b-614b. Operating Standards - Class B pharmacy designated as a Branch Pharmacy.

In accordance with Subsections 58-17b-102(7) 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-615. Operating Standards - Class C Pharmacy - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer in Utah.

In accordance with Subsections 58-17b-102(48) 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 must 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 publically 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 must 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 must publicly display or have readily available all licenses and the most recent inspection report administered by the Division.

(8) In accordance with Section 58-17b-307, the Division shall require a criminal background check of the applicant, including but not limited to all key personnel involved in the operation of the pharmaceutical wholesaler or manufacturer, including the most senior person responsible for facility operation, purchasing, and inventory control and the person they report to in order to determine if an applicant or others associated with the ownership, management, or operations of the pharmaceutical wholesaler or manufacturer have committed criminal acts that would constitute grounds for denial of licensure.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) 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.

(14) 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.

(15) Prescription drugs furnished by a manufacturer or pharmaceutical wholesaler shall be delivered only to the business address of a person described in Subsection R156-17b-615(14), 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.

(16) 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.

(17) 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.

(18) 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.

(19) 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.

(20) 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.

(21) 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.

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-614(1) through (4);

(b) a copy of the pharmacist's license for the PIC; and

(c) a copy of the most recent state inspection 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-617. Operating Standards - Class E pharmacy.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), the operating standards for a Class E pharmacy shall include a written pharmacy care protocol which includes:

(a) the identity of the supervisor or director;

(b) a detailed plan of care;

(c) identity of the drugs that will be purchased, stored, used and accounted for; and

(d) identity of any licensed healthcare provider associated with operation.

(2) A Class E pharmacy preparing sterile compounds must

follow the USP-NF Chapter 797 Compounding for sterile preparations.

R156-17b-618. Change in Ownership or Location.

(1)(a) 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 that proposes to change its location or ownership shall make application for a new license and receive approval from the Division prior to the proposed change.

(b) Upon approval of the change in ownership or location, the original licenses shall be surrendered to the Division.

(2)(a) In accordance with Section 58-17b-614, a licensed pharmaceutical facility that proposes to change its names without a change in ownership shall submit the request in writing upon a form provided by the Division, no later than ten business days before the proposed name change. The request for a name change must be approved by the Division prior to implementing the change.

(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.

KEY: pharmacists, licensing, pharmacies

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58-17b-601(1)

58-37-1

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-24b. Physical Therapy Practice Act Rule.
R156-24b-101. Title.

This rule is known as the "Physical Therapy Practice Act Rule".

R156-24b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 24b, as used in Title 58, Chapters 1 and 24b or this rule:

(1) "A recognized accreditation agency", as used in Subsections 58-24b-302(1)(c) and (2)(c), means a college or university:

(a) accredited by CAPTE; or
 (b) a foreign education program which is equivalent to a CAPTE accredited program as determined by FSBPT's Foreign Credentialing Commission on Physical Therapy.

(2) "Credential evaluation", as used in Subsections R156-24b-302a(2) and (3), means the appropriate Course Work Tool (CWT) adopted by the Federation of State Boards of Physical Therapy. The appropriate CWT means the CWT in place at the time the foreign educated physical therapist or physical therapist assistant graduated from the physical therapy program.

(3) "CAPTE" means Commission on Accreditation in Physical Therapy Education.

(4) "FSBPT" means the Federation of State Licensing Boards of Physical Therapy.

(5) "Joint mobilization", as used in Subsection 58-24b-102(14)(d), means passive and active movements of the joints of a patient, including the spine, to increase the mobility of joint systems; but, does not include specific vertebral adjustment and manipulation of the articulation of the spine by those methods or techniques which are generally recognized as the classic practice of chiropractic.

(6) "Routine assistance", as used in Subsections 58-24b-102(10) and 58-24b-401(3)(b) means:

(a) engaging in assembly and disassembly, maintenance and transportation, preparation and all other operational activities relevant to equipment and accessories necessary for treatment; and
 (b) providing only that type of elementary and direct patient care which the patient and family members could reasonably be expected to learn and perform.

(7) "Supportive personnel", as used in Subsection R156-24b-503(1), means a physical therapist assistant or a physical therapy aide and does not include a student in a physical therapist or physical therapist assistant program.

(8) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 24b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-24b-502.

R156-24b-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 24b.

R156-24b-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.

R156-24b-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-24b-302(1)(c), the accredited school of physical therapy for a physical therapist shall be accredited by CAPTE at the time of graduation.

(2) In accordance with Subsection 58-24b-302(3), an applicant for licensure as a physical therapist who is educated outside the United States whose degree was not accredited by CAPTE shall document that the applicant's education is equal to a CAPTE accredited degree by submitting to the Division a

credential evaluation from the Foreign Credentialing Commission on Physical Therapy. Only educational deficiencies in pre-professional subject areas may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas. Pre-professional subject areas include the following:

- (a) humanities;
- (b) social sciences;
- (c) liberal arts;
- (d) physical sciences;
- (e) biological sciences;
- (f) behavioral sciences;
- (g) mathematics; or
- (h) advanced first aid for health care workers.

(3) In accordance with Subsection 58-24b-302(2), a physical therapist assistant shall complete one of the following CAPTE accredited physical therapy education programs:

- (a) an associates, bachelors, or masters program; or
- (b) in accordance with Section 58-1-302, an applicant for a license as a physical therapist assistant who has been licensed in a foreign country whose degree was not accredited by CAPTE shall document that the applicant's education is substantially equivalent to a CAPTE accredited degree by submitting to the Division a credential evaluation from the Foreign Credentialing Commission on Physical Therapy. Only educational deficiencies in pre-professional subject areas may be corrected by completing college level credits in the deficient areas or by passing the College Level Examination Program (CLEP) demonstrating proficiency in the deficient areas. Pre-professional subject areas include the following:

- (a) humanities;
- (b) social sciences;
- (c) liberal arts;
- (d) physical sciences;
- (e) biological sciences;
- (f) behavioral sciences;
- (g) mathematics; or
- (h) advanced first aid for health care workers.

R156-24b-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsections 58-24b-302(1)(e), (2)(e) and (3)(e), each applicant for licensure as a physical therapist or physical therapist assistant shall pass the FSBPT's National Physical Therapy Examination with a passing score as established by the FSBPT.

(2) In accordance with Section 58-1-309 and Subsections 58-24b-302(1)(d), (2)(d) and (3)(d), each applicant for licensure as a physical therapist or physical therapist assistant, including endorsement applicants, shall pass all questions on the open book, take home Utah Physical Therapy Law and Rule Examination.

(3) An applicant for licensure as a physical therapist or a physical therapist assistant must have completed the education requirements set forth in Section R156-24b-302, or be enrolled in the final semester of a CAPTE accredited program, in order to be eligible to sit for the examination required for Utah licensure as set forth in Subsection (1) above.

R156-24b-303a. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 24b is established by rule in Section R156-1-308a.

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

R156-24b-303b. Continuing Education.

(1) Required Hours. In accordance with Subsection 58-24b-303(2), during each two year renewal cycle commencing on June 1 of each odd numbered year:

(a) A physical therapist shall be required to complete not fewer than 40 contact hours of continuing education of which a minimum of three contact hours must be completed in ethics/law.

(b) A physical therapist assistant shall be required to complete not fewer than 20 contact hours of continuing education of which a minimum of three contact hours must be completed in ethics/law.

(c) Examples of subjects to be covered in an ethics/law course for physical therapists and physical therapist assistants include one or more of the following:

- (i) patient/physical therapist relationships;
- (ii) confidentiality;
- (iii) documentation;
- (iv) charging and coding;
- (v) compliance with state and/or federal laws that impact the practice of physical therapy; and
- (vi) any subject addressed in the American Physical Therapy Association Code of Ethics or Guide for Professional Conduct.

(d) The required number of contact 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.

(e) 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 contact 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 contact hour of continuing education for every two hours of time spent:

- (i) lecturing or instructing a course;
- (ii) in a post-professional doctorate or transitional doctorate program; or
- (iii) in a post-professional clinical residency or fellowship approved by the American Physical Therapy Association.

(b) Course Content and Type. The 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 physical therapy and shall be completed in the form of any of the following course types:

- (A) department in-service;
- (B) seminar;
- (C) lecture;
- (D) conference;
- (E) training session;
- (F) webinar;
- (G) internet course;
- (H) distance learning course;
- (I) journal club;
- (J) authoring of an article or textbook publication;
- (K) poster platform presentation;
- (L) specialty certification through the American Board of Physical Therapy Specialties;
- (M) post-professional clinical residency or fellowship approved by the American Physical Therapy Association;
- (N) post-professional doctorate from a CAPTE accredited program;
- (O) lecturing or instructing a continuing education course;

or

- (P) study of a scholarly peer-reviewed journal article.
- (ii) The following limits apply to the number of contact

hours recognized in the following course types during a two year license renewal cycle:

(A) a maximum of 40 contact hours for initial specialty certification through the American Board of Physical Therapy Specialties (ABPTS);

(B) a maximum of 40 contact hours for hours spent in a post-professional doctorate or transitional doctorate CAPTE accredited program;

(C) a maximum of 40 contact hours for hours spent in a post-professional clinical residency or fellowship approved by the American Physical Therapy Association;

(D) a maximum of half of the number of contact hours required for renewal for lecturing or instructing in continuing education courses meeting these requirements;

(E) a maximum of half of the number of contact hours required for renewal for online or distance learning courses that include examination and issuance of a completion certificate;

(F) a maximum of 12 contact hours for authoring a published, peer-reviewed article;

(G) a maximum of 12 contact hours for authoring a textbook chapter;

(H) a maximum of ten contact hours for personal or group study of a scholarly peer-reviewed journal article;

(I) a maximum of six contact hours for authoring a non-peer reviewed article or abstract of published literature or book review; and

(J) a maximum of six contact hours for authoring a poster or platform presentation.

(c) 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 state or federal agency;
- (iii) a professional association, organization, or facility involved in the practice of physical therapy; or
- (iv) a commercial continuing education provider providing a course related to the practice of physical therapy.

(d) Objectives. The learning objectives of the course shall be clearly stated in course material.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training, and experience.

(g) 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.

(i) At a minimum, the documentation shall contain the following:

- (A) the date of the course;
- (B) the name of the course provider;
- (C) the name of the instructor;
- (D) the course title;
- (E) the number of contact hours of continuing education credit; and
- (F) the course objectives.

(ii) If the course is self-directed, such as personal or group study or authoring of a scholarly peer-reviewed journal article, the documentation shall contain the following:

- (A) the dates of study or research;
- (B) the title of the article, textbook chapter, poster, or platform presentation;
- (C) an abstract of the article, textbook chapter, poster, or platform presentation;
- (D) the number of contact hours of continuing education credit; and
- (E) the objectives of the self-study course.

(6) Extra Hours of Continuing Education. If a licensee completes more than the required number of contact hours of

continuing education during the two-year renewal cycle specified in Subsection (1), up to ten contact hours of the excess 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.

R156-24b-502. Unprofessional Conduct.

Unprofessional conduct includes:

(1) violating, as a physical therapist, any provision of the American Physical Therapy Association's Code of Ethics for the Physical Therapist, last amended July 2010, which is hereby adopted and incorporated by reference;

(2) violating, as a physical therapist, any provision of the American Physical Therapy Association's Guide for Professional Conduct, last amended July 2010, which is hereby adopted and incorporated by reference;

(3) not providing supervision, as a physical therapist, as set forth in Section R156-24b-503;

(4) violating, as a physical therapist assistant, any provision of the American Physical Therapy Association's Standards of Ethical Conduct for the Physical Therapist Assistant, last amended July 2010, which is hereby adopted and incorporated by reference; and

(5) violating, as a physical therapist assistant, any provision of the American Physical Therapy Association's Guide for Conduct of the Physical Therapist Assistant, last amended July 2010, which is hereby adopted and incorporated by reference.

R156-24b-503. Physical Therapist Supervisory Authority and Responsibility.

In accordance with Section 58-24b-404, a physical therapist's supervision of a physical therapist assistant or a physical therapy aide shall meet the following conditions:

(1) a full-time equivalent physical therapist can supervise no more than three full-time equivalent supportive personnel unless approved by the board and Division; and

(2) a physical therapist shall provide treatment to a patient at least every tenth treatment day but no longer than 30 days from the day of the physical therapist's last treatment day, whichever is less.

KEY: licensing, physical therapy, physical therapist, physical therapist assistant

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58-24b-101

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58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-26a. Certified Public Accountant Licensing Act Rule.
R156-26a-101. Title.

This rule is known as the "Certified Public Accountant Licensing Act Rule".

R156-26a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 26a, as defined or used in this rule:

(1) "Administering organization" means an organization approved by the Division of Occupational and Professional Licensing and the Utah Board of Accountancy which will administer peer reviews in the Peer Review Program.

(2) "AICPA" means American Institute of Certified Public Accountants.

(3) "Incidental to regular practice" as defined in Subsection 58-26a-305(1)(b) is further defined to mean:

(a) An individual or a firm licensed as a certified public accountant or equivalent designation in any other state, district, or territory of the United States or any foreign country may perform services in this state for a client whose principal office or residence is located outside of this state as long as the services are incidental to primary services being performed outside of this state for that client.

(b) An individual or firm licensed in another jurisdiction, as incidental to their practice in such other jurisdiction, may advertise in this state that their services are available by any means including, but not limited to television, radio, newspaper, magazine or Internet advertising provided such representations are not false, misleading or deceptive; and provided that such individual or firm does not establish a CPA/Client relationship to perform services requiring a CPA license or CPA firm registration with any individual, business or other legal entity having its principal office or residence in this state without first obtaining a CPA license and CPA firm registration in this state.

(c) Incidental to regular practice in another jurisdiction includes a licensed CPA or equivalent designation continuing a CPA/Client relationship with an individual which originated while the client's residence was located outside of this state but thereafter the client moved their residence to this state.

(4) "Qualified continuing professional education (CPE)" as used in this rule means continuing education that meets the standards set forth in Section R156-26a-303b.

(5) "Standard setting bodies" means the Financial Accounting Standards Board, the Government Accounting Standards Board, the American Institute of Certified Public Accountants, the Securities and Exchange Commission, and the Federal Accounting Standards Advisory Board and other generally recognized standard setting bodies.

(6) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 26a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-26a-501.

(7) "Year of review" means the calendar year during which a peer review is to be conducted.

R156-26a-103. Authority.

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 26a.

R156-26a-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.

R156-26a-201. Advisory Peer Committees Created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(1)(f), the Education Advisory Committee to the Utah Board of Accountancy consisting of one full-time faculty from each of

five or more colleges or universities in Utah which has an accredited program as set forth in Section R156-26a-302a(1)(a), a majority of which committee are to be licensed CPAs.

(2) The Education Advisory Committee shall be appointed and serve in accordance with Section R156-1-205. The duties and responsibilities of the Education Advisory Committee shall include assisting the Division in collaboration with the Board in their duties, functions, and responsibilities and shall include:

(a) advising the Board as to the acceptability of an educational institution;

(b) assisting the Board to make a final determination pursuant to R156-26a-302a(4)(c) of whether an applicant is qualified to sit for the AICPA examination; and

(c) advising the Board regarding proposed changes to rules.

(3) The committee shall consider, when advising the Board of the acceptability of the educational institution, the following:

(a) the institution's accreditation;

(b) the acceptability by other state licensing boards;

(c) the faculty qualifications; and

(d) other educational resources.

(4) There is created in accordance with Subsection 58-1-203(1)(f), the Peer Review Committee to the Utah Board of Accountancy consisting of not more than ten licensed CPAs. The committee shall be appointed and serve in accordance with Section R156-1-205.

(5) The duties and responsibilities of the Peer Review Committee shall be advising the Board on peer reviews matters and shall include:

(a) reviewing the results of peer reviews administered by approved organizations and requiring corrective action of firms with significant deficiencies noted in the review process when considered necessary in addition to those required by the administering organization;

(b) evaluating compliance of CPE programs;

(c) performing random audits to determine compliance with the CPE requirements and the standards for CPE programs;

(d) reviewing complaints and recommending whether certain acts, practices or omissions violate the ethical standards of the profession;

(e) providing technical assistance to the Division; and

(f) serving as expert witnesses at administrative hearings.

R156-26a-302a. Qualifications for CPA Licensure - Education Requirements.

The education requirements for CPA licensure in Subsection 58-26a-302(1)(d) are defined, clarified, or established as follows:

(1) An applicant shall submit transcripts showing completion of course work consisting of a minimum of 150 semester hours (225 quarter hours) as follows:

(a) a graduate or undergraduate program within an institution whose business or accounting education program is accredited by the Association of Advanced Collegiate Schools of Business (AACSB), or the Association of Collegiate Business Schools and Programs (ACBSP), from which the applicant received one of the following:

(i) a graduate degree in accounting;

(ii) a graduate degree in taxation, or a master of business administration degree which includes not less than:

(A) 24 semester hours (36 quarter hours) in upper division accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting;

(B) 15 semester hours (23 quarter hours) graduate level accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting;

(C) an equivalent combination of graduate and upper division accounting courses covering the subjects of financial

accounting, auditing, taxation, and management accounting with one hour of graduate level course work being equivalent to 1.6 hours of upper division course work; or

(iii) a baccalaureate degree in business or accounting and 30 semester hours (45 quarter hours) beyond the requirements for a baccalaureate degree which includes not less than:

(A) 16 semester hours (24 quarter hours) in upper division accounting courses, which when combined with the accounting courses listed in Subsection (B) below, have at least one course with a minimum of two semester hours (three quarter hours) each covering the subjects of financial accounting, auditing, taxation, and management accounting;

(B) eight semester hours (12 quarter hours) in graduate level accounting courses, which when combined with the accounting courses listed in Subsection (A) above, have at least one course each covering the subjects of financial accounting, auditing, taxation, and management accounting;

(C) 12 semester hours (18 quarter hours) in upper division non-accounting business courses;

(D) 12 semester hours (18 quarter hours) in graduate level business or accounting courses; and

(E) 10 semester hours (15 quarter hours) of either graduate or upper division accounting or business courses.

(b) a graduate or undergraduate program from an institution accredited by the Northwest Commission on Colleges and Universities, North Central Association of Colleges and Schools, Middle States Association of Colleges and Schools, New England Association of Colleges and Schools, Southern Association of Colleges and Schools and Western Association of Schools and Colleges from which the applicant received a baccalaureate or graduate degree with not less than:

(i) 30 semester hours (45 quarter hours) in business or related courses providing a minimum of two semester hours (three quarter hours) in each of the following subjects:

(A) business law;

(B) computers;

(C) economics;

(D) ethics;

(E) finance;

(F) statistics and quantitative methods;

(G) written and oral communications; and

(H) business administration such as marketing, production, management, policy or organizational behavior;

(ii) 24 semester hours (36 quarter hours) in upper division accounting courses with a minimum of two semester hours (three quarter hours) in each of the following subjects:

(A) auditing;

(B) finance;

(C) managerial or cost;

(D) systems; and

(E) taxes; and

(iii) 30 semester hours (45 quarter hours) beyond the requirements for a baccalaureate degree of additional business related course work including not less than:

(A) eight semester hours (12 quarter hours) in graduate accounting courses;

(B) 12 semester hours (18 quarter hours) in graduate accounting or graduate business courses; and

(C) 10 semester hours (15 quarter hours) of additional business related hours shall be taken in upper division undergraduate or graduate level courses.

(2) The Division in collaboration with the Board or the education subcommittee of the board may make a written finding for cause that a particular accredited institution or program is not acceptable.

(3) The Division in collaboration with the Board or the education subcommittee of the board may accept education of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has

obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 2007 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

(4) In accordance with Section 58-26a-306, the qualifications to sit for the AICPA examination are clarified or supplemented as follows:

(a) In accordance with Subsection 58-26a-306(1)(a), the form of application approved by the Division shall be the application that CPA Examination Services (CPAES) requires in order to sit for the examination.

(b) In accordance with Subsection 58-26a-306(1)(b), the fee shall be the fee charged by CPAES. No additional fee shall be due to the Division.

(c) In accordance with Subsections 58-26a-306(1)(c) and (d), the Board has approved CPAES to make the determination of whether the applicant has met the education requirements, provided however that, if an applicant disputes the finding of CPAES, the Board shall make a final determination of whether the applicant is qualified to sit for the AICPA examination.

R156-26a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the experience requirements for licensure in Section 58-26a-302 are clarified, or supplemented as follows:

(1) The Division in collaboration with the board may accept experience of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 2007 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

R156-26a-302c. Qualifications for Licensure - Examinations.

The Division in collaboration with the Board may accept testing of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 2007 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

R156-26a-303a. Renewal Requirements - Peer Review.

(1) General.

In accordance with Subsections 58-1-308(3)(b) and 58-26a-303(2)(b), there is created a peer review requirement as a condition for renewal of licenses issued under the Certified Public Accountant Licensing Act, providing for review of the work products of CPA and CPA firm licensees.

(a) The purpose of the program is to monitor compliance

with professional standards.

(b) The program shall emphasize education and may include other remedial actions when non-compliance is found.

(c) If a licensee is unwilling or unable to comply with or intentionally disregards professional standards, the administering organization shall refer the matter to the Division for consultation and determination of appropriate action.

(2) Scheduling of the Peer Review.

(a) A firm's initial peer review shall be assigned a due date to require that the initial review be started no later than 18 months after the date of the issuance of its initial report as defined in Subsection 58-26a-102(20).

(b) Not less than once in each three years a firm engaged in the practice of public accounting shall undergo, at its own expense, a peer review commensurate in scope with its practice.

(c) The administering organization will assign the year of review.

(d) A portion of the peer review may be performed by a regulatory body if the Utah Board of Accountancy approves the regulatory body as an administering organization. This does not by itself satisfy the peer review requirement unless the other standards as specified in this rule are fulfilled by the regulatory body.

(3) Selection of a Peer Reviewer or inspector in the case of inspections mandated by law or regulatory bodies.

A firm scheduled for peer review shall engage a reviewer qualified to conduct the peer review. Regulatory bodies will assign inspectors.

(4) Qualifications of a Peer Reviewer and inspectors.

(a) Peer reviewers must provide evidence of one of the two following minimum qualifications to the administering organization:

(i) acceptance as a peer reviewer by the AICPA; or
(ii) compliance with the qualifications required by the AICPA to qualify as a peer reviewer.

(b) Peer reviewers must be licensed or hold a permit to practice as a CPA in the state of Utah or another state or jurisdiction of the United States.

(c) The administering organization will approve reviewers for those reviews not administered by the AICPA.

(d) Regulatory bodies will determine the qualifications of inspectors.

(5) Conduct of the Peer Review or inspection. Peer reviews shall be conducted as follows:

(a) Peer reviews shall be conducted according to the "Standards for Performing and Reporting on Peer Reviews" promulgated by the AICPA, effective January 1, 2009 as amended, which are hereby incorporated by reference and adopted as the minimum standards for peer reviews of all firms. This section shall not require any firm or licensee to become a member of the AICPA or any administering organization.

(b) The Utah Board of Accountancy may review the standards used by the regulatory body to determine if those standards are sufficient to satisfy all or part of the peer review requirements, or what additional review may be required to meet the peer review requirements under this rule.

(6) If an administering organization finds that a peer review was not performed in accordance with this rule or the peer review results in a pass with deficiencies or fail report, the Peer Review Committee may require remedial action to assure that the review or performance of the CPA or CPA firm being reviewed meets the objectives of the peer review program.

(7) Review of Multi-State Firms.

(a) With respect to a multi-state firm, the Division may accept a peer review based solely upon work conducted outside of this state as satisfying the requirement to undergo peer review under this rule, if:

(i) the peer review is conducted during the year scheduled or rescheduled under R156-26a-303a(2);

(ii) the peer review is performed in accordance with requirements equivalent to those of this state;

(iii) the peer review:

(A) studies, evaluates and reports on the quality control system of the firm as a whole in the case of system reviews; or

(B) results in an evaluation and report on selected engagements in the case of engagement reviews;

(iv) the firm's internal inspection procedures require that the firm's personnel from another office outside the state perform the inspection of the office located in this state not less than once in each three year period; and

(v) at the conclusion of the peer review, the peer reviewer issues a report equivalent to that required by R156-26a-303a(5) or in the case of an approved regulatory body, a report is issued under their standards.

(b) A multi-state firm seeking approval under R156-26a-303a(7)(a) shall submit an application to the administering organization by February 1 of the year of review establishing that the peer review it proposes to undergo meets all of the requirements of R156-26a-303a(5).

(8) A firm which does not perform services encompassed in the scope of minimum standards as set out in R156-26a-303a(5)(a) or (b) is exempt from peer review and shall notify the Division of Occupational and Professional Licensing of the exemption at the time of renewal of its registration. A firm which begins providing these services must commence a peer review within 18 months of the date of the issuance of its initial report as defined in Subsection 58-26a-102(16).

(9) Mergers, Combinations, Dissolutions or Separations.

(a) Mergers or combinations: In the event that two or more firms are merged or sold and combined, the surviving firm shall retain the year of review of the largest firm.

(b) Dissolutions or separations: In the event that a firm is divided, the new firms shall retain the year of review of the former firm. In the event that this period is less than 12 months, a new year shall be assigned so that the review occurs after 12 months of operation.

(c) Upon application to the administering organization and a showing of hardship caused solely by compliance with R156-26a-303a(10), the Division may authorize a change in a firm's year of review.

(10) If the firm can demonstrate that the time established for the conduct of a peer review will create an unreasonable hardship upon the firm, the Division may approve an extension not to exceed 180 days from the date the peer review was originally scheduled. A request for extension shall be addressed in writing by the firm to the Division with a copy to the administering organization responsible for administration of that firm's peer review. The written request for extension must be received by the Division and the administering organization not less than 30 days prior to the date of scheduled review or the request will not be considered. The Division shall inform the administering organization of the approval of any extension.

(11) Retention of Documents Relating to Peer Reviews.

(a) All documentation necessary to establish that each peer review was performed in conformity with peer review standards adopted by the Board, including the peer review working papers, the peer review report, comment letters and related correspondence indicating the firm's concurrence or nonconcurrence, and any proposed remedial actions and related implementation shall be maintained.

(b) The documents described in R156-26a-303a(11)(a) shall be retained for a period of time corresponding to the designated retention period of the relevant administering organization. In no event shall the retention period be less than 120 days.

(12) Costs and Fees for Peer Review.

(a) All costs associated with firm-on-firm reviews will be negotiated between the firm and the reviewer and paid directly

to the reviewer. All costs associated with committee assigned review team (CART) reviews will be set by the administering organization. The administering organization will collect the fees associated with CART reviews and pay the reviewer.

(b) All costs associated with the administration of the review process will be paid from fees charged to the firms. The fees will be collected by the administering organization. The schedule of fees will be included in the administering organization's proposal. The fee schedule will specify how much is to be paid each year and will be based on the firm size.

(13) All financial statements, working papers, or other documents reviewed are confidential. Access to those documents shall be limited to being made available, upon request, to the Peer Review Committee or the technical reviewer for purposes of assuring that peer reviews are performed according to professional standards.

R156-26a-303b. Renewal and Reinstatement Requirements - Continuing Professional Education (CPE).

(1) All CPAs are required to maintain current knowledge, skills, and abilities in all areas in which they provide services in order to provide services in a competent manner. To maintain or to obtain the knowledge, skills and abilities to competently provide services, a CPA may be required to obtain CPE above and beyond the 80 minimum CPE credits specified in Section 58-26a-304.

The following standards have been broadly stated in recognition of the diversity of practice and experience among CPAs. They establish a framework for the development, presentation, measurement, and reporting of CPE programs and thereby help to ensure that CPAs maintain the required knowledge, skills and abilities necessary to competently provide services and to enable the CPA to provide evidence of meeting the minimum CPE requirements specified under this rule.

(2) General Standards for CPAs.

(a) Standard No. 1. All CPAs must participate in CPE learning activities that maintain and/or improve their professional competence. This CPE must include a minimum of 80 hours of CPE in each two-year period ending on December 31 of each odd numbered year.

(i) The term "must", as used in these standards, means departure from those specific standards is not permitted. The term "should", as used in these standards, means that CPAs and CPE program sponsors are expected to follow such standards as written and are required to justify any departures from such standards when unusual circumstances warrant such departures.

(ii) Selection of CPE learning activities should be a thoughtful, reflective process addressing the individual CPA's current and future professional plans, current knowledge and skills level, and desired or needed additional competence to meet future opportunities and/or professional responsibilities.

(iii) A CPA's field of employment does not limit the need for CPE. CPAs performing professional services need to have a broad range of knowledge, skills, and abilities. Thus, the concept of professional competence should be interpreted broadly. Accordingly, acceptable continuing education encompasses programs contributing to the development and maintenance of both technical and non-technical professional skills.

(iv) Acceptable CPE subjects include accounting, assurance/auditing, consulting services, specialized knowledge and applications, management, taxation, and ethics. Other subjects, including personal development, may also be acceptable if they maintain and/or improve the CPA's professional competence. Such subjects may include, but are not limited to: accounting and auditing, taxation, management advisory services, information technology, communication arts, mathematics, statistics, probability and quantitative analysis,

economics, business law and litigation support, functional fields of business such as finance, production, marketing, personnel relations, development and management, business management and organizations, social environment of business, and specialized areas of industry such as film industry, real estate, or farming.

(v) To help guide their professional development, CPAs may find it useful to develop a learning plan. The learning plan can be used to evaluate learning and professional competence development.

(A) A learning plan means a structured process that helps guide CPAs in their professional development. A learning plan is used to evaluate and document learning and professional competence development. A learning plan should be reviewed regularly and modified as a CPA's professional competence needs change. A learning plan should include:

(I) a self-assessment of the gap between current and needed knowledge, skills, and abilities;

(II) a set of learning objectives arising from this assessment; and

(III) learning activities to be undertaken to fulfill the learning plan.

(b) Standard No 2. CPAs should comply with all applicable CPE requirements and should claim CPE credit only for CPE programs when the CPE program sponsors have complied with the Standards for CPE Program Presentation (Nos. 8 - 11) and Standard for CPE Program Reporting No. 17.

(i) In addition to minimum CPE requirements specified in this rule, CPAs are responsible for compliance with all applicable CPE requirements, rules, and regulations of other state licensing bodies, other governmental entities and other professional organizations or bodies who have standard setting authority. CPAs should contact each appropriate entity to which they report to determine its specific requirements or any exceptions it may have to the standards presented herein.

(ii) Periodically, CPAs may participate in learning activities which do not comply with all applicable CPE requirements, for example specialized industry programs offered through industry sponsors. If CPAs propose to claim credit for such learning activities, they should retain all relevant information regarding the program to provide documentation to the Division, other state licensing bodies, and/or all other professional organizations or bodies showing that the learning activity is equivalent to one which meets all these or other applicable Standards.

(c) Standard No. 3. CPAs are responsible for accurate reporting of CPE credits earned and should retain appropriate documentation of their participation in learning activities, including: name and contact information of CPE program sponsor, title and description of content, date of program, location and number of CPE credits, all of which should be included in documentation provided by the CPE program sponsor.

(i) Although CPAs are required to document a minimum level of CPE hours, through periodic reporting of CPE, the objective of CPE must always be maintenance/enhancement of professional competence, not just attainment of minimum credits.

(ii) Compliance with regulatory and other requirements mandates that CPAs keep documentation of their participation in activities designed to maintain and/or improve professional competence. In the absence of legal or other requirements for longer retention, a CPA must retain documentation for a minimum of five years from the end of the year in which the learning activities were completed.

(iii) Participants must document their claims of CPE credit. Examples of acceptable evidence of completion include:

(A) For group and independent study programs, a certificate or other verification supplied by the CPE program

sponsor.

(B) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination.

(C) For instruction credit, a certificate or other verification supplied by the CPE program sponsor.

(D) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received.

(E) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college.

(F) For published articles, books, or CPE programs, (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer or publisher.

(d) Standard No. 4. CPAs who complete sponsored learning activities that maintain or improve their professional competence should claim the CPE credits recommended by CPE program sponsors.

(i) CPAs may participate in a variety of sponsored learning activities, such as workshops, seminars and conferences, self-study courses, Internet-based programs, and independent study. While CPE program sponsors determine credits, CPAs should claim credit only for activities through which they maintained or improved their professional competence. CPAs who participate in only part of a program should claim CPE credit only for the portion they attended or completed.

(ii) In order to qualify as CPE, an Internet-based program must qualify as a group program as provided in Subsection R156-26a-303b(3)(b)(i) or as a self-study program as provided in Subsection R156-26a-303b(3)(g).

(e) Standard No. 5. CPAs may engage in independent study under the direction of a CPE program sponsor who has met the applicable standards for CPE program sponsors when the subject matter and level of study maintain or improve their professional competence.

(i) Independent study is an educational process designed to permit a participant to learn a given subject under the guidance of a CPE program sponsor one-on-one. Participants in an independent study program should:

(A) Enter into a written learning contract with a CPE program sponsor who must comply with the applicable standards for CPE program sponsors.

(B) Accept the written recommendation of the CPE program sponsor as to the number of credits to be earned upon successful completion of the proposed learning activities. CPE credits will be awarded only if:

(I) all the requirements of the independent study as outlined in the learning contract are met;

(II) the CPE program sponsor reviews and signs the participant's report;

(III) the CPE program sponsor reports to the participant the actual credits earned; and

(IV) the CPE program sponsor provides the participant with contact information.

(ii) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

(iii) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(iv) Complete the program of independent study in 15 weeks or less.

(3) Standards for CPE Program Sponsors (Standard 1), Standards for CPE Program Development (Standards 2-7), Standards for CPE Program Presentation (Standards 8-11), Standards for Program Measurement (Standards 12-16), and Standards for CPE Program Reporting (Standards 17-18). "CPE sponsor", as used herein, means the individual or organization responsible for setting learning objectives, developing the program materials to achieve such objectives, offering a program to participants, and maintaining the documentation required by these standards. The term "CPE program sponsor" may include associations of CPAs, whether formal or informal, as well as employers who offer in-house programs.

(a) Standard No. 1. CPE program sponsors are responsible for compliance with all applicable standards and other CPE requirements.

(i) In addition to the minimum requirements under this rule, CPE program sponsors may have to meet specific CPE requirements of other state licensing bodies, other governmental entities, and/or other professional organizations or bodies. CPE program sponsors should contact the appropriate entity to determine requirements.

(b) Standard No. 2. Sponsored learning activities must be based on relevant learning objectives and outcomes that clearly articulate the knowledge, skills, and abilities that can be achieved by participants in the learning activities.

(i) Learning activities, meaning an educational endeavor that improves or maintains professional competence, provided by CPE program sponsors for the benefit of CPAs, should specify the level, content, and learning objectives so that potential participants can determine if the learning activities are appropriate to their professional competence development needs. Learning activity levels include, for example, basic, intermediate, advanced, update, and overview as defined as follows:

(A) Advanced. Learning activity level most useful for individuals with mastery of the particular topic. This level focuses on the development of in-depth knowledge, a variety of skills, or a broader range of applications. Advanced level programs are often appropriate for seasoned professionals within organizations; however, they may also be beneficial for other professionals with specialized knowledge in a subject area.

(B) Basic. Learning activity level most beneficial to CPAs new to a skill or an attribute. These individuals are often at the staff or entry level in organizations, although such programs may also benefit a seasoned professional with limited exposure to the area.

(C) Intermediate. Learning activity level that builds on a basic program, most appropriate for CPAs with detailed knowledge in an area. Such persons are often at a mid-level within the organization, with operational and/or supervisory responsibilities.

(D) Overview. Learning activity level that provides a general review of a subject area from a broad perspective. These programs may be appropriate for professionals at all organizational levels.

(E) Update. Learning activity level that provides a general review of new developments. This level is for participants with a background in the subject area who desire to keep current.

(c) Standard No. 3. CPE program sponsors should develop and execute learning activities in a manner consistent with the prerequisite education, experience, and/or advance preparation of participants.

(i) To the extent it is possible to do so, CPE program sponsors should make every attempt to equate program content and level with the backgrounds of intended participants. All programs must clearly identify prerequisite education, experience, and/or advance preparation, if any, in precise language so that potential participants can readily ascertain

whether they qualify for the program.

(d) Standard No. 4. CPE program sponsors must use activities, materials, and delivery systems that are current, technically accurate, and effectively designed, and include discussions of ethical issues that may apply to the subject matter. CPE program sponsors must be qualified in the subject matter.

(i) To best facilitate the learning process, sponsored programs and materials must be prepared, presented and updated in a timely manner. Learning activities must be developed by individuals or teams having expertise in the subject matter. Expertise may be demonstrated through practical experience or education.

(ii) CPE program sponsors must review the course materials periodically to ensure that they are accurate and consistent with currently accepted standards relating to the program's subject matter.

(e) Standard No. 5. CPE program sponsors of group and self-study programs must ensure learning activities are reviewed by qualified persons other than those who developed them to ensure that the program is technically accurate and current and addresses the stated learning objectives. These reviews must occur before the first presentation of these materials and again after each significant revision of the CPE programs.

(i) Individuals or teams qualified in the subject matter must review programs. When it is impractical to review certain programs in advance, such as lectures given only once, greater reliance should be placed on the recognized professional competence of the instructors or presenters. Using independent reviewing organizations familiar with these standards may enhance quality assurance.

(f) Standard No. 6. CPE program sponsors of independent study learning activities must be qualified in the subject matter.

(i) A CPE program sponsor of independent study learning activities must have expertise in the specific subject area related to the independent study. The CPE program sponsor must also:

(A) Review, evaluate, approve and sign the proposed independent study learning contract, including agreeing in advance on the number of credits to be recommended upon successful completion.

(B) Review and sign the written report developed by the participant in independent study.

(C) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(g) Standard No. 7. Self-study programs must employ learning methodologies that clearly define learning objectives, guide the participant through the learning process, and provide evidence of a participant's satisfactory completion of the program.

(i) To guide participants through a learning process, CPE program sponsors of self-study programs must elicit participant responses to test for understanding of the material, offer evaluative feedback to incorrect responses, and provide reinforcement feedback to correct responses. To provide evidence of satisfactory completion of the course, CPE program sponsors of self-study programs must require participants to successfully complete a final examination with a minimum-passing grade of at least 70 percent before issuing CPE credit for the course.

(A) Evaluative feedback, as used in this subsection, means: specific response to correct answers to questions in self-study programs. Unique feedback must be provided for each incorrect response, as each one is likely to be wrong for differing reasons.

(B) Reinforcement feedback, as used in this subsection, means: specific responses to correct answers to questions in self-study programs. Such feedback restates why the answer selected was correct.

(ii) Examinations may contain questions of varying format

(for example, multiple-choice, essay and simulations.) If objective type questions are used, at least five questions per CPE credit must be included on the final examination. For example, the final examination for a five-credit course must include at least 25 questions.

(iii) Self-study programs must be based on materials specifically developed for instructional use. Self-study programs requiring only the reading of general professional literature, IRS publications, or reference manuals followed by a test will not be acceptable. However, the use of the publications and reference materials in self-study programs as supplements to the instructional materials could qualify if the self-study program complies with each of the CPE standards.

(h) Standard No. 8. CPE program sponsors must provide descriptive materials that enable CPAs to assess the appropriateness of learning activities. To accomplish this, CPE program sponsors must inform participants in advance of: learning objectives, prerequisites, program level, program content, advance preparation, instructional delivery methods, recommended CPE credit, and course registration requirements. Instructional delivery methods, as used in this subsection, means: delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs.

(i) For potential participants to effectively plan their CPE, the program sponsor should disclose the significant features of the program in advance (e.g., through the use of brochures, Internet notices, invitations, direct mail, or other announcements). When CPE programs are offered in conjunction with non-educational activities, or when several CPE programs are offered concurrently, participants should receive an appropriate schedule of events indicating those components that are recommended for CPE credit. The CPE program sponsor's registration policies and procedures should be formalized, published, and made available to participants.

(ii) CPE program sponsors should distribute program materials in a timely manner and encourage participants to complete any advance preparation requirements. All programs should clearly identify prerequisite education, experience, and/or advance preparation requirements, if any, in the descriptive materials. Prerequisites should be written in precise language so that potential participants can readily ascertain whether they qualify for the program.

(i) Standard No. 9. CPE program sponsors must ensure instructors are qualified with respect to both program content and instructional methods used.

(i) Instructors are key ingredients in the learning process for any group program. Therefore, it is imperative that CPE program sponsors exercise great care in selecting qualified instructors for all group programs. Qualified instructors are those who are capable, through training, education, or experience of communicating effectively and providing an environment conducive to learning. They should be competent and current in the subject matter, skilled in the use of the appropriate instructional methods and technology, and prepared in advance. As used in this subsection, Group Program means: An educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants either in a classroom or conference setting or by using the Internet.

(ii) CPE program sponsors should evaluate the instructor's performance at the conclusion of each program to determine the instructor's suitability to serve in the future.

(j) Standard No. 10. CPE program sponsors must employ an effective means for evaluating learning activity quality with respect to content and presentation, as well as provide a mechanism for participants to assess whether learning objectives

were met.

(i) The objectives of evaluation are to assess participant satisfaction with specific programs and to increase subsequent program effectiveness. Evaluations, whether written or electronic, should be solicited from participants and instructors for each program session, including self-study, to determine, among other things, whether:

(A) Stated learning objectives were met.

(B) If applicable, prerequisite requirements were appropriate.

(C) Program materials were accurate.

(D) Program materials were relevant and contributed to the achievement of the learning objectives.

(E) Time allotted to the learning activity was appropriate.

(F) If applicable, individual instructors were effective.

(G) Facilities and/or technological equipment was appropriate.

(H) Handout or advance preparation materials were satisfactory.

(I) Audio and video materials were effective.

(ii) CPE program sponsors should periodically review evaluation results to assess program effectiveness and should inform developers and instructors of evaluation results.

(k) Standard No. 11. CPE program sponsors must ensure instructional methods employed are appropriate for the learning activities. Instructional methods means: delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs. Learning activities should be presented in a manner consistent with the descriptive and technical materials provided.

(i) CPE program sponsors should evaluate the instructional methods employed for the learning activities to determine if the delivery is appropriate and effective. Integral aspects in the learning environment that should be carefully monitored include the number of participants and the facilities and technologies employed in the delivery of the learning activity.

(ii) CPE program sponsors are expected to present learning activities that comply with course descriptions and objectives. Appropriate supplemental materials may also be used.

(l) Standard No. 12. Sponsored learning activities are measured by program length, with one 50-minute period equal to one CPE credit. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned in a given learning activity.

(i) For learning activities in which individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as three CPE credits.

(ii) When the total minutes of a sponsored learning activity are greater than 50, but not equally divisible by 50, the CPE credits granted should be rounded down to the nearest one-half credit. Thus, learning activities with segments totaling 140 minutes should be granted two and one-half CPE credits.

(iii) While it is the participant's responsibility to report the appropriate number of credits earned, CPE program sponsors must monitor group learning activities to assign the correct number of CPE credits.

(iv) For university or college credit courses that meet these CPE Standards, each unit of college credit shall equal the following CPE credits: semester system 15 credits; quarter system 10 credits.

(v) For university or college non-credit courses that meet these CPE standards, CPE credits shall be awarded only for the actual classroom time spent in the non-credit course.

(vi) Credit is not granted to participants for preparation time.

(vii) Only the portions of committee or staff meetings that are designed as programs of learning and comply with these standards qualify for CPE credit.

(m) Standard No. 13. CPE credit for self-study learning activities must be based on a pilot test of the average completion time.

(i) A sample of intended professional participants should be selected to test program materials in an environment and manner similar to that in which the program is to be presented. The sample group of at least three individuals must be independent of the program development group and possess the appropriate level of knowledge before taking the program.

(ii) The sample does not have to ensure statistical validity. CPE credits should be recommended based on the average completion time for the sample. If substantive changes are subsequently made to program materials, further pilot tests of the revised program materials should be conducted to affirm or amend, as appropriate, the average completion time.

(n) Standard No. 14. Instructors or discussion leaders of learning activities should receive CPE credit for both their preparation and presentation time to the extent the activities maintain or improve their professional competence and meet the requirements of these CPE standards.

(i) Instructors, discussion leaders, or speakers who present a learning activity for the first time should receive CPE credit for actual preparation time up to two times the number of CPE credits to which participants would be entitled, in addition to the time for presentation. For example, for learning activities in which participants could receive 8 CPE credits, instructors may receive up to 24 CPE credits (16 for preparation plus 8 for presentation).

(ii) For repeat presentations, CPE credit can be claimed only if it can be demonstrated that the learning activity content was substantially changed and such change required significant additional study or research.

(iii) The maximum credit for instructors, discussion leaders or speakers cannot exceed 50 percent of the CPE requirement.

(o) Standard No. 15. Writers of published articles, books, or CPE programs should receive CPE credit for their research and writing time to the extent it maintains or improves their professional competence.

(i) Writing articles, books, or CPE programs for publication is a structured activity that involves a process of learning. For the writer to receive CPE credit, the article, book, or CPE program must be formally reviewed by an independent party. CPE credits should be claimed only upon publication.

(ii) The maximum credit for books or articles cannot exceed 25 percent of the CPE requirement.

(p) Standard No. 16. CPE credits recommended by a CPE program sponsor of independent study must not exceed the time the participant devoted to complete the learning activities specified in the learning contract.

(i) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

(q) Standard No. 17. CPE program sponsors must provide program participants with documentation of their participation, which includes the following: CPE program sponsor name and contact information, participant's name, course title, course field of study, date offered or completed, if applicable, location, the name of the CPE registry issuing approval, and the approval number assigned to that program by the Registry, type of instructional/delivery method used, amount of CPE credit recommended, verification by CPE program sponsor representative.

(i) CPE program sponsors should provide participants with documentation to support their claims of CPE credit. Acceptable evidence of completion includes:

(A) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor.

(B) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination.

(C) For instruction credit, a certificate or other verification supplied by the CPE program sponsor.

(D) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received.

(E) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college.

(F) For published articles, books, or CPE programs: (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer(s) or publisher.

(r) Standard No. 18. CPE program sponsors must retain adequate documentation for five years to support their compliance with these standards and the reports that may be required of participants.

(i) Evidence of compliance with responsibilities set forth under these Standards which is to be retained by CPE program sponsors includes, but is not limited to: records of participation, dates and locations, instructor names and credentials, number of CPE credits earned by participants, and results of program evaluations.

(ii) Information to be retained by developers includes copies of program materials, evidence that the program materials were developed and reviewed by qualified parties, and a record of how CPE credits were determined.

(iii) For CPE program sponsors offering self-study programs, appropriate pilot test records must be retained regarding the following:

(A) When the pilot test was conducted.

(B) The intended participant population.

(C) How the sample was determined.

(D) Names and profiles of sample participants.

(E) A summary of participants' actual completion time.

(4) Programs or Activities Which Do Not Qualify. The following activities do not satisfy the standards for programs of this section and are not eligible for satisfaction of CPE requirements:

(a) Personal study: personal study includes reading professional journals and publications, studying and researching matters such as tax code revisions, practicing software programs on a computer and watching video movies of a conference; and

(b) Committee meetings, dinner and luncheon meetings, firm meetings or other activities that do not meet the standards outlined in this section.

(5) Reporting Requirements. Each licensee applying for license renewal shall report, by January 31 of each even numbered year, demonstrating completion of at least the minimum number of credits required in Section 58-26a-304 for qualified continuing professional education hours completed for the preceding two calendar years. Each person applying for license reinstatement shall file a report at the time of application demonstrating completion of the CPE required under Subsection R156-26a-307.

(a) Such report shall be by means of one of the following:

(i) certification from an approved continuing professional education registry of the hours of qualified continuing education completed; or

(ii) a report to the Division for review and approval of continuing professional education.

(b) It is the responsibility of the applicant or licensee to demonstrate to the Division that the applicant or licensee successfully completed all CPE reported and meets the requirements of this section or that the CPE has been approved by an approved continuing professional education registry and that reported courses maintained or increased the professional competence of the applicant or licensee.

(6) Continuing Professional Education Registry. To obtain approval as a continuing professional education registry, an organization shall:

(a) be a professional association primarily consisting of individuals licensed as certified public accountants;

(b) be organized and in good standing according to the laws of the state;

(c) enter into a written agreement with the Division under which the organization agrees to:

(i) review and approve only those programs which meet the standards set forth under this section;

(ii) publish and disseminate to their members or other CPAs on request, listings of continuing professional education programs which meet the standards and are approved for qualified continuing professional education credit;

(iii) maintain accurate records of qualified continuing professional education completed by each of its registrants and provide each of its registrants with a certificate on a timely basis to permit the registrant to file that certificate with the registrant's application to the Division for renewal or reinstatement of his license as a certified public accountant. The certificate shall contain the name of the instructor, the date of the program, location of the program, title of the program, the name of the sponsor, the name of the CPE registry issuing approval, and the approval number assigned to that program by the Registry, and the number of CPE hours granted; and

(iv) make records of approved of qualified continuing professional education programs and records of qualified continuing professional education completed by registrants available for audit by representatives of the Division, the Board or peer advisory committees of the board.

(7) Fees. A registry may charge a reasonable fee to registrants for services provided for approval of courses. Sponsors of approved courses may charge a lower fee to members of the sponsoring association for participation as a registrant than it charges to non-members of the association.

(8) Other CPE requirements and failure to complete CPE requirements.

(a) Interim Licensure CPE requirements. Those individuals who become licensed or certified between renewal periods shall be required to complete CPE based upon ten hours per calendar quarter for the remaining quarters of the reporting period.

(b) Carry Forward Provision. A licensee who completes more than 80 hours of CPE during the two year reporting period may carry forward up to 40 hours to the next succeeding reporting period.

(c) Failure to comply with CPE requirements.

(i) Failure to meet the 80 hour requirement. An individual holding a current Utah license who fails to complete the required 80 hours of CPE by the reporting deadline will not be allowed to renew their license unless they complete and report to the Division at least 30 days prior to their expiration date two times the number of CPE hours the license holder was short for the reporting period (penalty hours). The penalty hours shall not be considered to satisfy in whole or part any of the CPE hours required for subsequent renewal of the license.

(ii) Non-Qualifying or Disqualified CPE hours. An individual who reports nonqualifying hours or who has hours disqualified by the Utah Board of Accountancy shall not be

allowed to renew their license unless they complete and report to the Division, within 60 days of receiving notification by the Division of their shortage and the relevant penalty hours requirement under R156-26-303b(8)(c)(i).

(iii) Waiver for Medical Reasons. A licensee may request the Board to waive the requirements or grant an extension for continuing professional education on the basis that the licensee was not able to complete the continuing professional education due to medical or related conditions confirmed by a qualified health care provider. Such medical confirmation shall include the beginning and ending dates during which the medical condition would have prevented the licensee from completing the continuing professional education, the extent of the medical condition and the effect that the medical condition had upon the ability of the licensee to continue to engage in the practice of accountancy. The Board in determining whether the waiver is appropriate shall consider whether or not the licensee continued to be engaged in the practice of accountancy practice on a full or part time basis during the period specified by the medical confirmation. Granting a waiver of meeting the minimum CPE hours shall not be construed as a waiver of a CPA being required to provide services in a competent manner with current knowledge, skill and ability. When medical or other conditions prevent the CPA from providing services in a competent manner, the CPA shall refrain from providing such services.

R156-26a-303c. Renewal Cycle.

In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 26a is established by rule in Section R156-1-308.

R156-26a-303d. Renewal Procedures.

Renewal procedures shall be in accordance with Section R156-1-308.

R156-26a-307. Reinstatement of Licenses.

(1) An individual having held a Utah license which has expired for failure to renew for nonpayment of fees, or an individual applying for reinstatement from emeritus status, may be relicensed upon satisfactory completion of:

(a) submission of an application on forms supplied by the Division which shall contain information as to why the person allowed their license to lapse;

(b) 80 hours of acceptable CPE, completed within the 12 months preceding the submission of an application for reinstatement, which shall include a minimum of 16 hours in accounting or auditing or both and shall include successful completion of the AICPA Ethics Self-Study Examination and the Utah Law and Rules Examination with a minimum score of at least the minimum score required for initial licensure. Successful completion of the two examinations will count as eight hours of CPE towards the 80 hour requirement.

(i) The requirements in Subsection R156-26-307(1)(b) are waived if the reinstatement applicant has not been practicing within the state of Utah since the expiration of the license being reinstated, the reinstatement applicant has continuously since the expiration been licensed and practicing in another state and the reinstatement applicant demonstrates that the applicant has met all the CPE requirements that would have been applicable in the state of Utah during the time the license was expired in the state of Utah.

(ii) The requirements in Subsection R156-26a-307(1)(b) are waived, if the applicant failed to renew because of inadvertent failure to pay the renewal fees, to sign application documents, or to meet similar technical application requirements and the application for reinstatement is filed with the Division within 24 months after expiration date of the license and at time of application for reinstatement the applicant demonstrates by

proof of attendance at acceptable CPE courses that at all times the applicant was in full compliance with the CPE requirements.

(2) A licensee who reinstates their license must obtain ten hours of CPE per full calendar quarter remaining in the current CPE reporting period after reinstatement is granted.

(3) The number of hours required to reinstate the license shall not be considered to satisfy in whole or part any of the 80 hours of CPE required for subsequent renewal of the license.

R156-26a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) a licensee willfully failing to comply with continuing professional education or fraudulently reporting continuing professional education; or

(2) commission of an act or omission that fails to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Code of Professional Conduct" of the American Institute of Certified Public Accountants (AICPA) as adopted June 1, 2008, which is hereby incorporated by reference.

KEY: accountants, licensing, peer review, continuing professional education

August 10, 2009

Notice of Continuation November 15, 2011

58-26a-101

58-1-106(1)(a)
58-1-202(1)(a)

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

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

R156-28-102. Definitions.

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

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

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

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

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

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

R156-28-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 28.

R156-28-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

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

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

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

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

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

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

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

In accordance with Subsections 58-1-203(1) and 58-1-

301(3), the experience requirements for licensure in Subsection 58-28-302 are defined, clarified, or established as follows.

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

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

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

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

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

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

(iii) Experience completed while employed as unlicensed assistive personnel is not acceptable to fulfill this experience requirement.

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

(A) lawfully obtained;

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

(C) supervised by a competent supervisor who was licensed as a veterinarian or exempted from licensure, except if the supervisor was exempted from licensure, the applicant must demonstrate the qualifications and competence of the supervisor; and

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

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

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

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

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

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

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

(1) Applicants who passed the examinations listed in this subsection prior to May 1, 2000 shall submit documentation showing they passed:

(a) the National Board Examination (NBE) of the National Board Examination Committee (NBEC) of the American Veterinary Medical Association (AVMA) with a minimum passing score as determined by the NBEC; and

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

(2) Applicants who did not pass the examinations listed in

Subsection (1) prior to May 1, 2000 shall submit documentation showing they passed the North American Veterinarian Licensing Examination (NAVLE) with a score as determined by the NBEC.

(3) To be eligible to sit for the NAVLE examination, an applicant shall submit the following:

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

(b) the application fee; and

(c) documentation showing the applicant has met the education requirement specified in Section R156-28-302a or will complete the education requirement at the end of the semester or quarter in which the applicant is currently enrolled. If the applicant is enrolled in the final semester or quarter before obtaining the degree, documentation of the applicant's student status shall be provided by a letter from the dean or registrar of the educational institution confirming the applicant is a student in good standing and will graduate with the next graduating class.

R156-28-303. Renewal Cycle - Procedures.

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

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

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

R156-28-304. Continuing Professional Education.

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

(1) During each two year period commencing on September 30 of each even numbered year, a licensee shall be required to complete not less than 24 hours of qualified continuing professional education directly related to the licensee's professional practice.

(2) The required number of hours of continuing professional education for an individual who first becomes licensed during the two year period shall be decreased by a pro-rata amount equal to the part of that two year period preceding the date on which that individual first became licensed.

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

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

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

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

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

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

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

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

(i) the American Veterinary Medical Association;

(ii) the Utah Veterinary Medical Association;

(iii) the American Animal Hospital Association;

(iv) the American Association of Equine Practitioners;

(v) the American Association of Bovine Practitioners;

(vi) certifying boards recognized by the AVMA;

(vii) the Western Veterinary Conference; or

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

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

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

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

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

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

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

R156-28-502. Unprofessional Conduct.

Unprofessional conduct includes:

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

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

(3) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Principles of Veterinary Medical Ethics of the American Veterinarian Medical Association (AVMA), as approved by the AVMA Executive Board, July 1999, revised November 2003, which are hereby incorporated by reference, except that if a licensee fails to establish the veterinarian-client-patient relationship as required in Section III A. of those principles, such failure does not excuse the veterinarian from complying with all other duties that would be a part of the duties that would be imposed on a veterinarian if the veterinarian had properly established the veterinarian-client-patient relationship.

R156-28-503. Minimum Standards of Practice.

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

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

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

is available;

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

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

(d) treatments rendered including drugs used and dosages;

and

(e) date of service.

(2) A veterinarian shall:

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

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

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

KEY: veterinary medicine, licensing, veterinarian

October 22, 2009

58-1-106(1)(a)

Notice of Continuation November 29, 2011

58-1-202(1)(a)

58-28-101

R156. Commerce, Occupational and Professional Licensing.**R156-40a. Athletic Trainer Licensing Act Rule.****R156-40a-101. Title.**

This rule is known as the Athletic Trainer Licensing Act Rule.

R156-40a-104. 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 40a.

R156-40a-105. 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.

R156-40a-302a. Qualifications for Licensure.

In accordance with Subsection 58-40a-302(1), the "athletic training curriculum requirement" shall be the curriculum program standard for accreditation set forth in the Standards for the Accreditation of Entry-Level Athletic Training Education Programs, revised June 8, 2006, published by the Commission on Accreditation of Athletic Training Education (CAATE), which is hereby adopted and incorporated by reference.

R156-40a-304. 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 40a is established by rule in Subsection R156-1-308a(1).

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

KEY: licensing, occupational licensing, athletic trainers
February 22, 2007 **58-40a-101**
Notice of Continuation November 21, 2011 **58-1-106(1)(a)**
58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-41. Speech-Language Pathology and Audiology Licensing Act Rule.

R156-41-101. Title.

This rule is known as the "Speech-Language Pathology and Audiology Licensing Act Rule".

R156-41-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 41, as used in Title 58, Chapters 1 and 41, or this rule:

(1) "Audio electronic equipment" as used in Subsection 58-41-2(3) means equipment proven in use, accepted and standard to the profession, of known quality and function, well maintained, in current calibration and presenting no hazard to the operator or client.

(2) "Clinical externship", as used in Section R156-41-302b, means the same as a clinical fellowship as used in Subsection 58-41-5.5(1)(a)(ii).

(3) "Direct supervision" as used in Subsections 58-41-2(5)(c), 58-41-2(20)(c), and this rule, means supervision as defined in Subsection R156-1-102a(4)(a).

(4) "Evoked potentials evaluation", as used in Subsection 58-41-2(4), includes neurophysiological intraoperative monitoring.

(5) "Legal holder of an AuD in audiology", as used in Subsection 58-41-5(1)(c), means an applicant for temporary licensure as an audiologist who holds a letter from an accredited university or college, verifying the applicant is currently enrolled and has completed all the course work in a program of studies necessary to complete a doctors degree in audiology except for the completion of a clinical externship.

(6) "Professional training" as set forth in Subsection 58-41-12(2) means continuing professional education that meets the standards set forth in Section R156-41-304.

(7) "Substitute supervisor", as used in this rule, means a licensee who is designated by the supervisor to provide limited supervision to an aide. The substitute supervisor shall be licensed in the same discipline in which the aide is functioning.

(8) "Supervision", as used in this rule, means a supervisor-supervisee relationship requiring the supervisor to be responsible for the professional performance by the supervisee. This includes a substitute supervisor-supervisee relationship.

(9) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 41, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-41-502.

R156-41-103. 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 41.

R156-41-104. 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.

R156-41-302a. Qualifications for Licensure - Application Requirements.

In accordance with Section 58-41-5, ASHA certification as a speech-language pathologist or audiologist is one acceptable method to document that an individual has completed the requirements of Subsections 58-41-5(1)(f) and (4)(e).

R156-41-302b. Qualifications for Licensure - Temporary Licensure - Audiology.

In accordance with Section 58-41-5.5, the Division may issue a temporary license to an applicant for an audiology license for not more than 12 months to complete a clinical externship required for an AuD under the following conditions:

(1) The licensee shall work under general supervision, as

defined in Subsection R156-1-102a(4)(c), of an audiologist licensed in Utah and approved by the Division.

(2) The supervising audiologist shall:

(a) have been licensed for not less than two years;

(b) not have been disciplined for any unprofessional or unlawful conduct within two years of the start of any supervision of a clinical externship program;

(c) assume responsibility for all audiology activities and services performed by the temporary licensee;

(d) not begin the supervision until the applicant holds a temporary license; and

(e) supervise no more than two temporary licensees at any given time.

(3) Any change in the supervising audiologist shall be preapproved by the Division.

R156-41-302c. Qualifications for Licensure - Temporary Licensure - Speech-Language Pathology.

In accordance with Section 58-41-5.5, the Division may issue a temporary license to an applicant for a speech-language pathology license for a period of not more than 12 months to complete a clinical fellowship as required by ASHA under the following conditions:

(1) The licensee shall work under the general supervision, as defined in Subsection R156-1-102a(4)(c), of a speech-language pathologist licensed in Utah and approved by the Division.

(2) The supervision speech-language pathologist shall:

(a) have been licensed for not less than two years;

(b) not have been disciplined for any unprofessional or unlawful conduct within two years of the start of any supervision of a clinical externship program;

(c) assume responsibility for all speech-language pathology activities and services performed by the temporary licensee;

(d) not begin the supervision until the applicant holds a temporary license; and

(e) supervise no more than two temporary licensees at any given time.

(3) Any change in the supervising speech-language pathologist shall be preapproved by the Division.

R156-41-303. 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 41, is established by rule in Section R156-1-308a.

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

R156-41-304. Continuing Professional Education.

In accordance with Subsection 58-41-12(2), continuing professional education requirements are established as follows:

(1) During each two year period an individual licensed as a speech-language pathologist, speech-language pathologist/audiologist or audiologist shall be required to complete not less than 20 hours of continuing professional education directly related the licensee's professional practice.

(2) The required number of hours of continuing professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(3) Continuing professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of speech-language pathology, audiology or both;

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

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

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

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

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

(a) unlimited hours shall be recognized for continuing professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences.

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

(6) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-41-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) using an educational title conferred by an organization or institution that is not a regionally accredited college or university;

(2) engaging in sexual intercourse or other sexual contact with a client or patient;

(3) exercising undue influence in a manner as to exploit the client, patient, or supervisee for financial or other personal advantage to the practitioner or a third party;

(4) using or training audiology or speech-language pathology aides as defined in Subsections 58-41-2(5) and (20) and inappropriately failing to follow the standards set forth in Section R156-41-601;

(5) failing to comply with the American Speech-Language Hearing Association's (ASHA) Code of Ethics, March 1, 2010 edition, which is hereby incorporated by reference;

(6) supervising more than two audiology or speech-language pathology temporary licensees at one time;

(7) failing as an audiologist supervisor to comply with any of the requirements of Subsection R156-41-302b(2); and

(8) failing as a speech-language pathologist supervisor to comply with any of the requirements of Subsection R156-41-302c(2).

R156-41-601. Speech-Language Pathology and Audiology Aides.

(1) In accordance with Subsections 58-41-2(5) and (20), an individual licensed to engage in practice as a speech-language pathologist or audiologist may employ as an aide an individual who has graduated from an accredited high school or obtained a certificate of equivalency approved by the Division.

(2) A licensee supervising an aide shall be responsible for the direct supervision of an aide.

(3) A licensee supervising an aide must have a current written utilization plan outlining the specific manner in which the aide will be employed and the manner in which the aide will be supervised.

(4) A licensee shall be permitted to supervise not more

than three aides at any one time.

(5) An aide shall not engage in the following:

(a) preparing diagnostic statements or clinical management plans, strategies or procedures;

(b) communicating obtained observations or results to anyone other than the aide's supervising speech-language pathologist or audiologist;

(c) determining case selection;

(d) independently composing or signing clinical reports; except an aide may enter progress notes into the patient's file reflecting the results of the aide's assigned duties;

(e) independently diagnosing, treating, discharging of patient, or advising of patient disposition; and

(f) referral of a patient to other professionals or agencies.

(6) Upon the request of the Division, a licensee who employs an aide must provide documentation that the aide has met the qualifications as listed in Subsection (1), and that the aide is functioning under a utilization plan.

KEY: licensing, speech-language pathology, audiology
September 21, 2010 58-1-106(1)(a)
Notice of Continuation November 29, 2011 58-1-202(1)(a)
 58-41-1

R156. Commerce, Occupational and Professional Licensing.
R156-54. Radiologic Technologist, Radiologist Assistant, and Radiology Practical Technician Licensing Act Rule.

R156-54-101. Title.

This rule is known as the "Radiologic Technologist, Radiologist Assistant, and Radiology Practical Technician Licensing Act Rule."

R156-54-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 54, as used in Title 58, Chapters 1 and 54 or this rule:

(1) "ARRT" means the American Registry of Radiologic Technologists.

(2) "CBRPA" means the Certification Board of Radiology Practitioner Assistants.

(3) "Practice as a radiology practical technician" means using radiological equipment limited to specific radiographic procedures on specific parts of the human anatomy as contained in the American Registry of Radiologic Technologists (ARRT) "Content Specifications for the Examination for the Limited Scope of Practice in Radiography", effective January 2009, which is hereby incorporated by reference.

(3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 54, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-54-502.

R156-54-103. 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 54.

R156-54-104. 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.

R156-54-301. Equivalent Education Requirements for Licensure as a Radiologic Technologist.

In accordance with Subsection 58-54-302(2)(a), a four year bachelors of science degree in radiology is an equivalent radiological educational program approved for licensure as a radiologic technologist.

R156-54-302a. Examination Requirements - Radiologic Technologist.

In accordance with Subsection 58-54-302(2)(b), the examination requirement for licensure as a radiologic technologist requires passing:

(1) an applicable American Registry of Radiologic Technologists (ARRT) Examination in Radiologic Technology, which include:

- (a) Radiography;
- (b) Nuclear Medicine Technology; and
- (c) Radiation Therapy Technology; or

(2) the Nuclear Medicine Technology Certification Board Examination.

R156-54-302b. Examination Requirements - Radiology Practical Technician.

In accordance with Subsection 58-54-302(3), the examination requirement for licensure as a radiology practical technician requires passing:

(1) the ARRT Limited Scope of Practice in Radiography Examination with a minimum score of 75% for the following:

- (a) core; and
- (b) one or more of the following sections:
 - (i) chest;
 - (ii) extremities;
 - (iii) skull/sinuses;
 - (iv) spine; and

(v) podiatric; or

(2) the ARRT Bone Densitometry Equipment Operators Examination (BDEO) with a minimum score of 75%.

R156-54-303. 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 54 is established by rule in Section R156-1-308a(1).

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

R156-54-304. Professional Education.

(1) In accordance with Subsection 58-54-305(2), each licensee shall be required to complete a program of professional education during each two year license renewal cycle.

(2) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first becomes licensed.

(3) Qualified professional education under this section shall:

- (a) be relevant to the licensee's professional practice;
- (b) be prepared and presented by individuals who are qualified by education, training and experience; and
- (c) have a method of verification of attendance.

(4) Unlimited hours of professional education shall be recognized for professional education completed in blocks of time not less than 50 minutes in formally established classroom courses, seminars, lectures, labs, training sessions or conferences which are approved by or conducted under the sponsorship of:

- (a) an accredited institution of higher education;
- (b) American Society of Radiologic Technologists or other similar professional organizations;
- (c) an acute care hospital or medical treatment facility; or
- (d) a professional association representing one of the licensed professions regularly engaged in radiologic procedures.

(5) Each licensee shall be responsible for keeping documentation of his professional education hours for a period of four years after close of the two year period to which the records pertain.

(6) A licensee who has a serious health condition or has left the United States for an extended period of time which prevent the licensee from meeting the professional education requirements established under this section may be excused from the requirement for that period of time. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-54-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) performing mammography when not in compliance with the Utah State Department of Health, Bureau of Health Facility Licensure, Mammography Quality Assurance Rules, R432-950;

(2) performing a radiological procedure without having first passed the appropriate qualifying examination;

(3) performing a radiological procedure when not supervised in accordance with Section 58-54-303 or Subsection 58-54-304(1)(g) and (2); and

(4) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the ARRT "Standards of Ethics", August 1, 2010 edition, which is hereby incorporated by reference.

KEY: licensing, radiologic technologists, radiology practical technicians, radiologist assistants

October 13, 2011

58-54-101

Notice of Continuation November 15, 2011

58-1-106(1)(a)

58-1-202(1)(a)

**R156. Commerce, Occupational and Professional Licensing.
R156-78B. Prelitigation Panel Review Rule.
R156-78B-1. Title.**

This rule is known as the "Prelitigation Panel Review Rule".

R156-78B-2. Definitions.

In addition to the definitions in Section 78B-3-403, which shall apply to this rule:

- (1) "Answer" means a responsive answer to a request.
- (2) "Date of the panel's opinion", "issuance of an opinion", and "issue an opinion", as used in Subsections 78B-3-423(1)(a)(i), 78B-3-416(3)(a)(i)(A), and 78B-3-418(1)(a), respectively, mean the date the Division issues a panel opinion filed with the Division by a prelitigation panel.
- (3) "Director" means the Director of the Division of Occupational and Professional Licensing.
- (4) "File", "filing", or "filed" means a pleading or document filed with the Division with service to all parties as required in Section R156-78B-7.
- (5) "Findings", "conclusions", "determinations", or "results", as used in Section 78B-3-419, means a written outcome of a prelitigation panel whether each claim against each health care provider has merit, and if meritorious, whether the conduct complained of resulted in harm to the claimant.
- (6) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, enacted by Congress in Pub. L. No 104-91 as implemented by 45 CFR Parts 160 and 164, as amended.
- (7) "Issue" or "issued", as it relates to a written action or notice permitted or required from the Division, means the finalization of an action or notice by the Division as reflected by an authorized signature and date on the action or notice.
- (8) "Meritorious claim" means that there is a basis in fact and law to conclude that the standard of care has been breached and the petitioner has been injured thereby, such that the petitioner has a reasonable expectation of prevailing at trial.
- (9) "Motion" means a request for any action or relief permitted under Sections 78B-3-416 through 78B-3-420 or this rule.
- (10) "Nonmeritorious claim" means that the evidence before the panel is insufficient to conclude that the case is meritorious, but does not necessarily mean the case is frivolous.
- (11) "Notice" means a notice of intent to commence action under Section 78B-3-412.
- (12) "Panel" means the prelitigation panel appointed in accordance with Subsection 78B-3-416(4) to review a request.
- (13)(a) "Panel opinion" or "opinion" as shortened in context with reference to a panel opinion, as used in Sections 78B-3-418, 78B-3-419, and 78B-3-423, means the supplemental memorandum opinion rendered by the prelitigation panel as required by Subsection R156-78B-14(2), that articulates the basis for the panel's findings, determinations or results as to whether each claim against each health care provider has merit and, if meritorious, whether the conduct complained of resulted in harm to the claimant.
- (b) If a supplemental memorandum opinion is not timely rendered by the prelitigation panel, "panel opinion" or "opinion" means the prelitigation panel findings, conclusions, determinations, or results.
- (14) "Party" means a petitioner or respondent.
- (15) "Person" means any natural person, sole proprietorship, joint venture, corporation, limited liability company, association, governmental subdivision or agency, or organization of any type.
- (16) "Petitioner" means any person who files a request with the Division.
- (17) "Pleadings" include the requests, answers, motions, briefs and any other documents filed by the parties to a request.
- (18) "Request" means a request for prelitigation panel

review under Section 78B-3-416.

(19) "Respondent" means any health care provider named in a request.

(20) "Service" means service as set forth in Subsection R156-78B-7.

R156-78B-3. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 78B-3-416(1)(b) to define, clarify, and establish the process and procedures which govern prelitigation panel reviews.

R156-78B-4. General Provisions.

(1) Purpose.

This rule is intended to secure the just, speedy and economical determination of all issues presented to the Division.

(2) Deviation from Rule.

Except as otherwise required by Title 78B, Chapter 3, the Division may permit a deviation from this rule when it finds compliance to be impractical or unnecessary.

(3) Computation of Time.

The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday or a state holiday, and then it is excluded and the period runs until the end of the next day which is a scheduled workday for the Division. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period.

R156-78B-5. Representations - Appearances.

(1) Representation of Parties.

(a) A party may be represented by counsel or may represent oneself individually, or if not an individual, may represent itself through an officer or employee. For the purpose of this provision, the term "counsel" means active members of the Utah State Bar or active members of any other state bar.

(b) Counsel from a foreign licensing state shall submit a notice of appearance to the presiding officer along with a certificate of good standing from the foreign licensing state.

(2) Entry of Appearance of Representation.

Parties shall promptly enter their appearances by giving their names and addresses and stating their positions or interests in the proceeding. When possible, appearances shall be entered in writing concurrently with the filing of the request for petitioner and no later than 10 days from service of the request for respondent.

R156-78B-6. Pleadings.

(1) Docket Number and Title.

Upon receipt of a timely Request for Prelitigation Review, the Division shall assign a two letter code identifying the matter as involving this type of request (PR), a two digit code indicating the year the request was filed, a two digit code indicating the month the request was filed, and another number indicating chronological position among requests filed during the month. The Division shall give the matter a title in substantially the following form:

TABLE I

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

John Doe,

Petitioner Request for
 -vs- Prelitigation Review
 Richard Roe, No. PR-XX-XX-XXX
 Respondent

(2) Form and Content of Pleadings.

Pleadings must be double-spaced and typewritten and presented on standard 8 1/2" x 11" white paper. They must identify the proceeding by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate prayer for relief when relief is sought. A request shall, by affirmation, set forth the date that the required notice was served, shall include a copy of the notice and shall reflect service of the request upon all parties named in the notice and request. When a petitioner fails to attach a copy of the notice to petitioner's request, the Division shall return the request to the petitioner with a written notice of incomplete request and conditional denial thereof. The notice shall advise the petitioner that his request is incomplete and that the request is denied unless the petitioner corrects the deficiency within the time period specified in the notice and otherwise meets all qualifications to have the request granted.

(3) Signing of Pleadings.

Pleadings shall be signed by the party or their counsel of record and shall indicate the addresses of the party and, if applicable, their counsel of record. The signature shall be deemed to be a certification that the signer has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

(4) Answers.

A respondent named in a request may file an answer relative to the merits set forth in the petitioner's notice. Affirmative defenses shall be separately stated and numbered in an answer or raised at the time of the hearing. Any answer must be filed no later than 15 days following the filing of the request.

(5) Motions.

(a) Motions to be Filed in Writing.

Motions shall be in writing unless the motion could not have been anticipated prior to the prelitigation panel hearing.

(b) Time Periods for Filing Motions and Responding Thereto.

(i) Motions to Withdraw a Request.

Any motion to withdraw a request shall be filed no later than five days before the prelitigation panel hearing.

(ii) Motions Directed Toward a Request.

Any motion directed toward a request shall be filed no later than 15 days after service of the request.

(iii) Motions Directed Toward the Composition of a Panel.

Any motion directed toward the composition of a panel shall be filed no later than five days after discovering a basis therefore.

(iv) Motions to Dismiss.

Any motion to dismiss shall be filed no later than five days after discovering a basis therefore.

(v) Extraordinary Motions for Discovery or Perpetuation of Evidence.

Any motion seeking discovery or perpetuation of evidence for good cause shown demonstrating extraordinary circumstances shall be filed no later than 15 days before the prelitigation panel hearing.

(vi) Response to a Motion.

A response to a motion shall be filed no later than five days after service of the motion and any final reply shall be filed no later than five days after service of the response to the motion.

(c) Affidavits and Memoranda.

The Division or panel shall permit and may require affidavits and memoranda, or both, in support or contravention

of a motion.

(d) The Division or panel may permit or require oral argument on a motion.

R156-78B-7. Filing and Service.

(1) Filing of Pleadings. All pleadings shall be filed with the Division with service thereof to all parties named in the notice. The Division may refuse to accept pleadings if they are not filed in accordance with the requirements of this rule.

(2) Process for Service.

(a) All pleadings and documents issued by the Division or panel that are required to be served shall at the option of the Division be served by personal service, first class mail, registered mail, certified mail, or by express mail. Personal service shall be made upon a party in accordance with the Utah Rules of Civil Procedure by any peace officer within the State of Utah or by any person specifically designated by the Division.

(b) A request for a prelitigation proceeding filed by a petitioner shall be served in accordance with the same process for service required for a notice of intent as set forth in Subsection 78B-3-412(3). All other pleadings or documents filed by a party shall at the option of the party be served by personal service, first class mail, registered mail, certified mail, or by express mail.

(c) When an attorney has entered an appearance on behalf of any party, service upon that attorney constitutes service upon the party so represented.

(3) Proof of Service.

(a) There shall appear on all pleadings or documents required to be served a certificate of service certifying the appropriate method of service as set forth in Subsection (2), in substantially the following form:

TABLE II

I hereby certify that I have this day served the foregoing document upon the parties of record in this proceeding set forth below (by delivering a copy thereof in person) (by mailing a copy thereof, properly addressed by first class mail) (by registered mail) (by certified mail) (by certified mail, return receipt requested) (by type of express mail):

(Name of parties of record)
 (addresses)

Dated this (day) day of (month), (year).

(Signature)
 (Title)

(b) Any pleading or document filed with the Division shall be accompanied by documentation of the service reflected in the certificate of service.

(4) Date of Service.

Pleadings or documents shall be considered served on the date of personal service or mailing date, as set forth in Subsection (2).

R156-78B-8. Panel Selection and Compensation.

(1) The Division shall commence the selection and appointment of panel members following the issuance of a notice of hearing pursuant to this rule.

(2) The selection and appointment of panel members shall be in accordance with Subsections 78B-3-416(4) and (5).

(3) (a) In accordance with Subsection 78B-3-416(4), whenever multiple respondents are identified in a request, the Division shall select and appoint a panel to sit in consideration of all claims against any respondent as follows:

(i) one lawyer member who is the chairman in accordance with Subsection 78B-3-416(4)(a);

(ii) one lay panelist member in accordance with Subsection 78B-3-416(4)(c);

(iii) one licensed health care provider who is practicing and knowledgeable for each specialty represented by the respondents in accordance with Subsection 78B-3-416(4)(b)(i); and

(iv) if a hospital or their employees are named as a respondent, one member who is an individual currently serving in a hospital administration position directly related to hospital operations or conduct that includes responsibility for the area of practice that is the subject of the liability claim, in accordance with Subsection 78B-3-416(4)(b)(ii).

(b) The distinction between a hospital administrator and a person serving in a hospital administration position referenced in Subsection 78B-3-416(4)(b)(ii) is significant and is hereby emphasized.

(c) The person serving in a hospital administration position referenced in Subsection 78B-3-416(4)(b)(ii) shall be from a different facility than the facility which is the subject of the alleged medical liability case, but may be from the same umbrella organization provided the panel member certifies under oath that he is free from bias or conflict of interest with respect to any matter under consideration as required by Subsection 78B-3-416(6).

(d) Petitioner and respondent may stipulate concerning the type of health care provider to be selected and appointed by the Division, unless the stipulation is in violation with the panel composition requirements set forth in Subsection 78B-3-416(4)(b).

(4) Upon stipulation of all parties, a motion to evaluate damages may be submitted to the Division whereupon the Division may appoint an additional panel member to assist in evaluating damages.

(5) The Division shall ensure that panelists possess all qualifications required by statute and this rule.

(6) Upon appointment to a prelitigation panel, each member thereof shall sign a written affirmation in substantially the following form:

TABLE III

I, (panel member), hereby affirm that, as a member of a prelitigation panel, I will discharge my responsibilities without bias towards any party. I also affirm that, to the best of my knowledge, no conflict of interest exists as to any matter which will be entrusted to my consideration as a panel member.

Dated this (day) day of (month), (year).

(Signature)

(7) Panel members shall be entitled to per diem compensation and travel expenses according to a schedule as established and published by the Division.

R156-78B-9. Action upon Request - Scheduling Procedures - Continuances.

(1) Action upon Request.

Upon receiving a request, the Division shall issue an order approving or denying the request.

(2) Criteria for Approving or Denying a Request.

The criteria for approving or denying a request shall be whether:

(a) the request is timely filed in accordance with Subsection 78B-3-416(2)(a);

(b) the request includes a copy of the notice in accordance with Subsection 78B-3-416(2)(b) and documentation that the notice was served in accordance with Section 78B-3-412; and

(c) the request has been mailed to all health care providers named in the notice and request as required by Subsection 78B-3-416(2)(b).

(3) Legal Effect of Denial of Request.

The denial of a request restarts the running of the applicable statute of limitations until an appropriate request is

filed with the Division.

(4) Scheduling Procedures.

(a) If a request is approved, the order approving the request shall direct the party who made the request to contact all parties named in the request and notice to determine by agreement of the parties:

(i) what type of health care provider panelists are requested;

(ii) at least two dates acceptable to all parties on which a prelitigation panel hearing may be scheduled; and

(iii) whether or not the case will be submitted in accordance with Section R156-78B-13 and if so, the nature of the submission.

(b) The order shall direct the party who made the request to file the scheduling information with the Division, on forms available from the Division, no later than 20 days following the issuance of the order.

(c) If the party so directed fails to comply with the directive without good cause, the Division may schedule the hearing without further input from the party.

(d) No later than five days following the filing of the approved form, the Division shall issue a notice of hearing setting a date, time and a place for the prelitigation panel hearing. No hearing shall take place within the 35 day period immediately following the filing of a Request for Prelitigation Review, unless the parties and the Division consent to a shorter period of time.

(e) The Division shall thereafter promptly select and appoint a panel in accordance with Subsections 78B-3-416(4) and (5) and this rule.

(5) Continuances.

(a) Standard.

In order to prevail on a motion for a continuance the moving party must establish:

(i) that the motion was filed no later than five days after discovering the necessity for the motion and at least two days before the scheduled hearing;

(ii) that extraordinary facts and circumstances unknown and uncontrollable by the party at the time the hearing date was established justify a continuance;

(iii) that the rights of the other parties, the Division, and the panel will not be unfairly prejudiced if the hearing is continued; and

(iv) that a continuance will serve the best interests of the goals and objectives of the prelitigation panel review process.

(b) If a continuance is granted, the order shall direct the party who requested the continuance to contact all parties named in the request and notice to establish no less than two dates acceptable to all parties, on which the prelitigation panel hearing may be rescheduled.

(c) The order shall direct the party who requested the continuance to file the scheduling information with the Division, on forms approved by the Division, no later than five days following the issuance of the order.

(d) If a party so directed is the petitioner and the petitioner fails to comply with the directive without good cause, the Division shall dismiss the request without prejudice. Upon issuance of the order of dismissal by the Division, the applicable statute of limitations on the cause of action shall no longer be tolled. The petitioner shall be required to file another request prior to the scheduling of any further proceeding and, until this request is filed, the statute of limitations shall continue to run.

(e) If a party so directed is the respondent and the respondent fails to comply with the directive without good cause, the Division may establish a date for the prelitigation panel hearing acceptable to petitioner and disallow any further motions for continuances from respondent.

(f) No later than three days following the filing of the dates, the Division shall issue a notice of hearing resetting a

date, time and a place for the prelitigation panel hearing.

(6) Requests Made By Incarcerated Person.

(a) If a request, notice, or other documentation indicates that the alleged malpractice occurred while the petitioner was incarcerated and the alleged malpractice claim is against the State of Utah, its agencies or employees, the request shall be denied based upon Subsection 63G-7-301(5)(j).

(b) Subsequent requests by or communications from a petitioner whose request has been denied under this subsection will not receive response unless the petitioner files an amended request and notice that demonstrates:

(i) that the alleged malpractice did not occur while the petitioner was incarcerated; or

(ii) that the alleged malpractice claim is not against the State of Utah, its agencies or employees or as provided in Section 63G-7-202.

R156-78B-10. Consequences of Failure to Appear at a Scheduled Hearing.

(1) Except as provided by Section R156-78B-13:

(a) If a party or a representative appointed by the party fails to appear for a hearing without good cause after due notice has been provided as to the scheduling of the hearing, the hearing shall proceed in the party's absence and the party shall lose the right to present any further evidence to the panel.

(b) If neither party nor their representatives appear for a hearing without good cause after due notice has been provided as to the scheduling of the hearing, the Division shall dismiss the request without prejudice. The dismissal shall terminate the tolling of the applicable statute of limitations under Subsection 78B-3-416(3).

R156-78B-11. Prehearing Conferences.

The Division may, in exceptional circumstances as approved by a panel chair, upon written notice to all parties of record, schedule a prehearing conference with the panel for the purposes of formulating or simplifying the issues, obtaining admissions of fact and genuineness of documents which will avoid unnecessary proof, and agreeing to other matters as may expedite the orderly conduct of the prelitigation proceeding or the settlement thereof. Agreements reached during the conference shall be recorded in an appropriate order unless the parties enter into a written stipulation on the matters or agree to a statement thereof made on the record by the chairman of the panel.

R156-78B-12. Hearing Procedures.

(1) Authority Governing Hearing Procedures.

Prelitigation panel hearings are informal as provided by Subsection 78B-3-416(1)(c) and are not governed by Title 63G, Chapter 4, Utah Administrative Procedures Act, and they are closed to the public as provided by Subsection 78B-3-417(5)(a).

(2) Duration of Prelitigation Hearings.

The duration of a prelitigation hearing shall be limited to two hours except as otherwise permitted to be extended in duration by the panel chair.

(3) Hearings Closed to the Public.

In accordance with Subsection 78B-3-417(5)(a), prelitigation hearings are closed to the public.

(4) Attendance of Panel Members.

Except where a case is submitted in written form in accordance with Section R156-78B-13, all panel members appointed shall be present during the entire hearing.

(5) Order of Presentation of Evidence.

Unless otherwise directed by the panel at the hearing, the order of procedure and presentation of evidence will be as follows:

- (a) Petitioner;
- (b) Respondent; and

(c) Petitioner, if the panel chair permits petitioner to present rebuttal evidence.

(6) Method of Presentation of Evidence.

Evidence may be presented by any party on a narrative basis or through direct examination of said party by their counsel of record. The panel may make inquiry of any party pertinent to the issues to be addressed. If a motion to evaluate damages has been granted, the panel may properly take evidence as to that issue. As set forth in Section 78B-3-417, no party has the right to cross-examine, rebut, or demand that customary formalities of civil trials and court proceedings be followed. The panel may, however, request special or supplemental participation of some or all parties in particular respects, including oral argument, evidentiary rebuttal, or submission of briefs.

(7) Rules of Evidence.

Formal rules of evidence are not applicable. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent people in the conduct of their affairs. The panel shall give effect to the rules of privilege recognized by law. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded.

(8) Burden of Proof.

The petitioner shall be responsible for establishing a meritorious claim against any respondent, and if the issue of damages is presented, the amount of damages.

(9) Standard of Proof.

The standard of proof for prelitigation hearings is a preponderance of the evidence.

(10) Use of Evidence.

Use of evidence, documents, and exhibits submitted to a panel shall be in accordance with Subsection 78B-3-417(1) and Section 78B-3-418.

(11) Record of Hearing.

On its own motion, the panel may record the proceeding for the sole purpose of assisting the panel in its subsequent deliberation and issuance of an opinion. The record may be made by means of tape recorder or other recording device. No tape recorder or other device shall be used by anyone otherwise present during the proceeding to record the matter. Upon issuance by the panel of its opinion, the record of the proceeding shall be destroyed.

(12) Subpoenas - Discovery and Perpetuation of Testimony.

(a) Subpoenas for Medical Records Authorized - Discovery and Perpetuation of Testimony Prohibited.

The Division may issue subpoenas for the production of medical records directly related to a claim of medical liability in accordance with Subsection 78B-3-417(2) and (3). However, except as permitted by Subsection 78B-3-417(2) and (3) and in accordance with Subsection 78B-3-417(4), there is no discovery or perpetuation of testimony in prelitigation panel hearings, except upon special order of the panel, and for good cause shown demonstrating extraordinary circumstances.

(b) Requirements and Process for Issuance of Subpoenas for Medical Records.

A request for a subpoena for medical records shall be prepared by the person requesting it in proper form for issuance by the Division and shall be supported by:

(i) a written release for the medical records signed by the individual who is the subject of the medical record or by that individual's guardian or conservator; or

(ii) an affidavit prepared by the person requesting the subpoena which shall include the indicated text:

TABLE IV

I hereby certify:
 (1) that the medical record subject to the requested subpoena is believed by the person requesting the subpoena

("requester") to be directly related to the medical liability claim to which the subpoena is related;

(2) that the requester will comply with the requirements of HIPAA as set forth in 45 CFR 164.512(e), which governs the release of protected health information in the course of administrative proceedings;

(3) that more specifically with regard to the requirements of HIPAA, the requester will provide a written statement and documentation to the covered entity from whom the medical records are sought demonstrating satisfactory assurances that:

(a) the requestor provided the subject of the records notice of the subpoena, information about the governing prelitigation proceeding, a time period to object to the release of the subject's medical records, and that either no objections were filed or that objections were filed but resolved by a court of competent jurisdiction and the subpoena is consistent with the resolution, as specified in 45 CFR 164.512(e)(1)(ii)(A) and detailed in 45 CFR 164.512(e)(1)(iii); or

(b) the parties to the prelitigation proceeding have agreed to a qualified protective order and have presented it to a court of competent jurisdiction or the requestor has requested a qualified protective order from a court of competent jurisdiction, as specified in CFR 164.512(e)(1)(ii)(B) and detailed in 45 CFR 164.512(3)(1)(iv); and

(4) that if the recipient of the subpoena for medical records fails or refuses to comply with the subpoena, the requester understands that resolution of the issues regarding the subpoena needs to be through a court of competent jurisdiction.

R156-78B-13. Submission of Case in Written Form, by Proffer, or a Combination thereof - Requirements.

(1) A full prelitigation panel hearing is not required if the parties enter into a stipulation that no useful purpose would be served by convening a panel hearing as to any or all respondents or if the parties agree to submit their case as to any or all respondents to the panel in written form, by proffer of evidence, or by a combination thereof.

(2) Any case submitted in writing must include a legal argument addressing the relevant evidence and law with regard to the issues presented in the case.

R156-78B-14. Determination - Supplemental Opinion - Issuance of Panel Opinion - Certificate of Compliance.

(1) Panel Determination.

As soon as is reasonably practicable following the conclusion of a hearing or submission of a case to the panel in accordance with Section R156-78B-13, and, if applicable, submission of briefs by the parties, the panel shall render and file with the Division a determination whether each claim against each health care provider has merit or has no merit, and if meritorious whether the conduct complained of resulted in harm to the claimant. If applicable, the determination shall also reflect the panel's evaluation of the damages sustained by the petitioner.

(2) Supplementary Memorandum Opinion.

Within 30 days after filing its determination, the panel shall render and file with the Division a memorandum opinion explaining the panel's determination. The chairman of the panel shall be responsible for the preparation of the memorandum opinion of the panel, but may delegate the initial preparation of the opinion to another member of the panel.

(3) Issuance of Panel Determination and Opinion.

In accordance with Subsections 78B-3-416(3)(a)(i)(A) and 78B-3-418(1)(a), it is the responsibility of a prelitigation panel to render its panel determination and opinion and file them with the Division, and the Division's responsibility to issue the panel determination and opinion.

(4) Certificate of Compliance.

(a) The Director or designee shall issue a certificate of compliance which recites that the petitioner has fully complied with the prelitigation panel requirements of Title 78B, Chapter 3, as follows:

(i) in the case of a meritorious finding or determination, the Division shall issue the certificate of compliance to the petitioner within 15 days after:

(A) the filing of the panel's memorandum opinion; or

(B) in the case of the panel's memorandum opinion not being filed, within 15 days after the deadline for the filing of the memorandum opinion;

(ii) in the case of a determination made under Subsection 78B-3-416(3)(d)(ii)(A), within 15 days after petitioner's filing of an affidavit of respondent's failure to reasonably cooperate in the scheduling of a prelitigation hearing;

(iii) in the case of a submission of a written stipulation that no useful purpose would be served by convening a prelitigation panel submitted under Subsection 78B-3-416(3)(e), within 15 days after the filing of the stipulation; and

(iv) in all other cases where an affidavit of merit is required as specified by Section 78B-3-423, within 15 days after the timely filing of the affidavit of merit.

(b) The Division shall include with its service of a certificate of compliance copies of supporting documentation including the applicable panel determination or finding, supplemental memorandum opinion, determination on petitioner's affidavit of respondent's failure to reasonably cooperate in the schedule of a prelitigation hearing, required affidavits of merit, etc.

(c) In accordance with Subsection 78B-3-423(6), a certificate of compliance shall not be issued to a person who fails to timely file a required affidavit of merit.

R156-78B-15. Affidavits alleging Failure to Reasonably Cooperate in Scheduling a Hearing.

(1) As required by Subsection 78B-3-416(3)(c)(ii), an affidavit submitted by a petitioner alleging a respondent's failure to reasonably cooperate in scheduling a prelitigation hearing shall be submitted within 180 days of petitioner's request for prelitigation panel review.

(2) The affidavit alleging respondent's failure to reasonably cooperate in scheduling a prelitigation hearing filed under Subsection (1) shall set forth specific factual allegations that:

(a) respondent failed to reasonably cooperate in scheduling a hearing; and

(b) the hearing could not be held within the jurisdictional time frame of 180 days from the date of the request for prelitigation review.

(3) Failure to reasonably cooperate in scheduling a hearing may include one or more of the following reasons:

(a) a respondent failed to agree upon a first and second choice of dates for a prelitigation hearing;

(b) a respondent failed to reasonably participate in determining the type of health care providers requested for the prelitigation hearing panel; or

(c) a respondent submitted a motion for and obtained a continuance of the prelitigation hearing and failed to timely submit a notice of availability for a rescheduled hearing.

(4) An affidavit alleging failure to reasonably cooperate in scheduling a prelitigation hearing shall comply with Section R156-78B-6 governing pleadings and Section R156-78B-7 governing filing and service.

(5) A respondent may file a response to an affidavit alleging failure to reasonably cooperate in scheduling a prelitigation hearing within five days after the service of the affidavit. Any response shall be in the form of a counter affidavit.

(6) The Division shall review petitioner's affidavit alleging failure to reasonably cooperate in scheduling a hearing and respondent's counter affidavit, if any, and make a written determination within 15 days of the filing of petitioner's affidavit, under either Subsections 78B-3-416(3)(d)(ii)(A) or (B). The written determination shall be accompanied by a certificate of compliance or a notice to file an affidavit of merit, as appropriate.

R156-78B-16a. Affidavits of Merit - In General.

(1) The required affidavit of merit under Subsection 78B-3-423(1) shall consist of two or more affidavits, one executed by counsel or by a pro se claimant as required by Subsection 78B-3-423(2)(a) and one or more signed by an appropriate health care provider or providers as required by Subsections 78B-3-423(2)(b) and (3).

(2) The required affidavits shall comply with Section R156-78B-6 governing pleadings and Section R156-78B-7 governing filings and service.

R156-78B-16b. Affidavits of Merit - Affidavit of Counsel.

Each affidavit of merit executed by counsel or by a pro se claimant as required by Subsections 78B-3-423(1) and (2)(a) shall include the following text immediately prior to the affiant's signature:

TABLE V

I hereby certify that the affiant has consulted with and reviewed the facts of the case with an appropriate health care provider (or providers) and that the provider (or providers) has (have) determined after a review of the medical record and other relevant material involved in the particular action that there is a reasonable and meritorious cause for the filing of a medical liability action. The affidavit(s) of merit are attached.

R156-78B-16c. Affidavits of Merit - Affidavit of Health Care Provider or Providers.

(1) Each affidavit of merit signed by a health care provider as required by Subsections 78B-3-423(1) and (2)(b) shall include the following text immediately prior to the affiant's signature:

TABLE VI

I hereby certify that I am an appropriate health care provider qualified to render an affidavit of merit in this medical malpractice case as specified by Subsection 78B-3-423(3).

I further certify that I have reviewed the medical records and other relevant material involved in this medical malpractice case and have determined that in my opinion:

- (1) There are reasonable grounds to believe that the applicable standard of care was breached.
- (2) The breach was a proximate cause of the injury claimed in the notice of intent to commence action.
- (3) The specific reasons for my opinion are as follows (explanation).

(2) As provided by Subsection 78B-3-423(2)(c), the statement that there are reasonable grounds to believe that the applicable standard of care was breached shall be waived if the claimant received an opinion that there was a breach of the applicable standard of care under Subsection 78B-3-418(2)(a)(i).

R156-78B-16d. Affidavits of Merit - Appropriate Health Care Provider Affiant or Affiants.

The appropriate health care provider who is required to issue an affidavit of merit under Subsection 78B-3-423(3) and R156-78B-16c is clarified as follows. The health care provider shall:

(1) if none of the respondents is a physician under Title 58, Chapter 67, Utah Medical Practice Act, or an osteopathic physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, be one or more health care providers who hold an active and in good standing license in Utah or another state in the same specialty or the same class of license as the respondents; or

(2) if at least one of the respondents is a physician under Title 58, Chapter 67, Utah Medical Practice Act, or an osteopathic physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, be exclusively a physician

who is licensed and in good standing in Utah or another state to practice medicine in all of its branches.

R156-78B-16e. Affidavits of Merit - Request for 60-day Extension to File.

(1) In accordance with Subsection 78B-3-423(4), a petitioner's request for a 60-day extension to file an affidavit of merit shall be supported by an affidavit signed by the petitioner's or petitioner's attorney that includes the following text immediately prior to the affiant's signature:

TABLE VII

I hereby certify that the claimant is unable to timely submit an affidavit of merit as required by Subsection 78B-3-423(1) because:

- (1) a statute of limitations would impair the action; and
- (2) the affidavit of merit could not be obtained before the expiration of the statute of limitations for the following reason or reasons (describe).

I further certify that this affidavit has been served on each respondent in accordance with Section R156-78B-7 on the earlier of:

- (a) the required time frame specified in Subsection 78B-3-423(1)(b)(i); or
- (b) the date this affidavit was filed with the Division.

(2) Any respondent may submit a response to a request for extension to file an affidavit of merit within five days after the service of the affidavit. Any response shall be in the form of a counter affidavit.

(3) The Division shall review a petitioner's affidavit in support of petitioner's request for a 60-day extension to file an affidavit of merit and respondent's counter affidavit, if any, and render a determination within 15 days after the filing of the request.

**KEY: medical malpractice, prelitigation, certificate of compliance, affidavit of merit
November 8, 2011
Notice of Continuation April 9, 2007**

78B-3-416(1)(b)

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; 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) "Day" means calendar day unless specified as "business day."

(13) "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:

- (a) computer conferencing;
- (b) satellite teleconferencing;
- (c) interactive audio;
- (d) interactive computer software;
- (e) Internet-based instruction; and
- (f) other interactive online courses.

(14) "Division" means the Utah Division of Real Estate.

(15) "Double contract" means executing two or more purchase agreements, one of which is not made known to the prospective lender or loan funding entity.

(16) "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.

(17) "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.

(18) "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.

(19) "Informed consent" means written authorization, obtained from both principals to a single transaction, to allow a licensee to act as a limited agent.

(20) "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.

(21) "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.

(22) "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.

(23) "Principal brokerage" means the main real estate or property management office of a principal broker.

(24) "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.

(25) "Property management" is defined in Subsection 61-2f-102(19).

(26) "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.

(27) "Reinstatement" is defined in Subsection 61-2f-102(22).

(28) "Reissuance" is defined in Subsection 61-2f-102(23).

(29) The acronym RELMS means "real estate licensing and management system," which is the online database through which licensees can submit certain licensing information to the division.

(30) "Renewal" is defined in Subsection 61-2f-102(24).

(31) "Residential property" means real property consisting of, or improved by, a single-family one- to four-unit dwelling.

(32) "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 commission as a school; or

(d) any proprietary real estate school.

(33) "Sponsor" means the party that is the seller of an undivided fractionalized long-term estate.

(34) "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.

(35) "Traditional education" means education in which instruction takes place between an instructor and students where all are physically present in the same classroom.

(36) "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)(b), 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.

(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 a trust account pursuant to Section R162-2f-403.

(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.

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 shall 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 trust account in which funds received at the registered location will be deposited; and
- (e) 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.
- (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) obtain division approval of the school name; and
- (b) 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, and address of the physical facility;
 - (ii) name, phone number, and address of each school director;
 - (iii) name, phone number, 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 offered;
- (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;
- (l) criminal history disclosure statement as provided to students; and
- (m) 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) 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 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;
- (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; and
 - (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.
- (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)(c)(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; and
 - (f) use only texts, workbooks, and supplemental materials that are appropriate and current in their application to the required course outline.
- (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 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;
 - (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; and
 - (xi) broker trust accounts;
- (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;
 - (xxxii) 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; and

(xli) any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education.

(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 designed to test the knowledge of the subject matter proposed to be taught;

(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, at least 20 hours of in-class instruction in 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;

(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;

(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; and

(d) dissolution of corporation.

(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.

(iv) To report a change in corporate structure of a registered entity, the affiliated principal broker shall:

(A) if the change does not involve a change in ownership, submit a letter to the division, fully explaining the change; and

(B) if the change involves a change in ownership, obtain a new registration.

(v) To report the dissolution of an entity registered with the division, a person shall comply with this Subsection (3)(c)(ii)(B).

(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) a seller the individual represents;

(b) a buyer the individual represents;

(c) a buyer and seller 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) in negotiating and closing transactions, use:

(a)(i) the standard forms approved by the commission and identified in Section R162-2f-401f;

(ii) standard supplementary clauses approved by the commission; and

(iii) as necessary, other standard forms including settlement statements, warranty deeds, and quit claim deeds;

(b) forms prepared by an attorney for a party to the transaction, if:

(i) a party to the transaction requests the use of the attorney-drafted forms; and

(ii) the licensee first verifies that the forms have in fact been drafted by the party's attorney; or

(c) 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:

(i) the principal; or

(ii) an entity in the business of selling blank legal 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 in an application for license renewal with the division;

(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 in a real estate transaction, except that 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;

(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, whitening 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; or

(21) disclose, or make any use of, a short sale demand letter outside of the purchase transaction for which it is issued.

R162-2f-401c. Additional Provisions Applicable to Principal Brokers.

(1) A principal broker shall:

(a)(i) maintain all records pertaining to a real estate transaction for at least three calendar years following the year in which:

(A) an offer is rejected; or

(B) the transaction either closes or fails; and

(ii) make such records available for inspection and copying by the division;

(b) unless otherwise authorized by the division in writing, maintain business records at:

(i) the principal business location designated by the principal broker on division records; or

(ii) where applicable, a branch office as designated by the principal broker on division records;

(c) notify the division in writing within ten business days after terminating business operations as to where business records will be maintained;

(d) upon filing for brokerage bankruptcy, notify the division in writing of:

(i) the filing; and
(ii) the current location of brokerage records;
(e) provide to the person whom the principal broker represents in a 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;
(f)(i) regardless of who closes a 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 transaction receive copies of all documents executed in the transaction closing;
(g) 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;
(h) 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;
(i) 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;
(j) strictly adhere to the rules governing real estate auctions, as outlined in Section R162-2f-401i;
(k) strictly adhere to the rules governing property management, as outlined in Section R162-2f-401j;
(l)(i) except as provided in this Subsection (1)(l)(ii), 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;
(ii) a principal broker is not required to comply with this Subsection (1)(l)(i) if:
(A) the Real Estate Purchase Contract or other agreement states that the money is to be:
(I) held for a specific length of time; or
(II) deposited upon acceptance by the seller; or
(B) the Real Estate Purchase Contract or other 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;
(m)(i) maintain at the principal business location a complete record of all consideration received or escrowed for real estate transactions; and
(ii) be personally responsible at all times for deposits held in the principal broker's trust account;
(n)(i) assign a consecutive, sequential number to each offer, such that all pertinent documents may be readily identified as relating to the offer;
(ii) maintain a separate transaction file for each offer, 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 that does not involve funds deposited to trust:
(A) in separate files; or
(B) in a single file holding all such offers; and
(o) 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)(i) 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 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); and
(ii) obtain the student's signature on the criminal history disclosure;
(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) at the conclusion of a course:
 - (i) provide to each student who completes the course a course evaluation in the form required by the division; and
 - (ii) submit the completed course evaluations to the division within ten business days;
- (k) 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;
- (l) substantiate, upon request by the division, any claims made in advertising; and
- (m) 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 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, 1999 Real Estate Purchase Contract for Residential Construction;
- (3) January 1, 1987, Uniform Real Estate Contract;
- (4) October 1, 1983, All Inclusive Trust Deed;
- (5) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;
- (6) August 5, 2003, Addendum to Real Estate Purchase Contract;
- (7) August 27, 2008, Seller Financing Addendum to Real Estate Purchase Contract;
- (8) January 1, 1999, Buyer Financial Information Sheet;
- (9) August 27, 2008, FHA/VA Loan Addendum to Real Estate Purchase Contract;
- (10) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;
- (11) January 1, 1999, Lead-based Paint Addendum to Real Estate Purchase Contract; and
- (12) 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)(l); 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 unless the principal broker obtains a separate registration pursuant to Section R162-2f-205 for a separate business name.

(2)(a) The principal broker shall diligently supervise the activities of each sales agent or associate broker who is affiliated with the principal broker and assigned to perform property management tasks.

(b) If property management activities are conducted at a branch office, the branch broker shall actively supervise the licensees and unlicensed assistants working from that branch.

(3) The principal broker shall sign and submit forms as required by the division to affiliate the property management company with each associate broker, branch broker, and sales agent who will conduct the business of property management.

(4) No real estate sales activity may be conducted by a property management company.

(5) Individuals who are principals or owners of an entity registered as a property management company may not engage in activities that require licensure as a sales agent, associate broker, or principal broker without first obtaining a license and establishing an affiliation pursuant to Sections R162-2f-202a through 202c.

(6) An individual employed by a 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 vacant unit;
- (b) providing secretarial, bookkeeping, maintenance, or rent collection services;
- (c) quoting predetermined rent and lease terms; and
- (d) completing pre-printed lease or rental agreements.

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-403. Trust Accounts.

- (1) A principal broker shall:
 - (a) maintain a trust account in a bank or credit union located within the state of Utah;
 - (b) notify the division in writing of:
 - (i) the account number; and

(ii) the address of the bank or credit union where the account is located; and

(c) use the account for the purpose of securing client funds:

(i) deposited with the principal broker in connection with a real estate transaction regulated under Title 61, Chapter 2f et seq.;

(ii) 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

(iii) collected in the performance of property management duties as specified in this Subsection (4)(b).

(2) A principal broker who deposits in any trust account more than \$500 of the principal broker's own funds violates Subsection 61-2f-401(4)(b).

(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)(a) A principal broker who regularly engages in property management on behalf of seven or more individual units shall establish a property management trust account separate from the real estate trust account.

(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.

(5) 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 (5)(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 (5)(c)(ii) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code.

(6) Disbursement of funds held in trust.

(a) A principal broker may disburse funds only in accordance with:

(i) specific language in the Real Estate Purchase Contract authorizing disbursement;

(ii) other proper written authorization of the parties having an interest in the funds; or

(iii) court order.

(b) 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.

(c) A principal broker may not withdraw any portion of the principal broker's sales commission:

(i) without written authorization from the seller and buyer; or

(ii)(A) until after the settlement statements have been delivered to the buyer and seller; and

(B) the buyer or seller has been paid for the amount due as determined by the settlement statement.

(d) Unless otherwise agreed pursuant to this Subsection (6)(a), a principal broker may not pay a commission from the real estate trust account without first:

(i) closing or otherwise terminating the transaction;

(ii) making a record of each disbursement; and

(iii) depositing the withdrawn funds into the principal broker's operating account.

(e) A principal broker may not release earnest money or other trust funds associated with a failed transaction unless:

(i) a condition in the Real Estate Purchase Contract authorizing disbursement has occurred; or

(ii) the parties execute a separate signed agreement containing instructions and authorization for disbursement.

(f) If both parties to a contract make a written claim to the earnest money or other trust funds and the principal broker cannot determine from any signed agreement which party's claim is valid, the principal broker may:

(i) interplead the funds into court and thereafter disburse: (A) upon written authorization of the party who will not receive the funds; or

(B) pursuant to the order of a court of competent jurisdiction; or

(ii) within 15 days of receiving written notice that both parties claim the funds, refer the parties to mediation if:

(A) no party has filed a civil suit arising out of the transaction; and

(B) the parties have contractually agreed to submit disputes arising out of their contract to mediation.

(g) 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.

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.

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
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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
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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, licensing, enforcement

November 21, 2011

61-2f-103(1)

61-2f-105

61-2f-307

R277. Education, Administration.**R277-115. Material Developed with State Public Education Funds.****R277-115-1. Definitions.**

- A. "Board" means the Utah State board of Education.
- B. "LEA" means a local education agency directly responsible for the public education of Utah students, including traditional local school boards and charter school boards.
- C. "Material" means all copyrightable works, including writings, lectures, musical or dramatic compositions, sound recordings, films, videotapes and other pictorial reproductions, computer programs, listings, flow charts, manuals, codes, instructions, and software.
- D. "Utah Public Employees Ethics Act" means the provisions established in Section 67-16-1-14.
- E. "USOE" means the Utah State Office of Education.

C. If a public education employee creates or develops education materials as part of the employee's public education employment, the materials are the property of the employer. Sale or other use of the materials may not personally enrich the public employee, consistent with Section 67-16-4(1)(c).

**KEY: copyright, materials
November 8, 2011**

**Art X Sec 3
53A-1-401(3)**

R277-115-2. Authority and Purpose.

- A. This rule is authorized by Article X, Section 3 of the Utah Constitution which vests general control and supervision of public education in the Board and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to provide that education materials developed by LEAs or a public education employee using state public education funds are available to Utah educators, that educators licensed by the Board are not personally enriched, consistent with the Utah Public Employees Ethics Act, by developing education materials as part of their public education employment and that the Board receives appropriate and accurate acknowledgment for materials produced or provided or both by the Board for LEAs.

R277-115-3. Reprint or Reproduction of Materials Funded or Provided by the Board.

- A. The Board or its designee may grant permission to a requester to reprint or reproduce material that was developed or provided for use by public educators with funds controlled by the Board.
 - (1) Requests for permission to reprint or reproduce materials shall be submitted to the Board in writing or electronically and shall describe:
 - (a) the specific material to be reproduced or reprinted;
 - (b) the number of copies requested;
 - (c) the purpose and intended recipient of the materials;
 - (d) any proposed cost to recipients.
 - (2) Requests shall be reviewed and granted on a case-by-case basis.
 - (3) Any authorized use of Board materials shall require the materials to state in a conspicuous place that the materials were produced or distributed or both using public State Board of Education funds and that the material is reprinted or reproduced with permission from the Board.
 - (4) The Board may request a copy of the reproduction or reprinted material to be sent to the Board.
- B. An individual, entity or organization may not expressly assert or imply Board authorization, including use of the Board seal, of the use of materials reprinted or reproduced with Board funds without express authorization by the Board or its designee.

R277-115-4. Materials Developed or Distributed by LEAs Using Public Education Funds.

- A. If an LEA develops education materials with public education funds, the LEA shall make the materials available to Utah educators upon request at a cost not to exceed the LEA's actual cost.
- B. An LEA may request that the materials are attributed to the LEA that developed the materials.

R277. Education, Administration.**R277-405. Requirements for Assessment Pilot Programs.****R277-405-1. Definitions.**

A. "Adaptive testing" means assessments administered to assess a student's achievement. The assessments are administered online to measure the full range of student ability by adapting to each student's responses, selecting more difficult questions when a student answers correctly and less difficult questions when a student answers incorrectly.

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

C. "EXPLORE, PLAN, ACT System (EPAS)" means assessments that are aligned to college and career ready common core standards for grades 8, 10 and 11.

D. "Large school district" means a public school district with a student enrollment greater than 29,000 students based on the October 1, 2010 enrollment count.

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

F. "Online writing" means an online test to measure writing performance.

G. "U-PASS testing requirements" as defined in Section 53A-1-602, include Criterion-Referenced tests (CRT) or Adaptive tests, Utah Basic Skills Competency Test and Direct Writing Assessment (DWA).

R277-405-2. 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, Sections 53A-1-603 through 53A-1-611 which direct the Board to adopt rules for the conduct and administration of U-PASS, Section 53A-1-708(5) which directs the Board to make rules establishing procedures for applying for and awarding grants, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide consistent definitions and to provide standards and procedures for a Board developed and directed pilot assessment system for identified students as required by state law and consistent with federal law.

R277-405-3. K-12 Assessment Pilot Program.

A. The Board may exempt an LEA from U-PASS testing requirements if an LEA pilots an assessment system that incorporates:

- (1) online classroom-based assessment that utilizes adaptive testing in all grades;
- (2) online writing assessment in grades 4 through 12; or
- (3) assessments administered in grades 8, 10, and 11 to determine readiness for postsecondary education.

B. The pilot assessment system is subject to an accountability plan and high school graduation standards that are based on the assessment system described in the Utah Code and as developed and adopted by the Board.

C. The K-12 Pilot Program shall extend until July 1, 2015.

R277-405-4. High School Assessment Pilot Program.

A. The Board shall implement the High School Assessment Pilot Program consistent with Section 53A-1-603(7) to allow LEAs to:

- (1) administer the EPAS System (EXPLORE, PLAN and ACT) to secondary students for the 2010-11 and 2011-12 school years; or
- (2) administer a computer adaptive testing of basic skills, or both the EPAS and computer adaptive testing.

B. The High School Assessment Pilot Program shall extend until July 1, 2012.

C. The Board shall develop an application for LEAs choosing to participate in the High School Assessment Pilot Program.

D. The Board shall re-direct the money saved by not administering the UBSCT to fund implementation of the High School Assessment Pilot Program.

E. LEAs participating in the High School Assessment Pilot Program shall assure:

- (1) the LEA will continue required CRT or summative adaptive testing;
- (2) full participation and cooperation with evaluators and Board staff in implementing the High School Assessment Pilot Program;
- (3) the local board or governing board has fully endorsed the LEA's participation in a public meeting; and
- (4) the LEA agrees to provide participation data and results to the Board or the Utah State Legislature, or both, as a requirement of the High School Assessment Pilot Program.

R277-405-5. Pilot Assessment to Large School Districts for Online Delivery of U-PASS Tests.

A. Large school districts may submit an application for funds for online delivery of U-PASS.

B. Applicants shall provide the following:

- (1) names of participating schools within the school district;
- (2) U-PASS assessments that will be provided online;
- (3) a budget for implementing online testing involving all students and all online assessments throughout the school district in the 2011-2012 school year;
- (4) an assurance from the applicant that online testing shall be implemented at 100 percent of students and assessments during the pilot period; and
- (5) a proposed evaluation for the pilot program.

C. Pilot online assessment funds may be used for the following:

- (1) computer equipment and peripherals, including electronic data capture devices designed for electronic test administration and scoring;
- (2) software;
- (3) networking equipment;
- (4) upgrades of existing equipment or software;
- (5) upgrades of existing physical plant facilities;
- (6) online adaptive assessments approved for U-PASS testing; and

(7) personnel to provide technical support, coordination, management, and professional development (combined expenditures shall not exceed 10 percent of the funds allotted to a school district).

D. Large school district applicants for the online pilot assessment shall be selected for participation only if applicants have fully complied with student assessment Board rules and requirements.

E. Applications shall be provided by the USOE by May 15, 2011 and school districts shall submit completed applications to the USOE by June 15, 2011.

F. Funds shall be distributed to selected school districts based on a per pupil basis and proposed budgets.

KEY: assessment, pilot programs**August 8, 2011**

**Art X Sec 3
53A-1-603 through 53A-1-611
53A-1-401(3)
53A-1-708(5)**

R277. Education, Administration.**R277-419. Pupil Accounting.****R277-419-1. Definitions.**

A. "Aggregate Membership" means the sum of all days in membership during a school year for the student, program, school, LEA, or state.

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

C. "Charter school" means a school that is authorized and operated under Sections 53A-1a-501.6, 53A-1a-515 and 53A-1a-501.3.

D. "Compulsory school age" means:

(1) a person who is at least five years old and no more than 17 years old on or before September 1;

(2) with respect to special education, a person who is at least three years old and no more than 21 years old on or before September 1;

(3) with respect to YIC, a person who is at least five years old and no more than 21 years old on or before September 1.

E. "Data Clearinghouse" means the electronic data collection system used by the USOE to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

F. "Electronic high school" means a rigorous program offering 9-12 grade level courses delivered over the Internet and coordinated by the USOE.

G. "Influenza pandemic (pandemic)" means a global outbreak of serious illness in people. It may be caused by a strain of influenza that most people have no natural immunity to and that is easily spread from person to person.

H. "ISI-1" means a student who receives 1 to 59 minutes of YIC related services during a typical school day.

I. "ISI-2" means a student who receives 60 to 179 minutes of YIC related services during a typical school day.

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

K. "Membership" means a public school student is on the current roll of a public school class or public school as of a given date:

(1) A student is a member of a class or school from the date of entrance at the school and is placed on the current roll until official removal from the class or school due to the student having left the school.

(2) Removal from the roll does not mean that the LEA should delete the student's record, only that the student should no longer be counted in membership.

L. "Minimum School Program (MSP)" means public school programs for kindergarten, elementary, and secondary schools described in Section 53A-17a-103(5).

M. "Private school" means an educational institution that is not a charter school but is owned or operated by a private person, firm, association, organization, or corporation, rather than by a public agency.

N. "Program" means an institution within a larger education entity that is designed to accomplish a predetermined curricular objective or set of objectives.

O. "Resource" means a student who receives 1 to 179 minutes of special education services during a typical school day consistent with the student's IEP provided for under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.

P. "Retained senior" means a student beyond the general compulsory education age who is authorized at the discretion of the LEA to remain in enrollment as a high school senior in the year(s) after the cohort has graduated due to:

- (1) sickness;
- (2) hospitalization;
- (3) pending court investigation or action or both; or
- (4) other extenuating circumstances beyond the control of

the student.

Q. "S1" means the record maintained by the USOE containing individual student demographic and school membership data in a Data Clearinghouse file.

R. "S2" means the record maintained by the USOE containing individual student data related to participation in a special education program in a Data Clearinghouse file.

S. "S3" means the record maintained by the USOE containing individual student data related to participation in a YIC program in a Data Clearinghouse file.

T. "School" means an educational entity governed by an LEA that is supported with public funds, includes enrolled or prospectively enrolled full-time students, employs licensed educators as instructors that provide instruction consistent with R277-502-5, has one or more assigned administrators, is accredited consistent with R277-410-3, and administers required statewide assessments to its students.

U. "School day" means:

(1) a minimum of two hours per day per session in kindergarten and a minimum of four hours per day in grades one through twelve, subject to the following constraints:

(2)(a) All school day calculations shall exclude lunch periods and pass time between classes but may include recess periods that include organization or instruction from school staff.

(b) Each day that satisfies hourly instruction time shall count as a school day, regardless of the number or length of class periods or whether or not particular classes meet.

V. "School membership" means membership other than in a special education or YIC program in the context of the Data Clearinghouse.

W. "School of enrollment" means the school where a student takes a majority of his classes; the school designated to receive the student's weighted pupil unit.

X. "School year" means the 12 month period from July 1 through June 30.

Y. "Self-contained" means a public school student with an IEP or YIC, who receives 180 minutes or more of special education or YIC related services during a typical school day.

Z. "Self-Contained Resource Attendance Management (SCRAM)" means a record that tracks the aggregate membership of public school special education students for state funding purposes.

AA. "SSID" means Statewide Student Identifier.

BB. "UCAT" means any public institution of higher education affiliated with the Utah College of Applied Technology.

CC. "Unexcused absence" means an absence charged to a student when the student was not physically present at school at any of the times attendance checks were made in accordance with Section R277-419-4B(3) and the student's absence could not be accounted for by evidence of a legitimate or valid excuse in accordance with local board policy on truancy as defined in Section 53A-11-101.

DD. "USOE" means the Utah State Office of Education.

EE. "Virtual education" means the use of information and communication technologies to offer educational opportunities to students in a manner that transcends traditional limitations of time and space with respect to their relationships with teachers, peers, and instructional materials.

FF. "Year End upload" means the Data Clearinghouse file due annually by July 15 from school districts and charter schools to the USOE for the prior school year.

GG. "Youth in Custody (YIC)" means a person under the age of 21 who is:

- (1) in the custody of the Department of Human Services;
- (2) in the custody of an equivalent agency of a Native American tribe recognized by the United States Bureau of Indian Affairs and whose custodial parent or legal guardian

resides within the state; or

- (3) being held in a juvenile detention facility.

R277-419-2. 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 State Board of Education, by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities, Section 53A-1-402(1)(e) which directs the Board to establish rules and standards regarding cost-effectiveness, school budget formats and financial, statistical, and student accounting requirements, and Section 53A-1-404(2) which directs that local school board auditing standards shall include financial accounting and student accounting. This rule is further authorized by Section 53A-1-301(3)(d) which directs the Superintendent to present to the Governor and the Legislature data on the funds allocated to school districts, and Section 53A-3-404 which requires annual financial reports from all school districts.

B. The purpose of this rule is to specify pupil accounting procedures used in apportioning and distributing state funds for education.

R277-419-3. Schools and Programs.

A. Schools

(1) Each school shall receive the appropriate accountability reports from the USOE and other state-mandated reports for the school type and grade range; and

(2) All schools shall submit a Clearinghouse report per R277-419-3; and

(3) All schools shall employ at least one licensed educator and one administrator.

B. Programs

(1) Students who are enrolled in a program shall remain members of a public school; and

(2) Programs shall not receive separate accountability and other state-mandated reports from the USOE; and

(3) Students reported under a program shall be included in WPU and student enrollment calculations of a school of enrollment; and

(4) Courses taught at programs shall be credited to the appropriate school of enrollment.

C. Private school or program

(1) Private schools or programs shall not be required to submit data to the USOE; and

(2) Private schools or programs shall not receive annual accountability reports.

R277-419-4. Minimum School Days, LEA Records, and Audits.

A. Minimum standards for school days

(1) LEAs shall conduct school for at least 990 instructional hours and 180 school days each school year; exceptions to the number of school days for individual students and schools are provided for in R277-419-8.

(2) The required school days and hours may be offered at any time during the school year, consistent with the law.

(3) Health Department Emergency or Pandemic

(a) The Board may waive the school day and hour requirement, following a vote of Board members, pursuant to a directive from the Utah State Health Department or a local health department, that results in the closure of a school in the event of a pandemic or other public health emergency.

(b) In the event that the Board is unable to meet in a timely manner, the State Superintendent of Public Instruction may issue a waiver following consultation with a majority of Board members.

(c) The waiver may be for a designated time period and for specific areas, school districts, or schools in the state, as

determined by the health department directive.

(d) The waiver may allow for school districts to continue to receive state funds for pupil services and reimbursements.

(e) The waiver by the Board or State Superintendent of Public Instruction shall direct school districts to provide as much notice to students and parents of the suspension of school services, as is reasonably possible.

(f) The waiver shall direct school districts to comply with health department directives, but to continue to provide any services to students that are not inconsistent with the directive.

(g) The Board may encourage school districts to provide electronic or distance learning services to affected students for the period of the pandemic or other public health emergency to the extent of personnel and funds available.

(4) Minimum standards shall apply to all public schools in all settings unless Utah law or this rule provides for specific exceptions. Local boards are encouraged to provide adequate school days and hours in the school district's yearly calendar to avoid the necessity of a waiver request except in the most extreme circumstances.

B. Official records

(1) To determine student membership, LEAs shall ensure that records of daily student attendance are maintained in each school which clearly and accurately show for each student the:

(a) entry date;

(b) exit date;

(c) exit or high school completion status;

(d) whether or not an absence was excused;

(e) disability status (resource or self-contained, if applicable); and

(f) YIC status (ISI-1, ISI-2 or self-contained, if applicable).

(2)(a) Computerized or manually produced records for Career and Technical Education (CTE) programs shall be kept by teacher, class and Classification of Instructional Program (CIP) code.

(b) These records shall clearly and accurately show for each student in a CTE class the:

(i) entry date;

(ii) exit date; and

(iii) excused or unexcused status of absence.

(3) A minimum of one attendance check shall be made by each public school each school day.

C. Due to school activities requiring schedule and program modification during the first days and last days of the school year:

(1) For the first five school days, an LEA may report aggregate days of membership equal to the number recorded for the second five-day period of the school year.

(2) For the last five-day period, an LEA may report aggregate days of membership equal to the number recorded for the immediately preceding five-day period.

(3) Schools shall continue instructional activities throughout required calendared instruction days.

D. Audits

(1) An independent auditor shall be employed under contract by each LEA to audit its student accounting records annually and report the findings to the LEA board of education and to the Finance and Statistics Section of the USOE;

(2) Reporting dates, forms, and procedures are found in the State of Utah Legal Compliance Audit Guide, provided to LEAs by the USOE in cooperation with the State Auditor's Office and published under the heading of APP C-5;

(3) The USOE shall review student membership and fall enrollment audits as they relate to the allocation of state funds in accordance with the policies and procedures established in R277-484-7 and 8 and may periodically or for cause review LEA records and practices for compliance with the laws and this rule.

R277-419-5. Student Membership.**A. Eligibility**

(1) In order to generate membership for funding through the MSP for any clock hour of instruction on any school day, a student shall:

(a) not have previously earned a basic high school diploma or certificate of completion;

(b) not be enrolled in a YIC program with a YIC time code other than ISI-1 or ISI-2;

(c) not have unexcused absences on all of the prior ten consecutive school days;

(d) be a resident of Utah as defined under Sections 53A-2-201 through 213;

(e) be of compulsory school age or a retained senior;

(f)(i) be expected to attend a regular learning facility operated or recognized by the LEA on each regularly scheduled school day; or

(ii) have direct instructional contact with a licensed educator provided by the LEA at an LEA-sponsored center for tutorial assistance or at the student's place of residence or convalescence for at least 120 minutes each week during an expected period of absence, if physically excused from such a facility for an extended period of time, due to:

(A) injury, illness, surgery, suspension, pregnancy, pending court investigation or action; or

(B) an LEA determination that home instruction is necessary.

(2) Students may generate MSP funding by participation in an LEA-sponsored or LEA-supported virtual education program other than the Utah Electronic High School that is consistent with the student's SEOP, has been approved by the student's counselor, and includes regular face-to-face instruction or facilitation by a designated employee of the LEA.

B. Reporting

(1) LEAs shall report aggregate membership for each student via the School Membership field in the S1 record and special education membership in the SCRAM Membership field in the S2 record and YIC membership in the S3 record of the Year End upload of the Data Clearinghouse file.

(2) In the Data Clearinghouse, aggregate membership shall be expressed in days.

C. Calculations

(1) If a student was enrolled for only part of the school day or only part of the school year, the student's membership shall be prorated according to the number of hours, periods or credits for which the student actually was enrolled in relation to the number of hours, periods or credits for which a full-time student normally would have been enrolled. For example:

(a) If the student was enrolled for 4 periods each day in a 7 period school day for all 180 school days, the student's aggregate membership would be 4/7 of 180 days or 103 days.

(b) If the student was enrolled for 7 periods each day in a 7 period school day for 103 school days, the student's membership would also be 103 days.

(2) For students in grades 2 through 12, days in membership shall be calculated by the LEA using a method equivalent to the following: total clock hours of instruction for which the student was enrolled during the school year divided by 990 hours and then multiplied by 180 days and finally rounded up to the nearest whole day. For example, if a student was enrolled for only 900 hours during the school year, the student's aggregate membership would be $(900/990)*180$, and the LEA would report 164 days.

(3) For students in grade 1, the first term of the formula shall be adjusted to use 810 hours as the denominator.

(4) For students in kindergarten, the first term of the formula shall be adjusted to use 450 hours as the denominator.

D. Constraints

(1) The sum of regular plus self-contained special

education and self-contained YIC membership days may not exceed 180 days;

(2) The sum of regular and resource special education membership days may not exceed 360 days;

(3) The sum of regular, ISI-1 and ISI-2 YIC membership days may not exceed 360 days.

E. Exceptions

LEAs may also count a student in membership for the equivalent in hours of up to:

(1) one period each school day, if the student has been:

(a) released by school upon parent's request during the school day for religious instruction or individual learning activity consistent with the student's SEOP; or

(b) exempted from school attendance under 53A-11-102 for home schooling and participates in one or more extracurricular activities under R277-438;

(2) two periods each school day for time spent in bus travel during the regular school day to and from UCAT facilities, if the student is enrolled in CTE instruction consistent with the student's SEOP;

(3) all periods each school day, if the student is enrolled in:

(a) a concurrent enrollment program that satisfies all the criteria of R277-713;

(b) a private school without religious affiliation under a contract initiated by an LEA which directs that the instruction be paid by public funds. Contracts shall be approved by the LEA board in an open meeting.

(c) a foreign exchange student program under 53A-2-206(2)(i)(B).

(d) Electronic High School or UCAT classes for credit which meet curriculum requirements, consistent with the student's SEOP and following written school counselor approval.

(e) a school operated by an LEA under a Utah Schools for the Deaf and the Blind IEP:

(i) students may only be counted in (S1) membership and shall not have an S2 record;

(ii) the S2 record for these students shall only be submitted by the Utah Schools for the Deaf and the Blind.

R277-419-6. High School Completion Status.

A. The final status of all students who enter high school (grades 10-12) shall be accounted for, whether they graduate or leave high school for other reasons. LEAs shall use the following decision rules to indicate the high school completion or exit status of each student who leaves the Utah public education system:

(1) Graduates are students who earn a basic high school diploma by satisfying one of the options consistent with R277-705-4B or out-of-school youths of school age who complete adult education secondary diploma requirements consistent with R277-733.

(2) Other students are completers who have not satisfied Utah's requirements for graduation but who:

(a) shall be in membership in twelfth grade on the last day of the school year; and

(b) meet any additional criteria established by the LEA consistent with its authority under R277-705-4C; or

(c) meet any criteria established for special education students under Utah State Board of Education Special Education Rules, Revised, August 2007, and available from the USOE, and R277-700-8E; or

(d) pass a General Educational Development (GED) test with a designated score.

(3) Continuing students are students who:

(a) transfer to higher education, without first obtaining a diploma; or

(b) transfer to the Utah Center for Assistive Technology

- (UCAT) without first obtaining a diploma; or
- (c) age out of special education.
 - (4) Dropouts are students who have no legitimate reason for departure or absence from school or who:
 - (a) withdraw due to a situation so serious that educational services cannot be continued even under the conditions of R277-419-5A(1)(f)(ii); or
 - (b) are expelled and do not re-enroll in another public education institution; or
 - (c) transfer to adult education.
 - (5) Students shall be excluded from the cohort calculation if they:
 - (a) transfer out of state, out of the country, to a private school, or to home schooling; or
 - (b) are U.S. citizens who enrolled in another country as a foreign exchange student; or
 - (c) are non-U.S. citizens who enrolled in a Utah public school as a foreign exchange student under Section 53A-2-206 in which case they shall be identified by resident status (J for those with a J-1 visa, F for all others), not by an exit code; or
 - (d) died.

B. LEAs shall report the high school completion status or exit code of each student to the USOE as specified in Data Clearinghouse documentation.

C. The USOE shall report a graduation rate for each school, LEA, and the state.

- (1) The four-year cohort rate shall be reported on the annual state report card, the annual AYP report cards, and the official state graduation report.
- (2) The three-year cohort graduation rate shall be reported separately for high schools on the official state graduation report.

R277-419-7. Student Identification and Tracking.

A(1) Pursuant to Section 53A-1-603.5, LEAs shall use the SSID system maintained by the USOE to assign every public school student a unique student identifier; and

(2) shall display the SSID on student transcripts exchanged with LEAs and Utah public institutions of higher education.

B(1) LEAs shall require all students to provide their legal first, middle, and last names at the time of registration to ensure that the correct SSID follows students who transfer among LEAs.

(2)(a) Names shall be transcribed from the student's birth certificate or other reliable proof of the student's identity and age, consistent with Section 53A-11-503;

(b) The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records; and

(c) Schools or school districts may modify the order of student names, provide for nicknames, or allow for different surnames, consistent with court documents or parent preferences, so long as legal names are maintained on student records and used in transmitting student information to the USOE.

C. The USOE and LEAs shall track students and maintain data using students' legal names.

D. If there is a compelling need to protect a student by using an alias, the LEA should exercise discretion in recording the name of the student.

E. The SSID shall be an arbitrary number and may not contain any personally identifying information about the student.

R277-419-8. Variances.

A. An exception for school attendance for public school students may be made at the discretion of the local board, in the length of the school day or year, for students with compelling

circumstances. The time an excepted student is required to attend school shall be established by the student's IEP or SEOP.

B. Emergency/activity/weather-related exigency time shall be planned for in an LEA's annual calendaring. If school is closed for any reason, the instructional time missed shall be made up under the emergency/activity time as part of the minimum required time to qualify for full MSP funding.

C. Staff Planning, Professional Development, Student Assessment Time, and Parent-Teacher and Student Education Plan (SEP) Conferences.

(1) To provide planning and professional development time for staff, LEAs may hold school longer some days of the week and shorter other days so long as minimum school day requirements, as provided for in R277-419-1U, are satisfied.

(2) Schools may conduct parent-teacher and student education plan conferences during the school day.

(3) Such conferences may only be held for a total of the equivalent of three full school days or a maximum of 16.5 hours for the school year. Student membership for professional development or parent-teacher conference days shall be counted as that of the previous school day.

(4) LEAs may designate no more than 12 instructional days at the beginning of the school year or at the end of the school year or both for the assessment of students entering or completing kindergarten. If instruction days are designated for kindergarten assessment:

(a) the days shall be designated by the LEA board in an open meeting;

(b) adequate notice and explanation shall be provided to kindergarten parents well in advance of the assessment period;

(c) assessment shall be conducted by qualified school employees consistent with Section 53A-3-410; and

(d) assessment time per student shall be adequate to justify the forfeited instruction time.

(5) The final decision and approval regarding planning time, parent-teacher and SEP conferences rests with the local board of education, consistent with Utah law and Board administrative rules.

(6) Total instructional time and school calendars shall be approved by local boards in an open meeting.

D. A school using a modified 45-day 15-day year round schedule initiated prior to July 1, 1995 shall be considered to be in compliance with this rule if a school's schedule includes a minimum of 990 hours of instruction time in a minimum of 172 days.

**KEY: education finance, school enrollment
November 8, 2011
Notice of Continuation October 5, 2007**

**Art X Sec 3
53A-1-401(3)
53A-1-402(1)(e)
53A-1-404(2)
53A-1-301(3)(d)
53A-3-404
53A-3-410**

R277. Education, Administration.**R277-487. Public School Student Confidentiality.****R277-487-1. Definitions.**

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

B. "FERPA" means the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, a federal law designed to protect the privacy of students' education records. The law is hereby incorporated by reference.

C. "LEA" means local education agency, including local school boards/charter school governing board, public school districts and schools, and charter schools.

D. "Student record" means a record in any form, including handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche, that is directly related to a student and maintained by an educational agency or institution or by a party acting for an agency or institution.

F. 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.

G. All public education employees, student aides and volunteers have a responsibility to protect confidential student information and access records only as necessary for their assignment(s).

**KEY: students, records, confidentiality
November 8, 2011**

**Art X Sec 3
53A-13-301(3)
53A-1-401(3)**

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-13-301(3) which requires the Board to make rules to establish standards for public education employees, student aides, and volunteers in public schools regarding the confidentiality of student information and student records, and by Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide standards and procedures related to public school student confidentiality.

R277-487-3. Board Responsibilities.

A. The Board shall develop resource materials to train employees, student aides, and volunteers of an LEA regarding confidentiality of student information and student records, as defined in FERPA.

B. The Board shall make the materials available to each LEA.

R277-487-4. LEA Responsibilities.

A. LEAs shall establish policies and provide appropriate training for employees regarding the confidentiality of student records including an overview of all federal, state, and local laws that pertain to the privacy of students, their parents, and their families.

B. LEAs shall require password protection for all student records maintained electronically.

C. An LEA may adopt policies related to public school student confidentiality to address the specific needs or priorities of the LEA.

R277-487-4. Public Education Employee and Volunteer Responsibilities.

A. All public education employees, student aides, and volunteers in public schools shall become familiar with federal, state, and local law regarding the confidentiality of student information and student records.

B. All public education employees, student aides, and volunteers shall maintain appropriate confidentiality pursuant to federal, state, and local laws with regard to student records.

C. An employee, student aide, or volunteer shall maintain student records in a secure and appropriate place as designated by policies of an LEA.

D. An employee, student aide, or volunteer accessing student records in electronic format shall comply with policies of an LEA regarding the procedures for maintaining confidentiality of electronic records.

E. An employee, student aide, or volunteer shall not share, disclose, or disseminate passwords for electronic maintenance of student records.

R277. Education, Administration.**R277-531. Public Educator Evaluation Requirements (PEER).****R277-531-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Educator" means an individual licensed under Section 53A-6-104 and who meets the requirements of R277-501.
- C. "Formative evaluation" means evaluations that provide educators with feedback on how to improve their performance.
- D. "Instructional quality data" means data acquired through observation of educator's instructional practices.
- E. "Joint educator evaluation committee" means the local committee described under Section 53A-10-103 that develops and assesses an LEA evaluation program.
- F. "LEA" means a local education agency directly responsible for the public education of Utah students, including traditional local school boards and school districts.
- G. "LEA Educator Evaluation Program" means an LEA's process, policies and procedures for evaluating educators' performance according to their various assignments; those policies and procedures shall align with R277-531.
- H. "School administrator" means an educator serving in a position that requires a Utah Educator License with an Administrative area of concentration and who supervises Level 2 educators.
- I. "Student growth score" means a measurement of a student's achievement towards educational goals in the course of a school year.
- J. "Summative evaluation" means evaluations that are used to make annual decisions or ratings of educator performance and may inform decisions on salary, confirmed employment, personnel assignments, transfers, or dismissals.
- K. "USOE" means the Utah State Office of Education.
- L. "Utah Consolidated Application (UCA)" means the web-based grants management tool employed by the Utah State Office of Education by which local education agencies submit plans and budgets for approval of the Utah State Office of Education.
- M. "Utah Effective Teaching Standards" means the teaching standards identified and adopted in R277-530.
- N. "Utah Educational Leadership Standards" means the standards for educational leadership identified and adopted in R277-530.
- O. "Valid and reliable measurement tool(s)" means an instrument that has proved consistent over time and uses non-subjective criteria that require minimal interpretation.

R277-531-2. 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 Sections 53A-1-402(1)(a)(i) and (ii) which require the Board to establish rules and minimum standards for the qualification and certification of educators and for required school administrative and supervisory services, and Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide a statewide educator evaluation system framework that includes required Board directed expectations and components and additional LEA determined components and procedures to ensure the availability of data about educator effectiveness are available. The process shall focus on the improvement of high quality instruction and improved student achievement. Additionally, the process shall include common data that can be aggregated and disaggregated to inform Board and LEA decisions about retention, preparation, recruitment, improved professional development practices and ensure LEAs engage in a consistent process statewide of educator evaluation.

R277-531-3. Public Educator Evaluation Framework.

A. The Board shall provide a framework that includes five general evaluation system areas and additional discretionary components of an LEA's educator evaluation system.

B. Alignment with Board expectations and standards and required consistency of LEA policies with evaluation process:

(1) An LEA educator evaluation system shall be based on rigorous performance expectations aligned with R277-530.

(2) An LEA evaluation system shall establish and articulate performance expectations individually for all licensed LEA educators.

(3) An LEA evaluation system shall include valid and reliable measurement tools including, at a minimum:

- (a) observations of instructional quality;
- (b) evidence of student growth;
- (c) parent and student input; and
- (d) other indicators as determined by the LEA.

(4) An LEA evaluation system shall provide a summative yearly rating of educator performance using uniform statewide terminology and definitions. An LEA evaluation system shall include summative and formative components.

(5) An LEA evaluation system shall direct the revision or alignment of all related LEA policies, as necessary, to be consistent with the LEA Educator Evaluation System.

C. Valid and reliable tools:

(1) An LEA evaluation system shall use valid, reliable and research-based measurement tool(s) for all educator evaluations. Such measurements:

- (a) employ a variety of measurement tools;
- (b) adopt differentiated methodologies for measuring student growth for educators in subject areas for which standardized tests are available and in subject areas for which standardized tests are not available;
- (c) provide evaluation for non-instructional licensed educators and administrators;

(2) shall provide for both formative and summative evaluation data;

(3) data gathered from tools may be considered by an LEA to inform decisions about employment and professional development.

D. Discussion, collaboration and protection of confidentiality with educators regarding evaluation process:

(1) An LEA evaluation system shall provide for clear and timely notice to educators of the components, timelines and consequences of the evaluation process.

(2) An LEA evaluation system shall provide for timely discussion with evaluated educators to include professional growth plans as required in R277-501 and evaluation conferences.

(3) An LEA evaluation system shall protect personal data gathered in the evaluation process.

E. Support for instructional improvement:

(1) An LEA evaluation system shall assess professional development needs of educators.

(2) An LEA evaluation system shall identify educators who do not meet expectations for instructional quality and provide support as appropriate at the LEA level which may include providing educators with mentors, coaches, specialists in effective instruction and setting timelines and benchmarks to assist educators toward greater improved instructional effectiveness and student achievement.

F. Records and documentation of required educator evaluation information:

(1) An LEA evaluation system shall include the evaluation of all licensed educators at least once a year.

(2) An LEA evaluation system shall provide at least an annual rating for each licensed educator, including teachers, school administrators and other non-teaching licensed positions, using Board-directed statewide evaluation terminology and

definitions.

(3) An LEA evaluation system shall provide for the evaluation of all provisional educators, as defined by the LEA under Section 53A-6-106, at least twice yearly.

(4) An LEA evaluation system shall include the following specific educator performance criteria:

(a) instructional quality measures to be determined by the LEA;

(b) student growth score to be completely phased in by July 1, 2015; and

(c) other measures as determined by the LEA including data gathered from student/parent input.

(5) the Board shall determine weightings for specific educator performance criteria to be used in the LEA's evaluation system.

(6) An LEA evaluation system shall include a plan for recognizing educators who demonstrate exemplary professional effectiveness, at least in part, by student achievement.

(7) An LEA evaluation system shall identify potential employment consequences, including discipline and termination, if an educator fails to meet performance expectations.

(8) An LEA evaluation system shall include a review or appeals process for an educator to challenge the conclusions of a summative evaluation that provides for adequate and timely due process for the educator consistent with Section 53A-10-106.5.

G. An LEA may include additional components in an evaluation system.

H. A local board of education shall review and approve an LEA's proposed evaluation system in an open meeting prior to the local board's submission to the Board for review and approval.

R277-531-4. Board Support and Monitoring of LEA Evaluation Systems.

A. The Board shall establish a state evaluation advisory committee to provide ongoing review and support for LEAs as they develop and implement evaluation systems consistent with the law and this Rule. The Committee shall:

- (1) analyze LEA evaluation data for purposes of:
 - (a) reporting;
 - (b) assessing instructional improvement; and
 - (c) assessing student achievement.

(2) review required Board evaluation components regularly and evaluate their usefulness in providing a consistent statewide framework for educator evaluation, instructional improvement and commensurate student achievement;

(3) review LEA educator evaluation plans for alignment with Board requirements.

B. The USOE, under supervision of the Board, shall develop a model educator evaluation system that includes performance expectations consistent with this rule.

C. The USOE shall evaluate and recommend tools and measures for use by LEAs as they develop and initiate their local educator evaluation systems.

D. The USOE shall provide professional development and technical support to LEAs to assist in evaluation procedures and to improve educators' ability to make valid and reliable evaluation judgments.

R277-531-5. Implementation.

A. Each LEA shall have an educator evaluation committee in place by October 2011.

B. Each LEA shall design the required evaluation program, including pilot programs as desired.

C. Each LEA shall continue to report educator effectiveness data to the USOE in the UCA.

D. Implementation shall be in place for the 2013-2014

school year.

E. Board directed student growth measures shall be implemented as part of the LEA evaluation system by the 2014-2015 school year.

**KEY: educator, evaluation, requirements
November 8, 2011**

**Art X Sec 3
53A-1-402(1)(a)(i)
53A-1-401(3)**

R277. Education, Administration.**R277-603. Autism Awareness Restricted Account Distribution.****R277-603-1. Definitions.**

- A. "Autism Awareness Account" means the account established under Section 53A-1-304 and funded under Section 41-1a-418 (1)(e)(xvii).
- B. "Board" means the Utah State Board of Education.
- C. "Distribute funds," for purposes of this rule, means a process, including timelines and a standard application, to eligible organizations.
- D. "Superintendent" means the State Superintendent of Public Instruction or the Superintendent's designee;
- E. "USOE" means the Utah State Office of Education.

R277-603-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-304 which authorizes the Superintendent to distribute autism awareness funds appropriated by the Legislature, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to provide procedures, timelines and accountability for distribution of funds received in the Autism Awareness Restricted Account and subsequently appropriated by the Legislature to eligible organizations.

R277-603-3. Procedures.

- A. The Superintendent shall provide an application for organizations that meet the qualifications of Section 53A-1-304(4) to apply for available Autism Awareness Account funds to the extent of the legislative appropriation.
- B. The Superintendent shall provide for review of applications and selection of qualified recipients.
- C. Applications shall include a budget section, a plan for use of the funds by eligible organizations consistent with Section 53A-1-304(5)(b) and other information as requested.
- D. The Superintendent shall provide for distribution of funds, to the extent of funds appropriated by the Legislature, beginning, July 1, 2011.

R277-603-4. Timelines.

- A. The Superintendent shall announce the availability of funds at least annually, by March 15 of each year.
- B. Applicants may apply for funds on forms available from the USOE.
- C. Applications shall be due June 5 annually.
- D. Applicants identified for funding shall be notified no later than July 1 annually.
- E. The USOE shall distribute funds annually in July.
- F. For FY 2012, following the Board's approval of R277-603, applications shall be available, reviewed, and funds distributed as soon as possible.

R277-603-5. Accountability.

- A. The Superintendent shall require funded organizations to complete a year-end report explaining and documenting the use of funds consistent with the law and this rule.
- B. The year-end report may require an independent audit or review of a funded program.

**KEY: autism awareness, restricted account
November 8, 2011**

**Art X Sec 3
53A-1-304
53A-1-401(3)**

R277. Education, Administration.**R277-610. Released-Time Classes.****R277-610-1. Definitions.**

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

B. "Non-entangling criteria" means neutral course instruction and standards that are academic not devotional; promote awareness not acceptance of any religion; expose not impose a particular view; educate about religion; and inform but not seek to make students conform to any religion.

C. "Released-time" means a period of time during the regular school day when a student attending a public school is excused from the school, at the request of the student's parent.

R277-610-2. 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-1-402(1) which directs the Board to adopt minimum standards for public schools, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for public schools regarding released-time classes.

R277-610-3. Standards and Procedures for Released-Time Classes.

A. Students may attend released-time classes during the regular school day only upon the written request of the student's parent or legal guardian.

B. A public school shall not maintain records of attendance for released-time classes or use school personnel or school resources to regulate such attendance.

C. Teachers of released-time classes are not members of the school faculty and shall not participate as faculty members in any school function. Released-time teachers may participate in school activities as community members.

D. Public school teachers, administrators, or other officials shall not request teachers of released-time classes to exercise functions or assume responsibilities for the public school program which would result in a commingling of the activities of the two institutions.

E. Schedules of classes for public schools shall not include released-time classes by name. At the convenience of the school, registration forms may contain a space indicating released-time designation.

F. Public school publications shall not include pictures, reports, or records of released-time classes.

G. Public school equipment or personnel shall not be used in any manner to assist in the conduct of released-time classes.

R277-610-4. Additional Conditions for Religious Released-Time Programs.

A. Religious classes shall not be held in school buildings or on school property in any way that permits public money or property to be applied to, or that requires public employees to become entangled with, any religious worship, exercise, or instruction.

B. Religious released-time scheduling shall be done on forms and supplies furnished by the religious institution and by personnel employed or engaged by the institution and shall occur off the premises of the public school.

C. No connection of bells, telephones, computers or other devices shall be made between public school buildings and institutions offering religious instruction except as a convenience to the public school in the operation of its own program. When any connection of devices is permitted, the costs shall be borne by the respective institutions.

D. Records of attendance at religious released-time classes, grades, marks, or other data shall not be included in the correspondence or reports made by the public school to parents.

E. Institutions offering religious instruction are private schools separate and apart from the public schools. Those relationships that are legitimately exercised between the public school and any private school are appropriate with institutions offering released-time classes, so long as public property, public funds, or other public resources are not used to aid such institutions.

F. Public schools may grant elective credit for religious released-time classes if the school district establishes neutral, non-entangling criteria with which to evaluate the courses.

KEY: released-time classes**November 8, 2011****Notice of Continuation January 8, 2008****Art X Sec 3****53A-1-402(1)****53A-1-401(3)**

R277. Education, Administration.**R277-614. Athletes and Students with Head Injuries.****R277-614-1. Definitions.**

A. "Agent" means a coach, teacher, school employee, representative or volunteer under Section 26-53-102(1).

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

C. "LEA" means a public school or a public charter school.

D. "Parent" means a parent or legal guardian of student for whom LEA is responsible.

E. "Sporting event" means activities listed under Section 26-53-102(5) and includes games, classes, tryouts and activities that take place during the regular school day of public schools and activities sponsored by the public schools.

F. "Traumatic head injury" means any of the signs, observed or self-reported, listed under Section 26-53-102(6).

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

(4) adequate training for agents, consistent with their involvement and responsibility for supervising students in sporting events, about traumatic head injuries and response to suspected student injuries, consistent with the law; and

(5) notice at least annually to parents of students who participate in sporting events, including parents' signatures, of an LEA's traumatic head injury policy.

D. An LEA shall post its policy on a district/school or charter school website where the information will be readily accessible to the public and to parents.

**KEY: athletes, head injuries
November 8, 2011**

**Art X Sec 3
53A-1-401(3)**

R277-614-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution X, Section 3 which vests general control and supervision in the Board, by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to direct LEAs under the general control and supervision of the Utah State Board of Education to adopt and enforce a head injury policy for students participating in sporting events as defined in the law, including notification to parents of the policy and receipt from parents of signed statements that parents understand and will support the LEA in the enforcement of the policy.

R277-614-3. Board and USOE Responsibilities.

A. The Board directs all LEAs to develop, pass, post on the LEAs' websites and make available to parents a traumatic head injury policy that meets the requirements of Section 26-53.

B. The USOE shall, in consultation with Utah State Risk Management, provide a model policy for LEAs to use in developing their policies. The model policy shall be available on the USOE website.

C. The USOE shall provide model forms for LEAs to use to inform parents of LEA policies and obtain parent signatures documenting the parents' understanding of and willingness to adhere to LEA policies.

D. The USOE shall provide professional development, as needed and to the extent of funds available, to assist LEAs with training to identify students' traumatic head injuries, to provide notice to parents and to comply with the law.

R277-614-4. LEA Responsibilities.

A. All LEAs are identified as amateur sports organizations for purposes of Section 26-53 and shall meet all requirements of the law.

B. Before September 15, 2011, all LEAs shall adopt a traumatic head injury policy for students:

(1) participating in recess, field days or elementary school activities;

(2) participating in physical education classes offered by the LEA; and

(3) participating in extracurricular activities sponsored by the LEA or statewide athletic associations or both groups jointly.

C. An LEA's policy shall include:

(1) direction to agents to remove a student from a sporting event if the student is suspected of sustaining a concussion or a traumatic head injury;

(2) the prohibition of a student's continued participation until the student is evaluated by a trained qualified health care professional;

(3) a written statement from a trained health care provider clearing the student to resume participation in a sporting event;

R277. Education, Administration.**R277-746. Driver Education Programs for Utah Schools.****R277-746-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "USOE" means the Utah State Office of Education.

R277-746-2. 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-13-201(4) which directs the Board to prescribe rules for driver education classes in the public schools and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for local school districts conducting automobile driver education.

R277-746-3. Standards and Procedures.

A. Local school boards and school districts shall comply with DRIVER EDUCATION FOR UTAH HIGH SCHOOLS ORGANIZATION, ADMINISTRATION, AND STANDARDS, Revised, August, 2011, as required by R277-100-5C, and available from the USOE Driver Education Specialist and at all school district offices.

B. The Board shall act in accordance with DRIVER EDUCATION FOR UTAH HIGH SCHOOLS ORGANIZATION, ADMINISTRATION, AND STANDARDS, Utah State Office of Education, Revised, August, 2011, to determine and evaluate standards and operating procedures for automobile driver education programs conducted by local school districts.

KEY: driver education**November 8, 2011****Notice of Continuation March 3, 2008****53A-13-201(4)****53A-1-401(3)**

R309. Environmental Quality, Drinking Water.**R309-105. Administration: General Responsibilities of Public Water Systems.****R309-105-1. Purpose.**

The purpose of this rule is to set forth the general responsibilities of public water systems, water system owners and operators.

R309-105-2 Authority.

R309-105-3 Definitions.

R309-105-4 General.

R309-105-5 Exemptions from Monitoring Requirements.

R309-105-6 Construction of Public Drinking Water Facilities.

R309-105-7 Source Protection Plans.

R309-105-8 Existing Water System Facilities.

R309-105-9 Minimum Pressure.

R309-105-10 Operation and Maintenance Procedures.

R309-105-11 Operator Certification.

R309-105-12 Cross Connection Control.

R309-105-13 Finished Water Quality.

R309-105-14 Operational Reports.

R309-105-15 Annual Reports.

R309-105-16 Reporting Test Results.

R309-105-17 Record Maintenance.

R309-105-18 Emergencies.

R309-105-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104 of the Utah Code and in accordance with 63G-3 of the same, known as the Administrative Rulemaking Act.

R309-105-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-105-4. General.

Water suppliers are responsible for the quality of water delivered to their customers. In order to give the public reasonable assurance that the water which they are consuming is satisfactory, the Board has established rules for the design, construction, water quality, water treatment, contaminant monitoring, source protection, operation and maintenance of public water supplies.

R309-105-5. Exemptions from Monitoring Requirements.

(1) The applicable requirements specified in R309-205, R309-210 and R309-215 for monitoring shall apply to each public water system, unless the public water system meets all of the following conditions:

(a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(b) Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(c) Does not sell water to any person; and

(d) Is not a carrier which conveys passengers in interstate commerce.

(2) When a public water system supplies water to one or more other public water systems, the Executive Secretary may modify the monitoring requirements imposed by R309-205, R309-210 and R309-215 to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes.

(3) In no event shall the Executive Secretary authorize modifications in the monitoring requirements which are less stringent than requirements established by the Federal Safe Drinking Water Act.

R309-105-6. Construction of Public Drinking Water Facilities.

The following requirements pertain to the construction of public water systems.

(1) Approval of Engineering Plans and Specifications

(a) Complete plans and specifications for all public drinking water projects, as described in R309-500-5, shall be approved in writing by the Executive Secretary prior to the commencement of construction. A 30-day review time should be assumed.

(b) Appropriate engineering reports, supporting information and master plans may also be required by the Executive Secretary as needed to evaluate the proposed project. A certificate of convenience and necessity or an exemption therefrom, issued by the Public Service Commission, shall be filed with the Executive Secretary prior to approval of any plans or specifications for projects described in R309-500-4(1) as new or previously un-reviewed water system.

(2) Acceptable Design and Construction Methods

(a) The design and construction methods of all public drinking water facilities shall conform to the applicable standards contained in R309-500 through R309-550 of these rules. The Executive Secretary may require modifications to plans and specifications before approval is granted.

(b) There may be times in which the requirements of the applicable standards contained in R309-500 through R309-550 are not appropriate. Thus, the Executive Secretary may grant an "exception" to portions of these standards if it can be shown that the granting of such an exception will not jeopardize the public health. In order for the Executive Secretary to consider such a request, the Division asks that it receive a written request directly from the management of the public drinking water system, preferably on system letterhead, that includes the following:

(i) citation of the specific rule for which the "exception" is being requested;

(ii) a detailed explanation, drawings may be included, of why the conditions of rule cannot be met;

(iii) what the system proposes, drawings may be included, in lieu of rule;

(iv) justification the proposed alternative will protect the public health to a similar or better degree than required by rule.

Physical conditions as well as cost may be justification for requesting an "exception-to-rule."

(c) Alternative or new treatment techniques may be developed which are not specifically addressed by the applicable standards contained in R309-500 through R309-550. These treatment techniques may be accepted by the Executive Secretary if it can be shown that:

(i) They will result in a finished water meeting the requirements of R309-200 of these regulations.

(ii) The technique will produce finished water which will protect public health to the same extent provided by comparable treatment processes outlined in the applicable standards contained in R309-204 and R309-500 through R309-550.

(iii) The technique is as reliable as any comparable treatment process governed by the applicable standards contained in R309-204 and R309-500 through R309-550.

(3) Description of "Public Drinking Water Project"

Refer to R309-500-5 for the description of a public drinking water project and R309-500-6 for required items to be submitted for plan approval.

(4) Specifications for the drilling of a public water supply well may be prepared and submitted by a licensed well driller holding a current Utah Well Driller's Permit if authorized by the Executive Secretary.

(5) Drawing Quality and Size

Drawings which are submitted shall be compatible with Division of Drinking Water Document storage. Drawings

which are illegible or of unusual size will not be accepted for review. Drawing size shall not exceed 30" x 42" nor be less than 8-1/2" x 11".

(6) Requirements After Approval of Plans for Construction

After the approval of plans for construction, and prior to operation of any facilities dealing with drinking water, the items required by R309-500-9 shall be submitted and an operating permit received.

R309-105-7. Source Protection.

(1) Public Water Systems are responsible for protecting their sources of drinking water from contamination. R309-600 and R309-605 sets forth minimum requirements to establish a uniform, statewide program for implementation by PWSs to protect their sources of drinking water. PWSs are encouraged to enact more stringent programs to protect their sources of drinking water if they decide they are necessary.

(2) R309-600 applies to ground-water sources and to ground-water sources which are under the direct influence of surface water which are used by PWSs to supply their systems with drinking water.

(3) R309-605 applies to PWSs which obtain surface water prior to treatment and distribution and to PWSs obtaining water from ground-water sources which are under the direct influence of surface water. However, compliance with this rule is voluntary for public transient non-community water systems to the extent that they are using existing surface water sources of drinking water.

R309-105-8. Existing Water System Facilities.

(1) All public water systems shall deliver water meeting the applicable requirements of R309-200 of these rules.

(2) Existing facilities shall be brought into compliance with R309-500 through R309-550 or shall be reliably capable of delivering water meeting the requirements of R309-200.

(3) In situations where a water system is providing water of unsatisfactory quality, or when the quality of the water or the public health is threatened by poor physical facilities, the water system management shall solve the problem(s).

R309-105-9. Minimum Water Pressure.

(1) Unless otherwise specifically approved by the Executive Secretary, no water supplier shall allow any connection to the water system where the dynamic water pressure at the point of connection will fall below 20 psi during the normal operation of the water system. Water systems approved prior to January 1, 2007, are required to maintain the above minimum dynamic water pressure at all locations within their distribution system. Existing public drinking water systems, approved prior to January 1, 2007, which expand their service into new areas or supply new subdivisions shall meet the minimum dynamic water pressure requirements in R309-105-9(2) at any point of connection in the new service areas or new subdivisions.

(2) Unless otherwise specifically approved by the Executive Secretary, new public drinking water systems constructed after January 1, 2007 shall be designed and shall meet the following minimum water pressures at points of connection:

(a) 20 psi during conditions of fire flow and fire demand experienced during peak day demand;

(b) 30 psi during peak instantaneous demand; and

(c) 40 psi during peak day demand.

(3) Individual home booster pumps are not allowed as indicated in R309-540-5(4)(c).

R309-105-10. Operation and Maintenance Procedures.

All routine operation and maintenance of public water supplies shall be carried out with due regard for public health

and safety. The following sections describe procedures which shall be used in carrying out some common operation and maintenance procedures.

(1) Chemical Addition

(a) Water system operators shall determine that all chemicals added to water intended for human consumption are suitable for potable water use and comply with ANSI/NSF Standard 60.

(b) No chemicals or other substances shall be added to public water supplies unless the chemical addition facilities and chemical type have been reviewed and approved by the Division of Drinking Water.

(c) Chlorine, when used in the distribution system, shall be added in sufficient quantity to achieve either "breakpoint" and yield a detectable free chlorine residual or a detectable combined chlorine residual in the distribution system at points to be determined by the Executive Secretary. Residual checks shall be taken a minimum of three times each week by the operator of any system using disinfectants. The Executive Secretary may, however, reduce the frequency of residual checks if he determines that this would be an unwarranted hardship on the water system operator and, furthermore, the disinfection equipment has a verified record of reliable operation. Suppliers, when checking for residuals, shall use test kits and methods which meet the requirements of the U.S. EPA. The "DPD" test method is recommended for free chlorine residuals. Information on the suppliers of this equipment is available from the Division of Drinking Water.

(2) New and Repaired Mains

(a) All new water mains shall meet the requirements of R309-550-6 with regard to materials of construction. All products in contact with culinary water shall comply with ANSI/NSF Standard 61.

(b) All new and repaired water mains or appurtenances shall be disinfected in accordance with AWWA Standard C651-92. The chlorine solution shall be flushed from the water main with potable water prior to the main being placed in use.

(c) All products used to recoat the interiors of storage structures and which may come in contact with culinary water shall comply with ANSI/NSF Standard 61.

(3) Reservoir Maintenance and Disinfection

After a reservoir has been entered for maintenance or re-coating, it shall be disinfected prior to being placed into service. Procedures given in AWWA Standard C651-92 shall be followed in this regard.

(4) Spring Collection Area Maintenance

(a) Spring collection areas shall be periodically cleared of deep rooted vegetation to prevent root growth from clogging collection lines. Frequent hand or mechanical clearing of spring collection areas is strongly recommended. It is advantageous to encourage the growth of grasses and other shallow rooted vegetation for erosion control and to inhibit the growth of more detrimental flora.

(b) No pesticide (e.g., herbicide) may be applied on a spring collection area without the prior written approval of the Executive Secretary. Such approval shall be given 1) only when acceptable pesticides are proposed; 2) when the pesticide product manufacturer certifies that no harmful substance will be imparted to the water; and 3) only when spring development meets the requirements of these rules (see R309-515-7).

(5) Security

All water system facilities such as spring junction boxes, well houses, reservoirs, and treatment facilities shall be secure.

(6) Seasonal Operation

Water systems operated seasonally shall be disinfected and flushed according to the techniques given in AWWA Standard C651-92 and C652-92 prior to each season's use. A satisfactory bacteriologic sample shall be achieved prior to use. During the non-use period, care shall be taken to close all openings into the

system.

(7) Pump Lubricants

All oil lubricated pumps for culinary wells shall utilize mineral oils suitable for human consumption as determined by the Executive Secretary. To assure proper performance, and to prevent the voiding of any warranties which may be in force, the water supplier should confirm with individual pump manufacturers that the oil which is selected will have the necessary properties to perform satisfactorily.

R309-105-11. Operator Certification.

All community and non-transient non-community water systems or any public system that employs treatment techniques for surface water or ground water under the direct influence of surface water shall have an appropriately certified operator in accordance with the requirements of these rules. Refer to R309-300, Certification Rules for Water Supply Operators, for specific requirements.

R309-105-12. Cross Connection Control.

(1) The water supplier shall not allow a connection to his system which may jeopardize its quality and integrity. Cross connections are not allowed unless controlled by an approved and properly operating backflow prevention assembly. The requirements of Chapter 6 of the 2009 International Plumbing Code and its amendments as adopted by the Department of Commerce under R156-56 shall be met with respect to cross connection control and backflow prevention.

(2) Each water system shall have a functioning cross connection control program. The program shall consist of five designated elements documented on an annual basis. The elements are:

(a) a legally adopted and functional local authority to enforce a cross connection control program (i.e., ordinance, bylaw or policy);

(b) providing public education or awareness material or presentations;

(c) an operator with adequate training in the area of cross connection control or backflow prevention;

(d) written records of cross connection control activities, such as, backflow assembly inventory; and

(e) test history and documentation of on-going enforcement (hazard assessments and enforcement actions) activities.

(3) Suppliers shall maintain, as proper documentation, an inventory of each pressure atmospheric vacuum breaker, double check valve, reduced pressure zone principle assembly, and high hazard air gap used by their customers, and a service record for each such assembly.

(4) Backflow prevention assemblies shall be inspected and tested at least once a year, by an individual certified for such work as specified in R309-305. Suppliers shall maintain, as proper documentation, records of these inspections. This testing responsibility may be borne by the water system or the water system management may require that the customer having the backflow prevention assembly be responsible for having the device tested.

(5) Suppliers serving areas also served by a pressurized irrigation system shall prevent cross connections between the two. Requirements for pressurized irrigation systems are outlined in Section 19-4-112 of the Utah Code.

R309-105-13. Finished Water Quality.

All public water systems are required to monitor their water according to the requirements of R309-205, R309-210 and R309-215 to determine if the water quality standards of R309-200 have been met. Water systems are also required to keep records and, under certain circumstances, give public notice as required in R309-220.

R309-105-14. Operational Reports.

(1) Written Operational Reports.

(a) If, in the opinion of the Executive Secretary, a water system is not properly operated, the Executive Secretary may require a public water system to submit a written operational report covering the operation of the whole or a part of the water system's infrastructure.

(b) The Executive Secretary may require revisions to the submitted operational report to ensure satisfactory operation, and may order the water system to follow the operational report.

(c) If the water system fails to implement the provisions of the operational report, as evidenced by unsatisfactory delivery of a safe and/or reliable supply of drinking water, the Executive Secretary may order further remedies as deemed necessary.

(2) Treatment techniques for acrylamide and epichlorohydrin.

(a) Each public water system shall certify annually in writing to the Executive Secretary (using third party or manufacturer's certification) that when acrylamide and epichlorohydrin are used in drinking water systems, the combination (or product) of dose and monomer level does not exceed the levels specified in R309-215-8(2)(c).

(b) Certifications may rely on manufacturer's data.

(3)(a) All water systems using chemical addition or specialized equipment for the treatment of drinking water shall regularly complete operational reports. This information shall be evaluated to confirm that the treatment process is being done properly, resulting in successful treatment.

(b) The information to be provided, and the frequency at which it is to be gathered and reported, will be determined by the Executive Secretary.

R309-105-15. Annual Reports.

All community water systems shall be required to complete annual report forms furnished by the Division of Drinking Water. The information to be provided should include: the status of all water system projects started during the previous year; water demands met by the system; problems experienced; and anticipated projects.

R309-105-16. Reporting Test Results.

(1) If analyses are made by certified laboratories other than the state laboratory, these results shall be forwarded to the Division as follows:

(a) The supplier shall report to the Division the analysis of water samples which fail to comply with the Primary Drinking Water Standards of R309-200. Except where a different reporting period is specified in R309-205, R309-210 or R309-215, this report shall be submitted within 48 hours after the supplier receives the report from his lab. The Division may be reached at (801)536-4200.

(b) Monthly summaries of bacteriologic results shall be submitted within ten days following the end of each month.

(c) All results of TTHM samples shall be reported to the Division within 10 days of receipt of analysis for systems monitoring pursuant to R309-210-9.

(d) For all samples other than samples showing unacceptable results, bacteriologic samples or TTHM samples, the time between the receipt of the analysis and the reporting of the results to the Division shall not exceed 40 days.

(e) Arsenic sampling results shall be reported to the nearest 0.001 mg/L.

(f) There are additional reporting requirements in other sections of the rules, see R309-215-16(5).

(2) Disinfection byproducts, maximum residual disinfectant levels and disinfection byproduct precursors and enhanced coagulation or enhanced softening. This section applies to the reporting requirements of R309-210-8, R309-215-12 and R309-215-13. For the reporting requirements of R309-

210-9, R309-210-10 and R309-215-15 are contained within R309-210-9, R309-210-10 and R309-215-15, respectively.

(a) Systems required to sample quarterly or more frequently shall report to the State within 10 days after the end of each quarter in which samples were collected. Systems required to sample less frequently than quarterly shall report to the State within 10 days after the end of each monitoring period in which samples were collected. The Executive Secretary may choose to perform calculations and determine whether the MCL was exceeded, in lieu of having the system report that information.

(b) Disinfection byproducts. Systems shall report the information specified.

(i) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) on a quarterly or more frequent basis shall report:

(A) The number of samples taken during the last quarter.

(B) The location, date, and result of each sample taken during the last quarter.

(C) The arithmetic average of all samples taken in the last quarter.

(D) The annual arithmetic average of the quarterly arithmetic averages of this section for the last four quarters.

(E) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(ii) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) less frequently than quarterly (but at least annually) shall report:

(A) The number of samples taken during the last year.

(B) The location, date, and result of each sample taken during the last monitoring period.

(C) The arithmetic average of all samples taken over the last year.

(D) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(iii) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) less frequently than annually shall report:

(A) The location, date, and result of the last sample taken.

(B) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(iv) Systems monitoring for chlorite under the requirements of R309-210-8(2) shall report:

(A) The number of entry point samples taken each month for the last 3 months.

(B) The location, date, and result of each sample (both entry point and distribution system) taken during the last quarter.

(C) For each month in the reporting period, the arithmetic average of all samples taken in each three sample set taken in the distribution system.

(D) Whether, based on R309-210-8(6)(b)(ii), the MCL was violated.

(v) System monitoring for bromate under the requirements of R309-210-8(2) shall report:

(A) The number of samples taken during the last quarter.

(B) The location, date, and result of each sample taken during the last quarter.

(C) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year.

(D) Whether, based on R309-210-8(6)(b)(iii), the MCL was violated.

(c) Disinfectants. Systems shall report the information specified to the Executive Secretary within ten days after the end of each month the system serves water to the public, except as otherwise noted:

(i) Systems monitoring for chlorine or chloramines under the requirements of R309-210-8(3)(a) shall report and certify, by signing the report form provided by the Executive Secretary,

that all the information provided is accurate and correct and that any chemical introduced into the drinking water complies with ANSI/NSF Standard 60:

(A) The number of samples taken during each month of the last quarter.

(B) The monthly arithmetic average of all samples taken in each month for the last 12 months.

(C) The arithmetic average of all monthly averages for the last 12 months.

(D) The additional data required in R309-210-8(3)(a)(ii).

(E) Whether, based on R309-210-8(6)(c)(i), the MRDL was violated.

(ii) Systems monitoring for chlorine dioxide under the requirements of R309-210-8(3) shall report:

(A) The dates, results, and locations of samples taken during the last quarter.

(B) Whether, based on R309-210-8(6)(c)(ii), the MRDL was violated.

(C) Whether the MRDL was exceeded in any two consecutive daily samples and whether the resulting violation was acute or nonacute.

(d) Disinfection byproduct precursors and enhanced coagulation or enhanced softening. Systems shall report the information specified.

(i) Systems monitoring monthly or quarterly for TOC under the requirements of R309-215-12 and required to meet the enhanced coagulation or enhanced softening requirements in R309-215-13(2)(b) or (c) shall report:

(A) The number of paired (source water and treated water) samples taken during the last quarter.

(B) The location, date, and results of each paired sample and associated alkalinity taken during the last quarter.

(C) For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal.

(D) Calculations for determining compliance with the TOC percent removal requirements, as provided in R309-215-13(3)(a).

(E) Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in R309-215-13(2) for the last four quarters.

(ii) Systems monitoring monthly or quarterly for TOC under the requirements of R309-215-12 and meeting one or more of the alternative compliance criteria in R309-215-13(1)(b) or (c) shall report:

(A) The alternative compliance criterion that the system is using.

(B) The number of paired samples taken during the last quarter.

(C) The location, date, and result of each paired sample and associated alkalinity taken during the last quarter.

(D) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water TOC for systems meeting a criterion in R309-215-13(1)(b)(i) or (iii) or of treated water TOC for systems meeting the criterion in R309-215-13(1)(b)(ii).

(E) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water SUVA for systems meeting the criterion in R309-215-13(1)(b)(v) or of treated water SUVA for systems meeting the criterion in R309-215-13(1)(b)(vi).

(F) The running annual average of source water alkalinity for systems meeting the criterion in R309-215-13(1)(b)(iii) and of treated water alkalinity for systems meeting the criterion in R309-215-13(1)(c)(i).

(G) The running annual average for both TTHM and HAA5 for systems meeting the criterion in R309-215-13(1)(b)(iii) or (iv).

(H) The running annual average of the amount of magnesium hardness removal (as CaCO₃, in mg/L) for systems meeting the criterion in R309-215-13(1)(c)(ii).

(I) Whether the system is in compliance with the particular alternative compliance criterion in R309-215-13(1)(b) or (c).

(3) The public water system, within 10 days of completing the public notification requirements under R309-220 for the initial public notice and any repeat notices, shall submit to the Division a certification that it has fully complied with the public notification regulations. The public water system shall include with this certification a representative copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media.

(4) All samples taken in accordance with R309-215-6 shall be submitted within 10 days following the end of the operational period specified for that particular treatment. Finished water samples results for the contaminant of concern that exceed the Primary Drinking Water Standards of R309-200, shall be reported to the Division within 48 hours after the supplier receives the report. The Division may be reached at (801) 536-4000.

(5) Documentation of operation and maintenance for point-of-use or point-of-entry treatment units shall be provided to the Division annually. The Division shall receive the documentation by January 31 annually.

R309-105-17. Record Maintenance.

All public water systems shall retain on their premises or at convenient location near their premises the following records:

(1) Records of microbiological analyses and turbidity analyses made pursuant to this Section shall be kept for not less than five years. Records of chemical analyses made pursuant to this Section shall be kept for not less than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

(a) The date, place and time of sampling, and the name of the person who collected the sample;

(b) Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or process water sample or other special purpose sample.

(c) Date of analysis;

(d) Laboratory and person responsible for performing analysis;

(e) The analytical technique/method used; and

(f) The results of the analysis.

(2) Lead and copper recordkeeping requirements.

(a) Any water system subject to the requirements of R309-210-6 shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, Executive Secretary determinations, and any other information required by R309-210-6.

(b) Each water system shall retain the records required by this section for no fewer than 12 years.

(3) Records of action taken by the system to correct violations of primary drinking water regulations shall be kept for a period not less than three years after the last action taken with respect to the particular violation involved.

(4) Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, State or Federal agency, shall be kept for a period not less than ten years after completion of the sanitary survey involved.

(5) Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

(6) Records that concern the tests of a backflow prevention assembly and location shall be kept by the system for a minimum of not less than five years from the date of the test.

(7) Copies of public notices issued pursuant to R309-220 and certifications made to the Executive Secretary agency pursuant to R309-105-16 shall be kept for three years after issuance.

(8) Copies of monitoring plans developed pursuant to these rules shall be kept for the same period of time as the records of analyses taken under the plan are required to be kept under R309-105-17(1), except as otherwise specified. In all cases the monitoring plans shall be kept as long as the any associated report.

(9) A water system must retain a complete copy of your IDSE report submitted under this section for 10 years after the date that you submitted your IDSE report. If the Executive Secretary modifies the R309-210-10 monitoring requirements that you recommended in your IDSE report or if the Executive Secretary approves alternative monitoring locations, you must keep a copy of the Executive Secretary's notification on file for 10 years after the date of the Executive Secretary's notification. You must make the IDSE report and any Executive Secretary notification available for review by the Executive Secretary or the public.

(10) A water system must retain a complete copy of its 40/30 certification submitted under this R309-210-9 for 10 years after the date that you submitted your certification. You must make the certification, all data upon which the certification is based, and any Executive Secretary notification available for review by the Executive Secretary or the public.

(11) A water subject to the disinfection profiling requirements of R309-215-14 shall keep must keep results of profile (raw data and analysis) indefinitely.

(12) A water system subject to the disinfection benchmarking requirements of R309-215-14 shall keep must keep results of profile (raw data and analysis) indefinitely.

R309-105-18. Emergencies.

(1) The Executive Secretary or the local health department shall be informed by telephone by a water supplier of any "emergency situation". The term "emergency situation" includes the following:

(a) The malfunction of any disinfection facility such that a detectable residual cannot be maintained at all points in the distribution system.

(b) The malfunction of any "complete" treatment plant such that a clearwell effluent turbidity greater than 5 NTU is maintained longer than fifteen minutes.

(c) Muddy or discolored water (which cannot be explained by air entrainment or re-suspension of sediments normally deposited within the distribution system) is experienced by a significant number of individuals on a system.

(d) An accident has occurred which has, or could have, permitted the entry of untreated surface water and/or other contamination into the system (e.g. break in an unpressurized transmission line, flooded spring area, chemical spill, etc.)

(e) A threat of sabotage has been received by the water supplier or there is evidence of vandalism or sabotage to any public drinking water supply facility which may affect the quality of the delivered water.

(f) Any instance where a consumer reports becoming sick by drinking from a public water supply and the illness is substantiated by a doctor's diagnosis (unsubstantiated claims should also be reported to the Division of Drinking Water, but this is not required).

(2) If an emergency situation exists, the water supplier shall then contact the Division in Salt Lake City within eight hours. Division personnel may be reached at all times through 801-536-4123.

(3) All suppliers are advised to develop contingency plans to cope with possible emergency situations. In many areas of the state the possibility of earthquake damage shall be

realistically considered.

KEY: drinking water, watershed management

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R311. Environmental Quality, Environmental Response and Remediation.**R311-600. Hazardous Substances Mitigation Act: Enforceable Written Assurances.****R311-600-1. Purpose, Authority, Scope, and Requirements.**

(a) The purpose of these rules is to describe the principles and procedures the Executive Director of the Utah Department of Environmental Quality will use in responding to requests for enforceable written assurances.

(b) The authority for issuing these rules is found in the Hazardous Substance Mitigation Act which was amended in 2005 to expressly allow the Executive Director to issue enforceable written assurances to bona fide prospective purchasers, contiguous property owners, and innocent landowners, terms defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act and incorporated in the Hazardous Substance Mitigation Act. The Department will not bring an enforcement action under the Hazardous Substance Mitigation Act against the holder of an enforceable written assurance, provided the holder continues to satisfy the ongoing obligations associated with the written assurance. In addition, the assurance grants the holder protection from any state law cost recovery and contribution actions under the Hazardous Substance Mitigation Act. The Executive Director's refusal to issue an enforceable written assurance is not indicative of the environmental status of the property, the applicant's responsibility or liability, or the Department's enforcement interest in a particular property or person.

(c) These rules apply to enforceable written assurances. In many situations, other types of letters or agreements may be more appropriate or desirable. In passing these rules, the Executive Director does not intend to limit the authority to compromise and settle claims, to enter voluntary cleanup agreements, to enter prospective purchaser agreements, to enter apportionment determinations or to issue other types of letters. Writings that do not indicate they are enforceable written assurances are not covered by these rules.

(d) The requirements for enforceable written assurances are found in these rules and in the Hazardous Substance Mitigation Act, Title 19 Chapter 6 Part 3.

(e) When the Division of Environmental Response and Remediation is referenced in the Enforceable Written Assurances rules, the Division of Environmental Response and Remediation is the designee of the Executive Director for the purpose stated or implied.

R311-600-2. Definitions.

(a) The terms used in this rule are defined in section 19-6-302.

(b) For the purposes of the Enforceable Written Assurances rules:

(1) "Applicant" means a person who has applied to receive an enforceable written assurance based upon his status as a bona fide prospective purchaser, contiguous property owner or innocent landowner.

(2) "Characterization" means an investigation to demonstrate contaminants at the site do not pose a risk to human health and the environment. Characterization may include sampling, testing, monitoring, and the collecting of sufficient information to demonstrate compliance with the principles in R311-600-3.

(3) "Contaminants" mean hazardous substances or hazardous materials.

(4) "Department" means the Department of Environmental Quality.

(5) "Enforceable Written Assurance" means a letter issued by the Executive Director to an applicant pursuant to section 19-6-326 acknowledging the applicant's status as a bona fide

prospective purchaser, contiguous property owner or innocent landowner based upon the representations of the applicant that it meets and will continue to meet the criteria.

(6) "Environmental Covenant" means a servitude defined in section 57-25-102(4).

(7) "EPA" means the United States Environmental Protection Agency.

(8) "Executive Director" means the Executive Director of the Department of Environmental Quality or a designee.

(9) "Holder" means a person who has received an enforceable written assurance.

(10) "Institutional Control" means the term defined in section 19-10-102(1).

(11) "Property" means the property described in the legal description by the applicant in the enforceable written assurance application.

(12) "Site" means the area, including soil, water or groundwater, where a release of hazardous substances or hazardous materials has come to be located irrespective of property boundaries.

(13) "Utility Corridor" means easements, permits, rights of access, or right by virtue of franchise agreements held by utility companies for the purpose of providing water, electricity, natural gas, sewer, and other services to properties.

(14) "VCP" or "Voluntary Cleanup Program" means the program established under section 19-8-101 et seq.

R311-600-3. Enforceable Assurance Evaluation Principles.

(a) The issuance of an enforceable written assurance is discretionary and requires a case by case evaluation. The Department views that compliance with the conditions of the exemptions for a bona fide prospective purchaser, contiguous property owner, or innocent landowner (e.g., all appropriate inquiries, notice, care/reasonable steps, cooperation, and compliance with institutional controls) will generally ensure there is no unacceptable risk to human health or the environment. However, even if an applicant meets the definition of a bona fide prospective purchaser, a contiguous property owner, or an innocent landowner as defined in section 19-6-302, before issuing an enforceable written assurance, the Executive Director shall evaluate whether the applicant has demonstrated the following:

(1) After all appropriate inquiries, there is no indication of a release, a threatened release, or the possibility of a release at the property, or;

(2) If there is a threatened release or the possibility of a release at the property, there has been sufficient characterization to demonstrate that there is no reason to take action, or;

(3) If there has been a release, the release has been or is being cleaned up with oversight provided by the Department and the applicant is sufficiently informed to take reasonable steps to avoid exposing the contamination to the public, avoid contributing to or exacerbating the contamination, and to avoid interfering with or substantially increasing the costs of response actions, or;

(4) If the release has not been and is not being cleaned up, there has been sufficient characterization to demonstrate that the release is not ongoing, there are no uninterrupted exposure pathways, and the applicant is sufficiently informed to take reasonable steps to avoid exposing the contamination to the public, avoid contributing to or exacerbating the contamination, and to avoid interfering with or substantially increasing the costs of response actions, or; there has been sufficient characterization to demonstrate that there is no reason to take action.

(b) If the criteria in subsection (a) are satisfied and if the applicant qualifies as a bona fide prospective purchaser under federal law and is not a liable person under the Utah Hazardous Substance Mitigation Act, the Executive Director may issue an

enforceable written assurance to the applicant.

(c) If the criteria in subsection (a) are not satisfied, the Executive Director may issue an enforceable written assurance to the applicant that provides that an ongoing reasonable step is to complete additional characterization and response actions through the VCP to satisfy the criteria in subsection (a) above. The failure of the applicant to complete additional characterization and response actions through the VCP may result in a revocation or nullification of the enforceable written assurance.

(d) If the criteria in subsection (a) are not satisfied because reports provided by the applicant indicate a potential environmental problem, but subsequent information easily and quickly supports a conclusion that the potential for unacceptable risk is highly unlikely and also provides an understanding of reasonable steps, the Executive Director may issue an enforceable written assurance.

(e) The Executive Director may issue certain, general, non-specific comfort letters describing the liability provisions of the Hazardous Substance Mitigation Act. A person may request this type of letter without applying for an enforceable written assurance and without the submission of a fee or may request this type of letter anytime during the enforceable assurance review process.

R311-600-4. Application.

(a) An applicant shall submit to the Division of Environmental Response and Remediation an application as prescribed by this section.

(b) An application submitted under this section shall:

(1) Be on a form provided by the Division of Environmental Response and Remediation;

(2) Contain:

(A) General information concerning the applicant and its affiliates, and current and past owners, and operators of the site;

(B) The address, property tax identification number, and legal description of the property;

(C) A statement and information that demonstrates that the applicant has not caused or contributed to the contamination on the property or the site, and is otherwise eligible for an enforceable written assurance;

(D) A statement indicating and information demonstrating that the applicant is applying as a bona fide prospective purchaser, a contiguous property owner, or an innocent landowner, and a certification that the applicant meets and will continue to meet the requirements;

(E) The current and proposed future land use;

(F) Information indicating the involvement, if any, that the Department or the EPA has had with the property or the applicant;

(G) The fee required in the fee schedule approved by the legislature;

(H) A site eligibility report.

(c) The site eligibility report shall include the following:

(1) Results of the applicant's All Appropriate Inquiries, including a detailed discussion of each specific activity required by Standards and Practices for Conducting "All Appropriate Inquiries" under the Comprehensive Environmental Response, Compensation, and Liability Act, 70 Fed. Reg. 66070 (11/1/05) codified at 40 C.F.R. 312.

(2) Sufficient information demonstrating compliance with the principles in R311-600-3, including information identifying whether the release is on-going or likely to be on-going.

(3) Laboratory analytical results from environmental media sampled at the site.

(4) Proposed reasonable steps to mitigate potential risk to human health and the environment based on present and future intended land use, including utility corridors.

(5) Description of activity and use limitations or

engineering controls, and how the limitations or controls will be enforced over time.

R311-600-5. Review of Documents.

(a) The Executive Director may accept and review the application and site eligibility report. If the Executive Director accepts the application and site eligibility report, the Executive Director may notify the applicant of additional information required to issue an enforceable written assurance.

(b) If at any point the Executive Director determines that additional, substantial characterization is required, the Executive Director may deny the issuance of an enforceable written assurance.

R311-600-6. Withdrawal of Application.

The applicant may withdraw the application by giving written notice to the Executive Director. The withdrawal is effective on the date the Executive Director receives the notice. The fee will not be refunded.

R311-600-7. Enforceable Written Assurance.

(a) The enforceable written assurance shall state that it is issued pursuant to section 19-6-326.

(b) The enforceable written assurance may clarify what the applicant must do (or not do) to retain the assurance in effect.

(c) The enforceable written assurance is contingent upon the applicant's compliance with ongoing requirements imposed herein and in section 19-6-302 on a bona fide prospective purchaser, contiguous property owner, and innocent landowner.

R311-600-8. Rejection of Application.

(a) The Executive Director may choose not to review an application.

(b) Applications that are not reviewed are considered rejected.

(c) The Executive Director has sole discretion to reject an application for any reason.

(d) If an application is rejected, the Executive Director shall promptly notify the applicant.

(e) Rejection of an application is not indicative of the environmental status of the property, applicant's responsibility or liability, or the Department's enforcement interest in the applicant.

R311-600-9. Denial of Application.

(a) The Executive Director may reject or deny the issuance of an enforceable written assurance for any reason.

(b) The Executive Director will deny or reject the issuance of an enforceable written assurance for the following reasons:

(1) If the application is not complete, or;

(2) The applicant does not provide sufficient evidence for the Executive Director to acknowledge that:

(A) The applicant has demonstrated compliance with the Enforceable Assurance Evaluation Principles in R311-600-3, or;

(B) The applicant is a bona fide prospective purchaser, an innocent landowner, or a contiguous property owner based upon the applicant's representations, or;

(3) Information obtained subsequent to filing demonstrates that:

(A) The applicant has not demonstrated compliance with the Enforceable Assurance Evaluation Principles in R311-600-3, or;

(B) That the applicant is not a bona fide prospective purchaser, an innocent landowner, or a contiguous property owner, or;

(4) The applicant does not:

(A) Demonstrate the ability and willingness to exercise appropriate care with respect to the contamination at the facility, including taking reasonable steps to:

- (i) Stop any continuing release;
- (ii) Prevent any threatened future release; and
- (iii) Prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance or hazardous material or;
- (B) Grant and ensure reasonable access, or;
- (C) Demonstrate willingness to:
 - (i) Comply with any land use restrictions established or relied on in connection with the response action, and;
 - (ii) Not impede the effectiveness or integrity of any institutional control or environmental covenant employed in connection with a response action, and;
 - (iii) Record at the request of the Executive Director an Environmental Covenant for any land use restrictions established or relied on in connection with the response action.

R311-600-10. Revocation of Assurance.

- (a) The enforceable written assurance shall remain valid unless revoked.
- (b) The Executive Director may revoke the enforceable written assurance for good cause, including the following:
 - (1) The holder:
 - (A) Acquired the enforceable written assurance by fraud, misrepresentation, or failure to disclose material information;
 - (B) Does not exercise appropriate care with respect to contaminants found at the facility by taking reasonable steps to:
 - (i) Stop any continuing release;
 - (ii) Prevent any threatened future release, and;
 - (iii) Prevent or limit human, environmental, or natural resource exposure to any previously released contaminants;
 - (C) Does not comply with any land use restrictions or institutional controls established or relied on in connection with the response action, or; impedes the effectiveness or integrity of any institutional control, or environmental covenant employed in connection with a response action, or; does not record an Environmental Covenant for any land use restrictions established or relied on in connection with the response action if requested to do so by the Executive Director;
 - (D) Does not cooperate with persons providing remedial or investigative action;
 - (E) Does not pay the required fees within a reasonable time;
 - (F) Does not provide and ensure reasonable access as requested by the Executive Director;
 - (G) Does not provide legally required notices with respect to the discovery or release of any contaminants at the facility, or;
 - (2) New information demonstrates that the holder may not be a bona fide prospective purchaser, innocent landowner, or contiguous property owner.
- (c) The holder shall have the burden of proving by a preponderance of evidence that at the time the enforceable assurance was granted and thereafter, the holder satisfied criteria for being considered a bona fide prospective purchaser, an innocent landowner, or a contiguous property owner.
- (d) The procedures followed to revoke an enforceable written assurance shall comply with the Administrative Procedures Act and shall include written notice to the holder and an opportunity to contest the Department's notice.
- (e) An administrative action to revoke the enforceable written assurance may be issued concurrently with an order to abate under section 19-6-310 of the Hazardous Substance Mitigation Act.

R311-600-11. Access.

The applicant and holder shall ensure reasonable access to the site to persons that are authorized to conduct response actions or natural resource restoration at the property, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial

response actions or natural resource restoration at the property.

R311-600-12. Institutional Controls.

The applicant and holder shall comply with any existing land use restriction established or relied on in connection with the response action, any existing institutional control created under section 19-10-101 to -108 or any environmental covenant created under section 57-25-101 to -114, and shall implement and record an environmental covenant as requested by the Executive Director.

R311-600-13. Funding.

(a) The applicant shall pay the required fees in accordance with the legislatively approved fee schedule. The initial fee shall be remitted with the application. If the fee schedule allows imposition of additional fees based upon additional expenses and costs incurred by the Department, the applicant shall pay the fees within the time requested by the Department.

(b) The fees are not refundable unless the application is rejected without review.

R311-600-14. Transfer of Property after Issuance of Enforceable Written Assurance.

The enforceable written assurance is not transferable to another party but shall survive any conveyance or other disposition of the property identified in the enforceable written assurance as to the holder.

R311-600-15. Notice.

In providing notice to applicants and holders, the Executive Director may rely upon the address provided by the applicant in the application or upon subsequent written changes of address filed with the Division of Environmental Response and Remediation by the applicant or holder. A change of address filed by the applicant or holder shall indicate the name and new address of the applicant or holder, and shall also include the property address, legal description, property tax identification number, the date the assurance was issued, and the date the application was filed.

R311-600-16. Orders Issued Under Section 19-6-309.

Issuance of an enforceable written assurance shall not preclude the issuance of an order under section 19-6-309 of the Hazardous Substance Mitigation Act because ongoing obligations of a bona fide prospective purchaser require taking reasonable steps to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to earlier releases.

R311-600-17. Apportionment Policy.

In an apportionment proceeding conducted by the Executive Director, the Executive Director intends to apportion zero liability to a party who proves that he has satisfied the obligations, including the continuing obligations, of a bona fide prospective purchaser, contiguous property owner, or innocent landowner, and has satisfied the enforceable assurance evaluation principles in R311-600-3 regardless of whether the party has previously obtained an enforceable written assurance.

R311-600-18. Utility Company Enforcement Policy.

(a) The Department does not intend to bring enforcement or cost recovery action against, and will not hold liable, a utility company under the Hazardous Substance Mitigation Act based solely upon the utility company's interest in a utility corridor for the purpose of supplying utility services.

(b) The Department's policy is subject to the following conditions:

(1) The utility company did not cause or contribute to the release and does not take actions that exacerbate the release.

(2) The utility company complies with applicable regulations, land use restrictions, institutional controls, environmental covenants, and site management plans under the VCP in handling contaminated media.

(3) The utility company takes reasonable steps to prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances or hazardous materials.

R311-600-19. Relationship to Voluntary Cleanup Program.

Upon the request of the applicant, the Executive Director may condition the issuance of an enforceable written assurance upon completion of additional work through the Department's VCP. A conditional enforceable assurance is not a substitute for completion of work under the VCP. The Executive Director reserves the discretion to withdraw or revoke the conditional enforceable assurance at any time if the applicant is unable to prove that the conditions have been satisfied. The Executive Director reserves the discretion to issue an amended enforceable assurance that eliminates the requirement for additional work through the Department's VCP at such time as the Executive Director has adequate information and documentation to determine that the additional work is no longer necessary.

R311-600-20. Long Term Tenants.

Long Term tenants shall be treated as the equivalent of an owner or operator for the purpose of these rules.

R311-600-21. Innocent Landowners.

(a) An applicant who seeks or obtains an enforceable assurance as an innocent landowner shall:

(1) Take reasonable steps to:

(A) Stop any continuing release;

(B) Prevent any threatened future release; and,

(C) Prevent or limit human, environmental, or natural resource exposure to any hazardous substance or hazardous material released on or from the property owned by the applicant.

(2) Provide full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the property from which there has been a release or threatened release.

(3) Comply with any land use restrictions established or relied on in connection with the response action at the facility and cooperate to establish such restrictions and not impede the effectiveness or integrity of any institutional control or environmental covenant employed in connection with a response action.

(b) An applicant who seeks or obtains an enforceable assurance as an innocent landowner and fails to satisfy the above condition shall not be eligible to receive or retain an enforceable written assurance.

KEY: bona fide prospective purchaser, enforceable written assurance, Hazardous Substances Mitigation Act

March 26, 2007

19-6-326

Notice of Continuation November 30, 2011

R317. Environmental Quality, Water Quality.**R317-1. Definitions and General Requirements.****R317-1-1. Definitions.**

1.1 "Assimilative Capacity" means the difference between the numeric criteria and the concentration in the waterbody of interest where the concentration is less than the criterion.

1.2 "Board" means the Utah Water Quality Board.

1.3 "BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

1.4 "Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation of the State.

1.5 "Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

1.6 "CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

1.7 "COD" means chemical oxygen demand.

1.8 "Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water Regulations.

1.9 "Digested sludge" means sludge in which the volatile solids content has been reduced to about 50% by a suitable biological treatment process.

1.10 "Division" means the Utah State Division of Water Quality.

1.11 "Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

1.12 "Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

1.13 "Existing Uses" means those uses actually attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards.

1.14 "Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

1.15 "Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

1.16 "Influent" means the total wastewater flow entering a wastewater treatment works.

1.17 "Great Salt Lake impounded wetland" means wetland ponds which have been formed by dikes or berms to control and retain the flow of freshwater sources in the immediate proximity of Great Salt Lake.

1.18 "Large underground wastewater disposal system" means the same type of device as an onsite wastewater system except that it is designed to handle more than 5,000 gallons per day of domestic wastewater, or wastewater that originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other underground wastewater disposal system not covered under the definition of an onsite wastewater system. The Board controls the installation of such systems.

1.19 "Onsite wastewater system" means an underground wastewater disposal system for domestic wastewater which is designed for a capacity of 5,000 gallons per day or less and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums and twin homes. It usually consists of a building sewer, a septic tank and an absorption system.

1.20 "Operating Permit" is a State issued permit issued to any wastewater treatment works covered under R317-3 or R317-

5 with the following exceptions:

A. Any wastewater treatment permitted under Ground Water Quality Protection R317-6.

B. Any wastewater treatment permitted under Underground Injection Control (UIC) Program R317-7.

C. Any wastewater treatment permitted under Utah Pollutant Discharge Elimination System (UPDES) R317-8.

D. Any wastewater treatment permitted under Approvals and Permits for a Water Reuse Project R317-13.

E. Any wastewater treatment permitted by a Local Health Department under Onsite Wastewater Systems R317-4.

1.21 "Person" means any individual, corporation, partnership, association, company, or body politic, including any agency or instrumentality of the United States government (Section 19-1-103).

1.22 "Point source" means any discernible, confined and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

1.23 "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

1.24 "Sewage" is synonymous with the term "domestic wastewater".

1.25 "Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

1.26 "Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

1.27 "SS" means suspended solids.

1.28 Total Maximum Daily Load (TMDL) means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources.

1.29 "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

1.30 "TSS" means total suspended solids.

1.31 "Underground Wastewater Disposal System" means a system for underground disposal of domestic wastewater. It includes onsite wastewater systems and large underground wastewater disposal systems.

1.32 "Wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (Section 19-5-102).

1.33 "Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by wastes is not included.

1.34 "Waters of the state" means all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except

that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

R317-1-2. General Requirements.

2.1 Water Pollution Prohibited. No person shall discharge wastewater or deposit wastes or other substances in violation of the requirements of these rules.

2.2 Construction Permit. No person shall make or construct any device for treatment or discharge of wastewater (including storm sewers) without first receiving a permit to do so from the Board or its authorized representative, except as provided herein.

A. Body Politic Required. A permit for construction of a new treatment works or a sewerage system, or modifications to an existing treatment works or sewerage system for multiple units under separate ownership will be issued only if the treatment works or sewerage system are under the sponsorship of a body politic as defined in R317-1-1.

B. Submission of Plans. Any person desiring a permit shall submit complete plans, specifications, and other pertinent documents covering the proposed construction to the Division for review. Liquid waste storage facilities at animal feeding operations must be designed and constructed in accordance with Table 2a - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth greater than 2 feet; Table 2b - Criteria for Siting, Investigation, and Design of Liquid Waste Storage Facilities with a water depth of 2 feet or less; and Table 2c - Criteria for runoff ponds with a water depth of 2 feet or less and a storage period less than 90 days annually, contained in the U.S.D.A. Natural Resource Conservation Service (NRCS) Conservation Practice Standard, Waste Storage Facility, Code 313, dated August 2006. This rule incorporates by reference Tables 2a, 2b, and 2c in the August 2006 U.S.D.A. NRCS Conservation Practice Standard, Waste Storage Facility, Code 313.

C. Review of Plans. The Division shall review said plans and specifications as to their adequacy of design for the intended purpose and shall require such changes as are found necessary to assure compliance with pertinent parts of these rules.

D. Approval of Plans. Issuance of a construction permit shall be construed as approval of plans for the purposes of authorizing release of federal or state funds allocated for planning or construction purposes.

E. Permit Expiration. Construction permits shall expire one year after date of issuance unless substantial and continuous construction is under way. Upon application, construction permits may be extended on an individual basis provided application for such extension is made prior to the permit expiration date.

F. Exceptions.

1. Wastewater facilities that discharge to an existing sewer system and serve only units that are under single ownership, or serve multiple units under separate ownership where the wastewater facilities are under the sponsorship of the public sewer system to which they discharge. This exception does not apply to pumping stations having the installed capacity in excess of 1 million gallons per day (3,785 cubic meters per day).

2. Onsite Wastewater Disposal Systems. Construction plans and specifications for onsite wastewater disposal systems shall be submitted to the local health authority having jurisdiction and need not be submitted to the Division. Such devices, in any case, shall be constructed in accordance with rules for onsite wastewater disposal systems adopted by the Water Quality Board. Compliance with the rules shall be determined by an on-site inspection by the appropriate health authority.

3. Small Animal Waste (Manure) Lagoons and Runoff Ponds. Construction plans and specifications for small animal waste lagoons as defined in R317-6 (permitted by rule for ground water permits) need not be submitted to the Division if the design is prepared or certified by the U.S.D.A. Natural Resources Conservation Service (NRCS) in accordance with criteria provided for in the Memorandum of Agreement between the Division and the NRCS, and the construction is inspected by the NRCS. Compliance with these rules shall be determined by on-site inspection by the NRCS.

2.3 Compliance with Water Quality Standards. No person shall discharge wastes into waters of the state except in compliance with these rules and under circumstances which assure compliance with water quality standards in R317-2.

2.4 Operation of Wastewater Treatment Works. Wastewater treatment works shall be so operated at all times as to produce effluents meeting all requirements of these rules and otherwise in a manner consistent with adequate protection of public health and welfare. Complete daily records shall be kept of the operation of wastewater treatment works covered under R317-3 on forms approved by the Division and a copy of such records shall be forwarded to the Division at monthly intervals.

R317-1-3. Requirements for Waste Discharges.

3.1 Compliance With Water Quality Standards.

All persons discharging wastes into any of the waters of the State shall provide the degree of wastewater treatment determined necessary to insure compliance with the requirements of R317-2 (Water Quality Standards), except that the Board may waive compliance with these requirements for specific criteria listed in R317-2 where it is determined that the designated use is not being impaired or significant use improvement would not occur or where there is a reasonable question as to the validity of a specific criterion or for other valid reasons as determined by the Board.

3.2 Compliance With Secondary Treatment Requirements.

All persons discharging wastes from point sources into any of the waters of the State shall provide treatment processes which will produce secondary effluent meeting or exceeding the following effluent quality standards.

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the BOD values of effluent samples shall not be greater than 15% of the BOD values of influent samples collected in the same time period. As an alternative, if agreed to by the person discharging wastes, the following effluent quality standard may be established as a requirement of the discharge permit and must be met: The arithmetic mean of CBOD values determined on effluent samples collected during any 30-day period shall not exceed 20 mg/l nor shall the arithmetic mean exceed 30 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the CBOD values of effluent samples shall not be greater than 15% of the CBOD values of influent samples collected in the same time period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the SS values of effluent samples shall not be greater than 15% of the SS values of influent samples collected in the same time period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 2000 per 100 ml or 200 per 100 ml respectively, nor shall the geometric mean exceed 2500

per 100 ml or 250 per 100 ml respectively, during any 7-day period; or, the geometric mean of *E. coli* bacteria in effluent samples collected during any 30-day period shall not exceed 126 per 100 ml nor shall the geometric mean exceed 158 per 100 ml respectively during any 7-day period. Exceptions to this requirement may be allowed by the Board where domestic wastewater is not a part of the effluent and where water quality standards are not violated.

D. The effluent values for pH shall be maintained within the limits of 6.5 and 9.0.

E. Exceptions to the 85% removal requirements may be allowed where infiltration makes such removal requirements infeasible and where water quality standards are not violated.

F. The Board may allow exceptions to the requirements of (A), (B) and (D) above where the discharge will be of short duration and where there will be of no significant detrimental affect on receiving water quality or downstream beneficial uses.

G. The Board may allow that the BOD5 and TSS effluent concentrations for discharging domestic wastewater lagoons shall not exceed 45 mg/l for a monthly average nor 65 mg/l for a weekly average provided the following criteria are met:

1. The lagoon system is operating within the organic and hydraulic design capacity established by R317-3,

2. The lagoon system is being properly operated and maintained,

3. The treatment system is meeting all other permit limits,

4. There are no significant or categorical industrial users (IU) defined by 40 CFR Part 403, unless it is demonstrated to the satisfaction of the Executive Secretary to the Utah Water Quality Board that the IU is not contributing constituents in concentrations or quantities likely to significantly effect the treatment works,

5. A Waste Load Allocation (WLA) indicates that the increased permit limits would not impair beneficial uses of the receiving stream.

3.3 Extensions To Deadlines For Compliance.

The Board may, upon application of a waste discharger, allow extensions to the compliance deadlines in Section 1.3.2 above where it can be shown that despite good faith effort, construction cannot be completed within the time required.

3.4 Pollutants In Diverted Water Returned To Stream.

A user of surface water diverted from waters of the State will not be required to remove any pollutants which such user has not added before returning the diverted flow to the original watercourse, provided there is no increase in concentration of pollutants in the diverted water. Should the pollutant constituent concentration of the intake surface waters to a facility exceed the effluent limitations for such facility under a federal National Pollutant Discharge Elimination System permit or a permit issued pursuant to State authority, then the effluent limitations shall become equal to the constituent concentrations in the intake surface waters of such facility. This section does not apply to irrigation return flow.

R317-1-4. Utilization and Isolation of Domestic Wastewater Treatment Works Effluent.

4.1 Untreated Domestic Wastewater. Untreated domestic wastewater or effluent not meeting secondary treatment standards as defined by these regulations shall be isolated from all public contact until suitably treated. Land disposal or land treatment of such wastewater or effluent may be accomplished by use of an approved total containment lagoon as defined in R317-3 or by such other treatment approved by the Board as being feasible and equally protective of human health and the environment.

4.2 Use of Secondary Effluent at Plant Site. Secondary effluent may be used at the treatment plant site in the following manner provided there is no cross-connection with a potable water system:

A. Chlorinator injector water for wastewater chlorination facilities, provided all pipes and outlets carrying the effluent are suitably labeled.

B. Water for hosing down wastewater clarifiers, filters and related units, provided all pipes and outlets carrying the effluent are suitably labeled.

C. Irrigation of landscaped areas around the treatment plant from which the public is excluded.

R317-1-5. Use of Industrial Wastewaters.

5.1 Use of industrial wastewaters (not containing human pathogens) shall be considered for approval by the Board based on a case-specific analysis of human health and environmental concerns.

R317-1-6. Disposal of Domestic Wastewater Treatment Works Sludge.

6.1 General. No person shall use, dispose, or otherwise manage sewage sludge through any practice for which pollutant limits, management practices, and operational standards for pathogens and vector attraction reduction requirements are established in 40 CFR 503, July 1, 1994, except in accordance with such requirements.

6.2 Permit. All treatment works producing, treating and disposing of sewage sludge must comply with applicable permit requirements at R317-3, 6 and 8.

6.3 Septic Tank Contents. The dumping or spreading of septic tank contents is prohibited except in conformance with 40 CFR 503 and R317-550-7.

6.4 Effective Date. Notwithstanding the effective date for incorporation by reference of 40 CFR 503 provided in R317-8-1.10(9), those portions of 40 CFR 503 specified in R317-1-6.1 and 6.3 are effective immediately.

R317-1-7. TMDLs.

The following TMDLs are approved by the Board and hereby incorporated by reference into these rules:

- 7.1 Middle Bear River -- February 23, 2010
- 7.2 Chalk Creek -- December 23, 1997
- 7.3 Otter Creek -- December 23, 1997
- 7.4 Little Bear River -- May 23, 2000
- 7.5 Mantua Reservoir -- May 23, 2000
- 7.6 East Canyon Creek -- September 14, 2010
- 7.7 East Canyon Reservoir -- September 14, 2010
- 7.8 Kents Lake -- September 1, 2000
- 7.9 LaBaron Reservoir -- September 1, 2000
- 7.10 Minersville Reservoir -- September 1, 2000
- 7.11 Puffer Lake -- September 1, 2000
- 7.12 Scofield Reservoir -- September 1, 2000
- 7.13 Onion Creek (near Moab) -- July 25, 2002
- 7.14 Cottonwood Wash -- September 9, 2002
- 7.15 Deer Creek Reservoir -- September 9, 2002
- 7.16 Hyrum Reservoir -- September 9, 2002
- 7.17 Little Cottonwood Creek -- September 9, 2002
- 7.18 Lower Bear River -- September 9, 2002
- 7.19 Malad River -- September 9, 2002
- 7.20 Mill Creek (near Moab) -- September 9, 2002
- 7.21 Spring Creek -- September 9, 2002
- 7.22 Forsyth Reservoir -- September 27, 2002
- 7.23 Johnson Valley Reservoir -- September 27, 2002
- 7.24 Lower Fremont River -- September 27, 2002
- 7.25 Mill Meadow Reservoir -- September 27, 2002
- 7.26 UM Creek -- September 27, 2002
- 7.27 Upper Fremont River -- September 27, 2002
- 7.28 Deep Creek -- October 9, 2002
- 7.29 Uinta River -- October 9, 2002
- 7.30 Pineview Reservoir -- December 9, 2002
- 7.31 Browne Lake -- February 19, 2003
- 7.32 San Pitch River -- November 18, 2003

- 7.33 Newton Creek -- June 24, 2004
- 7.34 Panguitch Lake -- June 24, 2004
- 7.35 West Colorado -- August 4, 2004
- 7.36 Silver Creek -- August 4, 2004
- 7.37 Upper Sevier River -- August 4, 2004
- 7.38 Lower and Middle Sevier River -- August 17, 2004
- 7.39 Lower Colorado River -- September 20, 2004
- 7.40 Upper Bear River -- August 4, 2006
- 7.41 Echo Creek -- August 4, 2006
- 7.42 Soldier Creek -- August 4, 2006
- 7.43 East Fork Sevier River -- August 4, 2006
- 7.44 Koosharem Reservoir -- August 4, 2006
- 7.45 Lower Box Creek Reservoir -- August 4, 2006
- 7.46 Otter Creek Reservoir -- August 4, 2006
- 7.47 Thistle Creek -- July 9, 2007
- 7.48 Strawberry Reservoir -- July 9, 2007
- 7.49 Matt Warner Reservoir -- July 9, 2007
- 7.50 Calder Reservoir -- July 9, 2007
- 7.51 Lower Duchesne River -- July 9, 2007
- 7.52 Lake Fork River -- July 9, 2007
- 7.53 Brough Reservoir -- August 22, 2008
- 7.54 Steinaker Reservoir -- August 22, 2008
- 7.55 Red Fleet Reservoir -- August 22, 2008
- 7.56 Newcastle Reservoir -- August 22, 2008
- 7.57 Cutler Reservoir -- February 23, 2010
- 7.58 Pariette Draw -- September 28, 2010
- 7.59 Emigration Creek -- September 1, 2011

R317-1-8. Penalty Criteria for Civil Settlement Negotiations.

8.1 Introduction. Section 19-5-115 of the Water Quality Act provides for penalties of up to \$10,000 per day for violations of the act or any permit, rule, or order adopted under it and up to \$25,000 per day for willful violations. Because the law does not provide for assessment of administrative penalties, the Attorney General initiates legal proceedings to recover penalties where appropriate.

8.2 Purpose And Applicability. These criteria outline the principles used by the State in civil settlement negotiations with water pollution sources for violations of the UWPCA and/or any permit, rule or order adopted under it. It is designed to be used as a logical basis to determine a reasonable and appropriate penalty for all types of violations to promote a more swift resolution of environmental problems and enforcement actions.

To guide settlement negotiations on the penalty issue, the following principles apply: (1) penalties should be based on the nature and extent of the violation; (2) penalties should at a minimum, recover the economic benefit of noncompliance; (3) penalties should be large enough to deter noncompliance; and (4) penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

In determining whether a civil penalty should be sought, the State will consider the magnitude of the violations; the degree of actual environmental harm or the potential for such harm created by the violation(s); response and/or investigative costs incurred by the State or others; any economic advantage the violator may have gained through noncompliance; recidivism of the violator; good faith efforts of the violator; ability of the violator to pay; and the possible deterrent effect of a penalty to prevent future violations.

8.3 Penalty Calculation Methodology. The statutory maximum penalty should first be calculated, for comparison purposes, to determine the potential maximum penalty liability of the violator. The penalty which the State seeks in settlement may not exceed this statutory maximum amount.

The civil penalty figure for settlement purposes should then be calculated based on the following formula: CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

PENALTY: Violations are grouped into four main penalty

categories based upon the nature and severity of the violation. A penalty range is associated with each category. The following factors will be taken into account to determine where the penalty amount will fall within each range:

A. History of compliance or noncompliance. History of noncompliance includes consideration of previous violations and degree of recidivism.

B. Degree of willfulness and/or negligence. Factors to be considered include how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance.

C. Good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State.

Category A - \$7,000 to \$10,000 per day. Violations with high impact on public health and the environment to include:

1. Discharges which result in documented public health effects and/or significant environmental damage.

2. Any type of violation not mentioned above severe enough to warrant a penalty assessment under category A.

Category B - \$2,000 to \$7,000 per day. Major violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Discharges which likely caused or potentially would cause (undocumented) public health effects or significant environmental damage.

2. Creation of a serious hazard to public health or the environment.

3. Illegal discharges containing significant quantities or concentrations of toxic or hazardous materials.

4. Any type of violation not mentioned previously which warrants a penalty assessment under Category B.

Category C - \$500 to \$2,000 per day. Violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Significant excursion of permit effluent limits.

2. Substantial non-compliance with the requirements of a compliance schedule.

3. Substantial non-compliance with monitoring and reporting requirements.

4. Illegal discharge containing significant quantities or concentrations of non toxic or non hazardous materials.

5. Any type of violation not mentioned previously which warrants a penalty assessment under Category C.

Category D - up to \$500 per day. Minor violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Minor excursion of permit effluent limits.

2. Minor violations of compliance schedule requirements.

3. Minor violations of reporting requirements.

4. Illegal discharges not covered in Categories A, B and C.

5. Any type of violations not mentioned previously which warrants a penalty assessment under category D.

ADJUSTMENTS: The civil penalty shall be calculated by adding the following adjustments to the penalty amount determined above: 1) economic benefit gained as a result of non-compliance; 2) investigative costs incurred by the State and/or other governmental levels; 3) documented monetary costs associated with environmental damage.

ECONOMIC AND LEGAL CONSIDERATIONS: An adjustment downward may be made or a delayed payment schedule may be used based on a documented inability of the violator to pay. Also, an adjustment downward may be made in consideration of the potential for protracted litigation, an attempt to ascertain the maximum penalty the court is likely to

award, and/or the strength of the case.

8.4 Mitigation Projects. In some exceptional cases, it may be appropriate to allow the reduction of the penalty assessment in recognition of the violator's good faith undertaking of an environmentally beneficial mitigation project. The following criteria should be used in determining the eligibility of such projects:

- A. The project must be in addition to all regulatory compliance obligations;
- B. The project preferably should closely address the environmental effects of the violation;
- C. The actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;
- D. The project must primarily benefit the environment rather than benefit the violator;
- E. The project must be judicially enforceable;
- F. The project must not generate positive public perception for violations of the law.

8.5 Intent Of Criteria/Information Requests. The criteria and procedures in this section are intended solely for the guidance of the State. They are not intended, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the State.

R317-1-9. Electronic Submissions and Electronic Signatures.

(a) Pursuant to the authority of Utah Code Ann. Subsection 46-4-501(a), the submission of Discharge Monitoring Reports and related information may be conducted electronically through the EPA's NetDMR program, provided the requirements of subsection (b) are met.

(b) A person may submit Discharge Monitoring Reports and related information only after (1) completion of a Subscriber Agreement in a form designated by the Executive Secretary to ensure that all requirements of 40 CFR 3, EPA's Cross - Media Electronic Reporting Regulation (CROMERR) are met; and (2) completion of subsequent steps specified by EPA's CROMERR, including setting up a subscriber account.

(c) The Subscriber Agreement will continue until terminated by its own terms, until modified by mutual consent or until terminated with 60 days written notice by any party.

(d) Any person who submits a Discharge Monitoring Report or related information under the NetDMR program, and who electronically signs the report or related information, is, by providing an electronic signature, making the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

KEY: water pollution, waste disposal, industrial waste, effluent standards
November 7, 2011
Notice of Continuation October 2, 2007

19-5

R380. Health, Administration.**R380-400. Use of Statistical Sampling and Extrapolation.****R380-400-1. Purpose and Authority.**

This rule governs the methodology for statistical sampling and extrapolation on services covered by Title XIX of the Social Security Act. This rule is authorized by Sections 26-1-5, 26-18-3, and 26-18-605.

R380-400-2. Definitions.

Definitions for the purposes of this rule are as follows:

(1) "Billing Codes" means the current codes that may be billed to the Department and may consist of currently used DRG Codes, CPT Codes, HCPC Codes, or other nationally or locally accepted codes.

(2) "Confidence Interval" means a range of values within which a pattern of error is statistically estimated to lie.

(3) "Confidence Level" means the probability that the value of a parameter falls within a specified range of values.

(4) "Cost Effective" means provides the greatest estimated return of recoveries for overpayments relative to cost considering the available alternatives.

(5) "Diagnostic Related Groups (DRG)" means a group of related medical conditions used to establish reimbursement.

(6) "Dollar Error Rate" means the percentage of the total dollars in the initial sample found to be overpayments to the total dollars in the initial sample.

(7) "Error Types" means overpayments with a similar cause or result. For purposes of this rule, error types are limited to the following:

a. Insufficient or no documentation to support services billed, medical necessity, diagnosis codes, or billing codes.

b. Upcoding.

c. Incorrectly Unbundled services.

d. Incorrect billing code combinations.

(8) "Extrapolation" means an estimate of overpayments in claims that lie beyond the range of observation taken from a universe of records.

(9) "Initial Sample" means a statistically valid random sample of claims from the universe of records from a period not less than three months and not more than eighteen months, used to establish a pattern of error.

(10) "Standard deviation" means a statistical measure of variability that reflects the typical deviation from the mean of a distribution.

(11) "Overpayment" means any amount paid by the Department to a provider which is in excess of the amount allowed either through fraud, waste or abuse; a mistake; the lack of appropriate documentation; billing errors; errors caused either by the department, Reviewing Agency, provider, or a mechanized claims processing system; or payments not allowed under part 1902 of the Social Security Act or in violation of state rules or federal regulations, or Federally published policies.

(12) "Pattern of Error" means a transaction error rate of 10% or more, or a dollar error rate of 5% or more, found in the initial sample.

(13) "Random Sample" means a statistically valid sample drawn from the universe of records by chance; a sample drawn in such a way that every item in the universe of records has an equal and independent chance of being included in the sample.

(14) "Review" means the process in which the Reviewing Agency will select a universe of records to be sampled to determine the appropriateness of a claim. Factors used to assess appropriateness will include medical necessity; appropriate documentation; compliance with department, state and federal program policies, rules, regulations, statutes, and laws; and adherence to contract requirements.

(15) "Reviewing Agency" means any state agency, or other entity acting on behalf of a state agency, authorized by state or federal law to perform reviews, which include samples of claims

filed for a public benefit funded with state or federal funds administered by the Department.

(16) "Sampling Methodology" means the use of the sampling tool, by certified users, developed by the Texas Department of Health and Human Services version 2009, which is hereby incorporated by reference, to select a random sample from a universe of records in order to calculate a dollar error rate for means of extrapolating an overpayment in a universe of records.

(17) "Transaction Error Rate" means the percentage of claims in the sample containing overpayments to the total number of claims in the sample.

(18) "Underpayment" means any amount paid by the Department to a provider which is less than the amount allowed under part 1902 of the Social Security Act or state rules or federal regulations, or federally published policies.

(19) "Universe of Records" means the total number of claims based on a single provider and for services for a single billing code, for dates of service up to 36 months prior to the date of the review.

(20) "Risk Assessment" means the identification of the level of risk of overpayments involved with the universe of records.

R380-400-3. Use of Sampling Methodology.

The Reviewing Agencies' procedures for performing reviews include the use of the sampling methodology.

R380-400-4. Initial Review to Determine Dollar and Transaction Error Rates and Need for Extrapolation.

(1) The Reviewing Agency, based on a review, of the initial sample of claims, will determine whether a pattern of error is present.

(2) Following a review of the initial sample, if a pattern of error was found and the Reviewing Agency, at its sole discretion, concludes it is cost effective, and that the error rate lies within 2.5 standard deviations of the mean, the Reviewing Agency may proceed with extrapolation based on reviewing the results from a random sample. If the error rate of the random sample lies outside 2.5 standard deviations of the mean of the initial sample and the error rate is lower than 2.5 standard deviations from the mean of the initial sample, extrapolation shall not be applied and only those errors discovered will be considered as overpayment.

(3) When extrapolation is applied, sampling methodology will be used to extrapolate the dollar and transaction error rate within the universe of records. The statistical random sample will be of sufficient size to achieve a confidence interval of 95% and a confidence level of plus or minus 5%. The dollar and transaction error rates will be determined based on the results of the statistical sample.

R380-400-5. Initial Sample Size Determination.

(1) Referrals will be processed through any federally-approved fraud and abuse detection software (FADS) tool, when access to such a tool is available.

(2) The Risk Assessment will be considered "moderate" unless the risk assessment is determined to be either "high" or "low."

(3) The Risk Assessment will be considered "high" when any of the following are true:

a. The claims being considered for review are indicated to be aberrant by the use of a FADS tool, when access to such a tool is available, or by the use of any data-mining analysis.

b. The applicable provider type is classified, as of the date of the review, as "high" risk in the CFR for initially categorizing provider risk. See Federal Register/Vol. 76, No. 22/Wednesday, February 2, 2011/Rules and Regulations, pages 5895-5896, which is incorporated by reference.

c. The provider is operating during the first 12 months after signing a provider agreement. If the provider is considered "high" risk during any period of a review, then the provider is considered "high" risk during the entire period of the review.

unless rebutted by the provider.

**KEY: Medicaid
November 22, 2011**

**26-1-5
26-18-3**

(4) The Risk Assessment will be considered "low" when the risk assessment has not been determined to be "high" and when all of the following are true:

a. The applicable provider type is classified, as of the date of the review, as "low" risk in the Federal Register for initially categorizing provider risk.

b. The Reviewing Agency, based on any previous review of the same provider, assumes both the dollar and transaction errors in the initial sample are likely to be below the pattern of error.

c. The Reviewing Agency, based on any previous reviews involving the same provider type, assumes both the dollar and transaction errors in the initial sample are likely to be below the pattern of error.

(5) The statistically valid sample size table for initial samples is as follows in Table 1:

TABLE 1

Risk Assessment	Universe of Records	Universe of Records
	> = 250 Claims	< 250 Claims
High	100	80
Moderate	75	60
Low	50	40

R380-400-6. Overpayments and Underpayments.

The dollar amount of the extrapolated overpayment will be computed by applying the dollar error rate of the statistical random sample to the total dollar amount actually paid the provider as documented from the universe of records. If the review establishes that any claims from the universe of records should have been paid at a lesser amount, then only the difference between the total amount actually paid to the provider and the lesser amount that should have been paid to the provider will be used to calculate the dollar error rate. Any underpayments discovered during a review will offset the final total dollar amount of the overpayment. The final total dollar amount of the overpayment will constitute a debt by the provider to the Department.

R380-400-7. Provider Notification Requirements.

(1) When extrapolation is not applied after the initial sample, notice will be sent to the provider of the following:

- a. The opportunity to request a hearing.
- b. The criteria used to determine the initial sample.
- c. The dollar and transaction error rates.
- d. The size of the sample.
- e. The specific claims sampled.
- f. The reason(s) for the overpayments.
- g. The actual total dollar amount of the total overpayments specifically identified to be recovered.

(2) When a statistical sample has been reviewed and extrapolation has been applied, notice will be sent to the provider of the following:

- a. Items (1) a. through f. above in R380-400-7 as applied to the initial sample and the statistical sample.
- b. Total underpayments noted.
- c. The final total dollar amount of the overpayment based on extrapolation.

R380-400-8. Administrative Hearing Appeals and Burden of Proof.

If a provider appeals an action of the Department or Reviewing Agency regarding a claim based on statistical sampling using this rule's methodology, the action shall be deemed to satisfy the Department's or Reviewing Agency's burden of providing evidence sufficient to establish the claim,

R382. Health, Children's Health Insurance Program.**R382-10. Eligibility.****R382-10-1. Authority.**

(1) This rule is authorized by Title 26, Chapter 40.

(2) The purpose of this rule is to set forth the eligibility requirements for coverage under the Children's Health Insurance Program (CHIP).

R382-10-2. Definitions.

(1) The Department incorporates by reference the definitions found in Sections 2110(b) and (c) of the Compilation of Social Security Laws, in effect January 1, 2011.

(2) The Department adopts the definitions in Section R382-10-2.

(3) "American Indian or Alaska Native" means someone having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

(4) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming eligibility period, based on past and current circumstances and anticipated future changes.

(5) "Children's Health Insurance Program" or "CHIP" means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(6) "Co-payment and co-insurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under CHIP.

(7) "Department" means the Utah Department of Health.

(8) "Due process month" means the month that allows time for the enrollee to return all verification, and for the eligibility agency to determine eligibility and notify the enrollee.

(9) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for CHIP under contract with the Department.

(10) "Employer-sponsored health plan" means health insurance that meets the requirements of Subsection R414-320-2(19).

(11) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(12) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(13) "Income averaging" means a process of using a history of past or current income and averaging it over a determined period of time that is representative of future income.

(14) "Quarterly Premium" means a payment that enrollees must pay every three months to receive coverage under CHIP.

(15) "Review month" means the last month of the eligibility period for an enrollee during which the eligibility agency redetermines an enrollee's eligibility for a new certification period.

(16) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in Rule R414-320.

(17) "Verification" means the proof needed to decide if a child meets the eligibility criteria to be enrolled in the program. Verification may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of a child.

R382-10-3. Actions on Behalf of a Minor.

(1) A parent, legal guardian or an adult who assumes responsibility for the care or supervision of a child who is under 19 years of age may apply for CHIP enrollment, provide information required by this rule, or otherwise act on behalf of

a child in all respects under the statutes and rules governing the CHIP program.

(2) If the child's parent, responsible adult, or legal guardian wants to designate an authorized representative, he must so indicate in writing to the eligibility agency.

(3) A child who is under 19 years of age and is independent of a parent or legal guardian may assume these responsibilities. The eligibility agency may not require a child who is independent to have an authorized representative if the child can act on his own behalf; however, the eligibility agency may designate an authorized representative if the child needs a representative but cannot make a choice either in writing or orally in the presence of a witness.

(4) Where the statutes or rules governing the CHIP program require a child to take an action, the parent, legal guardian, designated representative or adult who assumes responsibility for the care or supervision of the child is responsible to take the action on behalf of the child. If the parent or adult who assumes responsibility for the care or supervision of the child fails to take an action, the failure is attributable as the child's failure to take the action.

(5) The eligibility agency shall consider notice to the parent, legal guardian, designated representative, or adult who assumes responsibility for the care or supervision of a child to be notice to the child. The eligibility agency shall send notice to a child who assumes responsibility for himself.

R382-10-4. Applicant and Enrollee Rights and Responsibilities.

(1) A parent or an adult who assumes responsibility for the care or supervision of a child may apply or reapply for CHIP benefits on behalf of a child. A child who is independent may apply on his own behalf.

(2) If a person needs assistance to apply, the person may request assistance from a friend, family member, the eligibility agency, or outreach staff.

(3) The applicant must provide verification requested by the eligibility agency to establish the eligibility of the child, including information about the parents.

(4) Anyone may look at the eligibility policy manuals located on-line or at any eligibility agency office, except at outreach or telephone locations.

(5) If the eligibility agency determines that the child is not eligible for CHIP, the parent or legal guardian who arranges for medical services on behalf of the child must repay the Department for the cost of services.

(6) The parent or child, or other responsible person acting on behalf of a child must report certain changes to the eligibility agency within ten calendar days of the day the change becomes known. Some examples of reportable changes include:

(a) An enrollee begins to receive coverage or to have access to coverage under a group health plan or other health insurance coverage.

(b) An enrollee leaves the household or dies.

(c) An enrollee or the household moves out of state.

(d) Change of address of an enrollee or the household.

(e) An enrollee enters a public institution or an institution for mental diseases.

(7) An applicant and enrollee may review the information that the eligibility agency uses to determine eligibility.

(8) An applicant and enrollee have the right to be notified about actions that the agency takes to determine their eligibility or continued eligibility, the reason the action was taken, and the right to request an agency conference or agency action as defined in Sections R414-301-5 and R414-301-6.

(9) An enrollee in CHIP must pay quarterly premiums, co-payments, or co-insurance amounts to providers for medical services that the enrollee receives under CHIP.

R382-10-5. Verification and Information Exchange.

(1) The provisions of Section R414-308-4 apply to applicants and enrollees of CHIP.

(2) The Department and the eligibility agency shall safeguard applicant and enrollee information in accordance with Section R414-301-4.

(3) The Department or the eligibility agency may release information concerning applicants and enrollees and their households to other state and federal agencies to determine eligibility for other public assistance programs.

(4) The Department and the eligibility agency shall release information to the Title IV-D agency and Social Security Administration to determine benefits.

(5) The Department and the eligibility agency may verify information by exchanging information with other public agencies as described in 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960.

R382-10-6. Citizenship and Alienage.

(1) To be eligible to enroll in CHIP, a child must be a citizen or national of the United States or a qualified alien.

(2) The provisions of Section R414-302-1 regarding citizenship and alien status requirements apply to applicants and enrollees of CHIP.

R382-10-7. Utah Residence.

(1) A child must be a Utah resident to be eligible to enroll in the program.

(2) An American Indian or Alaska Native child in a boarding school is a resident of the state where his parents reside. A child in a school for the deaf and blind is a resident of the state where his parents reside.

(3) A child is a resident of the state if he is temporarily absent from Utah due to employment, schooling, vacation, medical treatment, or military service.

(4) The child need not reside in a home with a permanent location or fixed address.

R382-10-8. Residents of Institutions.

(1) Residents of institutions described in Section 2110(b)(2)(A) of the Compilation of Social Security Laws are not eligible for the program.

(2) A child under the age of 18 is not a resident of an institution if he is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

R382-10-9. Social Security Numbers.

(1) The eligibility agency may request an applicant to provide the correct Social Security Number (SSN) or proof of application for a SSN for each household member at the time of application for the program. The eligibility agency shall use the SSN in accordance with the requirements of 42 CFR 457.340.

(2) The eligibility agency shall require that each applicant claiming to be a U.S. citizen or national provide their SSN for the purpose of verifying citizenship through the Social Security Administration in accordance with Section 2105(c)(9) of the Compilation of the Social Security Laws.

(3) The eligibility agency may request the SSN of a lawful permanent resident alien applicant, but may not deny eligibility for failure to provide a SSN.

R382-10-10. Creditable Health Coverage.

(1) To be eligible for enrollment in the program, a child must meet the requirements of Sections 2110(b)(1)(C) and (2)(B) of the Compilation of Social Security Laws.

(2) A child who is covered under a group health plan or other health insurance that provides coverage in Utah, including

coverage under a parent's or legal guardian's employer, as defined in 29 CFR 2590.701-4, 2010 ed., is not eligible for CHIP assistance.

(3) A child who is covered under health insurance that does not provide coverage in the State of Utah is eligible for enrollment.

(4) A child who is covered under a group health plan or other health coverage but reaches the lifetime maximum coverage under that plan is eligible for enrollment.

(5) A child who has access to health insurance coverage, where the cost to enroll the child in the least expensive plan offered by the employer is less than 5% of the household's gross annual income, is not eligible for CHIP. The child is considered to have access to coverage even when the employer only offers coverage during an open enrollment period, and the child has had at least one chance to enroll.

(6) An eligible child who has access to an employer-sponsored health plan may choose to enroll in either CHIP or the employer-sponsored health plan.

(a) If the child chooses to enroll in the employer-sponsored health plan, the child may enroll in and receive premium reimbursement through the UPP program if enrollment is not closed. The health plan must meet the following conditions:

(i) The cost of the least expensive plan equals or exceeds 5% of the household's gross annual income; and

(ii) The plan meets the requirements of Subsection R414-320-2(19).

(b) The cost of coverage includes a deductible if the employer plan is one that must be met before it will pay any claims. For a dependent child, if the employee must enroll to enroll the dependent child, the cost of coverage will include the cost to enroll the employee and the dependent child.

(c) If the child enrolls in the employer-sponsored health plan or COBRA coverage and UPP, but the plan does not include dental benefits, the child may receive dental-only benefits through CHIP.

(d) If the applicant enrolls the child in the employer-sponsored health plan or COBRA coverage and the plan includes dental, the applicant may choose to enroll the child in the dental plan and receive an additional reimbursement of up to \$20 per month, or may choose not to enroll the child in the dental plan and receive dental-only benefits through CHIP.

(e) A child who chooses to enroll in the employer-sponsored health plan or COBRA coverage may switch to CHIP coverage at any time without a 90-day ineligibility period for voluntarily discontinuing health insurance. Eligibility continues through the current certification period without a new eligibility determination.

(7) The eligibility agency shall deny eligibility if the applicant or a custodial parent voluntarily terminates health insurance that provides coverage in Utah within the 90 days before the application date for enrollment under CHIP.

(a) If the 90-day ineligibility period for CHIP ends in the month of application, or by the end of the month that follows, the eligibility agency shall determine the applicant's eligibility.

(b) If eligible, enrollment in CHIP begins the day after the 90-day ineligibility period ends.

(c) If the 90-day ineligibility period does not end by the end of the month that follows the application month, the eligibility agency shall deny the application.

(8) If an applicant or an applicant's parent voluntarily terminates coverage under a Consolidated Omnibus Budget Reconciliation Act (COBRA) plan or under the Health Insurance Pool (HIP), or if an applicant is involuntarily terminated from an employer's plan, the applicant is eligible for CHIP without a 90-day ineligibility period.

(9) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from

enrolling in the program.

(10) An applicant must report at application and review whether any of the children in the household for whom enrollment is being requested has access to or is covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(11) The eligibility agency shall deny an application or review if the enrollee fails to respond to questions about health insurance coverage for children that the household seeks to enroll or renew in the program.

(12) A recipient must report when a child enrolls in health insurance coverage within ten calendar days of the date of enrollment or the date that benefits are effective, whichever is later. The eligibility agency shall end eligibility after the month in which the agency sends proper notice of the closure. A child may switch to UPP in accordance with Subsection R382-10-10(6) if the change is reported timely. Failure to make a timely report may result in overpayment.

R382-10-11. Household Composition.

(1) The following individuals who reside together must be included in the household for purposes of determining the household size, whether or not the individual is eligible to enroll in the program:

(a) At least one child who meets the CHIP age requirement and who does not have access to and is not covered by a group health plan or other health insurance;

(b) Siblings, half-siblings, adopted siblings, and step-siblings of the eligible child if they are under 19 years of age. They may also be eligible for CHIP if they meet the CHIP eligibility criteria;

(c) Parents and stepparents of any child who is included in the household size;

(d) Children of any child included in the household size;

(e) The spouse of any child who is included in the household size;

(f) Unborn children of anyone included in the household size; and

(g) Children of a former spouse when a divorce is finalized.

(2) Any individual described in Subsection R382-10-11(1) who is temporarily absent solely by reason of employment, school, training, military service, or medical treatment, or who will return home to live within 30 days from the date of application, is part of the household.

(3) Any household member described in Subsection R382-10-11 (1) who is not a citizen, a national, or a qualified alien is included in the household size. The eligibility agency counts the income of these individuals the same way that it counts the income for household members who are citizens, nationals, or qualified aliens.

R382-10-12. Age Requirement.

(1) A child must be under 19 years of age sometime during the application month to enroll in the program. An otherwise eligible child who turns 19 years of age during the application month may receive CHIP for the application month and the four-day grace period.

(2) The month in which a child turns 19 years of age is the last month of eligibility for CHIP enrollment.

R382-10-13. Income Provisions.

(1) To be eligible to enroll in the Children's Health Insurance Program, gross household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of equal size.

(a) All gross income, earned and unearned, received by the parents and stepparents of any child who is included in the household size, counts toward household income, unless this

section specifically describes a different treatment of the income.

(b) When a CHIP household is scheduled for a renewal of eligibility, the household may give consent to the eligibility agency to access the household's most recent adjusted gross income from the Utah State Tax Commission. Only CHIP eligible households can elect this option. When the household elects this option, the eligibility agency shall use the adjusted gross income from the most recent tax record as the countable income of the household to determine eligibility for CHIP.

(2) The Department may not count as income any payments from sources that federal law specifically prohibits from being counted as income to determine eligibility for federally-funded programs.

(3) The Department may count any income in a trust that is available to, or is received by any of the following household members:

(a) a parent or spouse of a parent;

(b) an eligible child who is the head of the household;

(c) a spouse of an eligible child if the spouse is 19 years of age or older; or

(d) a spouse who is under 19 years old and is the head of the household.

(4) Payments received from the Family Employment Program, General Assistance, or refugee cash assistance is countable income.

(5) Rental income is countable income. The following expenses can be deducted:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(6) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. An applicant or enrollee who disputes household ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to the household. Funds that are successfully disputed are not countable income.

(7) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(8) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the eligibility period.

(9) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service or did not work to receive is not counted as income.

(10) SSI and State Supplemental Payments are countable income.

(11) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(12) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(13) Child Care Assistance under Title XX is not countable income.

(14) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the

Department are not countable income.

(15) Needs-based Veteran's pensions are counted as income. The Department may only count the portion of a Veteran's Administration benefit to which the individual is legally entitled.

(16) The Department may not count the income of a child under the age of 19 if the child is not the head of a household.

(17) The Department shall count the income of the spouse of an eligible child if:

(a) the spouse is 19 years of age or older; or

(b) the spouse is under 19 years old and is the head of the household.

(18) Educational income such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(19) Reimbursements for expenses incurred by an individual are not countable income.

(20) Any payments made to an individual because of his status as a victim of Nazi persecution as defined in Pub. L. No. 103 286 are not countable income, including payments made by the Federal Republic of Germany, Austrian Social Insurance payments, and Netherlands WUV payments.

(21) Victim's Compensation payments as defined in Pub. L. No. 101 508 are not countable income.

(22) Disaster relief funds received if a catastrophe has been declared a major disaster by the President of the United States as defined in Pub. L. No. 103 286 are not countable income.

(23) Income of an alien's sponsor or the sponsor's spouse is not countable income.

(24) If the household expects to receive less than \$500 per year in taxable interest and dividend income, then they are not countable income.

(25) Income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census is not countable income.

(26) The additional \$25 a week payment to unemployment insurance recipients provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, which an individual may receive from March 2009 through June 2010 is not countable income.

(27) The one-time economic recovery payments received by individuals receiving social security, supplemental security income, railroad retirement, or veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, and refunds received under the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, for certain government retirees are not countable income.

(28) The Consolidated Omnibus Reconciliation Act (COBRA) premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, is not countable income.

(29) The making work pay credit provided under Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, is not countable income.

(30) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resolution Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(31) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives between January 1, 2010, and December 31, 2012, pursuant to the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010, Pub. L. No. 111 312, 124, Stat 3296.

R382-10-14. Budgeting.

(1) The Department shall count the gross income for parents and stepparents of any child included in the household size to determine a child's eligibility, unless the income is excluded under this rule. The Department may only deduct required expenses from the gross income to make an income available to the individual. No other deductions are allowed.

(2) The Department shall determine monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department shall multiply the weekly amount by 4.3 to obtain a monthly amount. The Department shall multiply income paid bi-weekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine a child's eligibility and cost-sharing requirements prospectively for the upcoming eligibility period at the time of application and at each renewal for continuing eligibility. The Department shall determine prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming eligibility period. The Department shall prorate income that is received less often than monthly over the eligibility period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) A household with only CHIP coverage may elect upon renewal to have the Department use the most recent adjusted gross income (AGI) from the Utah State Tax Commission.

(a) The eligibility agency shall then use AGI instead of requesting verification of current income. If the use of AGI should result in an adverse change, the household may provide verification of current income.

(5) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the eligibility period, or an annual amount that is prorated over the eligibility period. Different methods may be used for different types of income received in the same household.

(6) The Department shall determine farm and self-employment income by using the individual's recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department may request income information from a recent time period during which the individual had farm or self-employment income. The Department shall deduct 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department may exclude more than 40% if the individual can demonstrate that the actual expenses are greater than 40%. The Department shall deduct the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(7) The Department may annualize income for any household and in particular for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

R382-10-15. Assets.

An asset test is not required for CHIP eligibility.

R382-10-16. Application and Eligibility Reviews.

(1) The applicant must complete and sign a written application or an on-line application to enroll in the CHIP program. The application process includes gathering information and verification to determine the child's eligibility for enrollment in the program.

(2) The eligibility agency may accept any Department-approved application form for medical assistance programs offered by the state as an application for CHIP enrollment.

(3) Individuals may apply for enrollment in person, through the mail, by fax, or online.

(4) The provisions of Section R414-308-3 apply to applicants for CHIP.

(5) The eligibility agency may interview applicants, the applicant's parents, and any adult who assumes responsibility for the care or supervision of the child to assist in determining eligibility.

(6) The eligibility agency shall complete a periodic review of an enrollee's eligibility for CHIP medical assistance at least once every 12 months. The periodic review is a review of eligibility factors that may be subject to change. The eligibility agency shall use available, reliable sources to gather necessary information to complete the review.

(7) The eligibility agency may ask the enrollee to respond to a request to complete the review process. If the enrollee fails to respond to the request during the review month, the agency shall end the enrollee's eligibility after the review month. If the enrollee responds to the review or reapplies in the month after the review month, the eligibility agency shall treat the response as a new application. The application processing period then applies for this new request for coverage.

(a) The eligibility agency may ask the enrollee for verification to redetermine eligibility.

(b) Upon receiving verification, the eligibility agency shall redetermine eligibility and notify the enrollee. If the enrollee fails to return verification within the application processing period or if the enrollee is determined ineligible, the eligibility agency shall send a denial notice to the enrollee.

(c) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(d) If the eligibility agency closes the case for one or more calendar months, the enrollee must reapply for CHIP.

(e) If the enrollee becomes eligible, the new certification period begins the first day of the month after the closure date.

(8) If the enrollee responds to the review request during the review month, the eligibility agency may request verification from the enrollee.

(a) The eligibility agency shall send a written request for the necessary verification.

(b) The enrollee has at least ten calendar days to provide the requested verification to the eligibility agency.

(c) If the enrollee provides all verification by the due date in the review month, the eligibility agency shall determine eligibility and notify the enrollee of its decision.

(i) If the eligibility agency sends proper notice of an adverse decision during the review month, the agency shall change eligibility for the month that follows.

(ii) If the eligibility agency does not send proper notice of an adverse change for the month that follows, the agency shall extend eligibility to that month. The eligibility agency shall send proper notice of an adverse decision that becomes effective after the due process month and the enrollee does not owe a premium for the due process month.

(9) If the enrollee responds to the review in the review month and the verification due date is in the month that follows, the eligibility agency shall extend eligibility to the month that follows. The enrollee must provide all verification by the verification due date.

(a) If the enrollee provides all requested verification by the verification due date, the eligibility agency shall determine eligibility and send proper notice of the decision.

(b) If the enrollee does not provide all requested verification by the verification due date, the eligibility agency shall end eligibility after the month in which the eligibility agency sends proper notice of the closure.

(c) If the enrollee returns all verification after the verification due date and before the effective closure date the eligibility agency shall treat the date that it receives all verification as a new application date. The eligibility agency shall determine eligibility and send a notice to the enrollee.

(d) The eligibility agency may not continue eligibility while it determines eligibility. The new certification date for the application is the day after the effective closure date if the enrollee is found eligible.

(10) The eligibility agency shall provide ten-day notice of case closure if the enrollee is determined to be ineligible or if the enrollee fails to provide verification by the verification due date.

(11) If eligibility for CHIP enrollment ends, the eligibility agency shall review the case for eligibility under any other medical assistance program without requiring a new application. The eligibility agency may request additional verification from the household if there is insufficient information to make a determination.

R382-10-17. Eligibility Decisions.

(1) The eligibility agency shall determine eligibility for CHIP within 30 days of the date of application. If the eligibility agency cannot make a decision in 30 days because the applicant fails to take a required action and requests additional time to complete the application process, or if circumstances beyond the eligibility agency's control delay the eligibility decision, the eligibility agency shall document the reason for the delay in the case record.

(2) The eligibility agency may not use the time standard as a waiting period before determining eligibility, or as a reason for denying eligibility when the agency does not determine eligibility within that time.

(3) The eligibility agency shall complete a determination of eligibility or ineligibility 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 died; or

(c) the applicant cannot be located or does not respond to requests for information within the 30-day application period.

(4) The eligibility agency shall redetermine eligibility at least every 12 months.

(5) At application and review, the eligibility agency shall determine if any child applying for CHIP enrollment is eligible for coverage under Medicaid.

(a) The enrollee must provide any additional verification needed to determine if a child is eligible for Medicaid or the eligibility agency shall deny the application or review.

(b) A child who is eligible for Medicaid coverage is not eligible for CHIP.

(c) An eligible child who must meet a spenddown to receive Medicaid and chooses not to meet the spenddown may enroll in CHIP.

(d) If the use of the adjusted gross income (AGI) at a review causes the household to appear eligible for Medicaid, the eligibility agency shall request verification of current income and other factors needed to determine Medicaid eligibility. The eligibility agency cannot renew CHIP coverage if the household fails to provide requested verification.

(e) If the AGI causes the household to qualify for a more expensive CHIP plan, the household may choose to verify current income. If current income verification shows the family is eligible for a lower cost plan, the eligibility agency shall change the household's eligibility to the lower cost plan effective the month after verification is provided.

(6) If an enrollee asks for a new income determination during the CHIP certification period and the eligibility agency finds the child is eligible for Medicaid, the agency shall end

CHIP coverage and enroll the child in Medicaid.

R382-10-18. Effective Date of Enrollment and Renewal.

(1) Subject to the limitations in Sections R414-306-6 and R382-10-10, the effective date of CHIP enrollment is the first day of the application month.

(2) If the eligibility agency receives an application during the first four days of a month, the agency shall allow a grace enrollment period that begins no earlier than four days before the date that the agency receives a completed and signed application. During the grace enrollment period, the individual must receive medical services, meet eligibility criteria, and have an emergency situation that prevents the individual from applying. The Department may not pay for any services that the individual receives before the effective enrollment date.

(3) For a family who enrolls a child in CHIP and who adds a newborn or adopted child, the effective date of enrollment is the date of birth or placement for adoption if the family requests the coverage within 30 days of the birth or adoption. If the family makes the request more than 30 days after the birth or adoption, enrollment in CHIP will be effective beginning the first day of the month in which the date of report occurs, subject to the limitations in Sections R414-306-6, R382-10-10 and the provisions of Subsection R382-10-18(2).

(4) The effective date of enrollment for a new certification period after the review month is the first day of the month after the review month, if the review process is completed by the end of the review month. If a due process month is approved, the effective date of enrollment for a renewal is the first day of the month after the due process month. The enrollee must complete the review process and continue to be eligible to be reenrolled in CHIP at review.

R382-10-19. Enrollment Period.

(1) Subject to the provisions in Subsection R382-10-19(2), a child eligible for CHIP enrollment receives 12 months of coverage that begins with the effective month of enrollment. If the eligibility agency allows a grace enrollment period that extends into the month before the application month, the days of the grace enrollment period do not count as a month in the 12-month enrollment period.

(2) CHIP coverage may end before the end of the 12-month certification period if the child:

- (a) turns 19 years of age before the end of the 12-month enrollment period;
- (b) moves out of the state;
- (c) becomes eligible for Medicaid;
- (d) begins to be covered under a group health plan or other health insurance coverage;
- (e) enters a public institution or an institution for mental diseases; or
- (f) does not pay the quarterly premium.

(3) The month that a child turns 19 years of age is the last month that the child may be eligible for CHIP.

(4) Certain changes affect an enrollee's eligibility during the 12-month certification period.

(a) If an enrollee gains access to health insurance under an employer-sponsored plan or COBRA coverage, the enrollee may switch to UPP. The enrollee must report the health insurance within ten calendar days of enrolling, or within ten calendar days of when coverage begins, whichever is later. The employer-sponsored plan must meet UPP criteria.

(b) If income decreases, the enrollee may report the income and request a redetermination. If the change makes the enrollee eligible for Medicaid, the eligibility agency shall end CHIP eligibility and enroll the child in Medicaid.

(c) If the decrease in income causes the child to be eligible for a lower premium, the change in eligibility becomes effective the month after the eligibility agency receives verification of the

change.

(d) If income increases during the certification period, eligibility remains unchanged through the end of the certification period.

(5) Failure to make a timely report of a reportable change may result in an overpayment of benefits.

R382-10-20. Quarterly Premiums.

(1) Each family with children enrolled in the CHIP program must pay a quarterly premium based on the countable income of the family during the first month of the quarter.

(a) A family whose countable income is equal to or less than 100% of the federal poverty level or who are American Indian or Alaska Native pays no premium.

(b) A family with countable income greater than 100% and up to 150% of the federal poverty level must pay a quarterly premium of \$30.

(c) A family with countable income greater than 150% and up to 200% of the federal poverty level must pay a quarterly premium of \$75.

(2) The eligibility agency shall end CHIP coverage and assess a \$15 late fee to a family who does not pay its quarterly premium by the premium due date. The agency may reinstate coverage when any of the following events occur:

(a) The family pays the premium and the late fee by the last day of the month immediately following the termination;

(b) The family's countable income decreased to below 100% of the federal poverty level prior to the first month of the quarter.

(c) The family's countable income decreases prior to the first month of the quarter and the family owes a lower premium amount. The new premium must be paid within 30 days.

(3) A family whose CHIP coverage ends and who reapplies within one year for coverage must pay any outstanding premiums and late fees before the children can be re-enrolled.

(4) The eligibility agency may not charge the household a premium during a due process month associated with the periodic eligibility review.

(5) The eligibility agency shall assess premiums that are payable each quarter for each month of eligibility.

R382-10-21. Termination and Notice.

(1) The eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or periodic eligibility review.

(2) The eligibility agency shall notify an enrollee in writing ten calendar days before taking a proposed action that adversely affects the enrollee's eligibility.

(3) Notices under Section R382-10-21 shall provide the following information:

- (a) the action to be taken;
- (b) the reason for the action;
- (c) the regulations or policy that support the action when the action is a denial, closure or an adverse change to eligibility;
- (d) the applicant's or enrollee's right to a hearing;
- (e) how an applicant or enrollee may request a hearing;

and

- (f) the applicant's or enrollee's right to represent himself, use legal counsel, a friend, relative, or other spokesperson.

(4) The eligibility agency need not give ten-day notice of termination if:

- (a) the child is deceased;
- (b) the child moves out-of-state and is not expected to return;

(c) the child enters a public institution or an institution for mental diseases; or

(d) the child's whereabouts are unknown and the post office has returned mail to indicate that there is no forwarding address.

R382-10-22. Case Closure or Withdrawal.

The eligibility agency shall end a child's enrollment upon enrollee request or upon discovery that the child is no longer eligible. An applicant may withdraw an application for CHIP benefits any time before the eligibility agency makes a decision on the application.

KEY: children's health benefits**December 1, 2011****Notice of Continuation May 19, 2008****26-1-5****26-40**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-1. Utah Medicaid Program.****R414-1-1. Introduction and Authority.**

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

- (1) "Act" means the federal Social Security Act.
- (2) "Applicant" means any person who requests assistance under the medical programs available through the Division.
- (3) "Categorically needy" means aged, blind or disabled individuals or families and children:
 - (a) who are otherwise eligible for Medicaid; and
 - (i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or
 - (ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or
 - (iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or
 - (iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or
 - (v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or
 - (vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or
 - (vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or
 - (viii) who is a child for whom an adoption assistance agreement with the state is in effect.
- (b) whose categorical eligibility is protected by statute.
- (4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.
- (5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.
- (6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.
- (7) "Department" means the Department of Health.
- (8) "Director" means the director of the Division.
- (9) "Division" means the Division of Health Care Financing within the Department.
- (10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:
 - (a) placing the patient's health in serious jeopardy;
 - (b) serious impairment to bodily functions;
 - (c) serious dysfunction of any bodily organ or part; or
 - (d) death.
- (11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of

diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson Criteria for Inpatient Reviews, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(22) "Provider" means any person, individual or corporation, institution or organization, qualified to perform services available under the Medicaid program and who has entered into a written contract with the Medicaid program.

(23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

(25) "Utilization review" means the Department provides for review and evaluation of the utilization of inpatient Medicaid services provided in acute care general hospitals to patients entitled to benefits under the Medicaid plan.

(26) "Utilization Control" means the Department has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services, safeguards against excess payments, and assesses the quality of services available under the plan. The program meets the requirements of 42 CFR, Part 456.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. Incorporations by Reference.

(1) The Department incorporates by reference the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program effective October 1, 2011. It also incorporates by reference State Plan Amendments that become effective no later than October 1, 2011.

(2) The Department incorporates by reference the Medical Supplies Manual and List described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, with its referenced attachment, Medical Supplies List, effective October 1, 2011, as applied in Rule R414-70.

(3) The Department incorporates by reference the Hospital Services Provider Manual, with its attachments, effective October 1, 2011.

(4) The Department incorporates by reference both the definitions and the attachment for the Private Duty Nursing Acuity Grid found in the Home Health Agencies Provider Manual, effective October 1, 2011.

(5) The Department incorporates by reference the Speech-Language Services Provider Manual, effective October 1, 2011.

(6) The Department incorporates by reference the Audiology Services Provider Manual, effective October 1, 2011.

(7) The Department incorporates by reference the Hospice Care Provider Manual, effective October 1, 2011.

(8) The Department incorporates by reference the Long Term Care Services in Nursing Facilities Provider Manual, with its attachments, effective October 1, 2011.

(9) The Department incorporates by reference the Personal Care Provider Manual, with its attachments, effective October 1, 2011.

(10) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals 65 or Older Provider Manual, effective October 1, 2011.

(11) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Provider Manual, effective October 1, 2011.

(12) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Developmental Disabilities and Mental Retardation Provider Manual, effective October 1, 2011.

(13) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Provider Manual, effective October 1, 2011.

(14) The Department incorporates by reference the Utah Home and Community-Based Waiver Services New Choices Waiver Provider Manual, effective October 1, 2011.

(15) The Department incorporates by reference the Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals (HCBWS) Provider Manual, effective October 1, 2011.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services;

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency;

and

(iii) medical supplies, equipment, and appliances suitable for use in the home;

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care

recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

- (i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;
 - (ii) transportation services;
 - (iii) skilled nursing facility services for patients under 21 years of age;
 - (iv) emergency hospital services; and
 - (v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.
- (dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:
- (i) it is medically necessary and more appropriate than any Medicaid covered service; and
 - (ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

(1) Certain qualified aliens described in Title IV of Pub. L. No. 104 193, 110 Stat. 2105, may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services as described in Section 1903(v) of the Social Security Act.

(2) An alien who is prohibited from receiving non-emergency services will have "Emergency Services Only Program" printed on his Medical Identification Card, as noted in Rule R414-3A.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Department has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR, Part 431, Subpart E.

R414-1-12. Utilization Review.

(1) The Department conducts hospital utilization review as outlined in the Superior System Waiver in effect at the time service was rendered.

(2) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation.

(3) The standards in the InterQual Criteria shall not apply to services in which a determination has been made to utilize criteria customized by the Department or that are:

- (a) excluded as a Medicaid benefit by rule or contract;

(b) provided in an intensive physical rehabilitation center as described in Rule R414-2B; or

(c) organ transplant services as described in Rule R414-10A.

In these exceptions, or where InterQual is silent, the Department shall approve or deny services based upon appropriate administrative rules or its own criteria as incorporated in the Medicaid provider manuals.

R414-1-13. Provider and Client Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

(1) In order to control utilization, and in accordance with 42 CFR 440, Subpart B, services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program are not a covered benefit. In addition, the Department will also use prior authorization for utilization control. All necessary and appropriate medical record documentation for prior approvals must be submitted with the request. If the provider has not obtained prior authorization for a service as outlined in the Medicaid provider manual, the Department shall deny coverage of the service.

(2) The Department may request records that support provider claims for payment under programs funded through the Department. These requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the Department will close the record and will evaluate the payment based on the records available.

(3)(a) If the Department pays for a service which is later determined not to be a benefit of the Utah Medicaid program or does not comply with state or federal policies and regulations, the provider shall refund the payment upon written request from the Department.

(b) If services cannot be properly verified or when a provider refuses to provide or grant access to records, the provider shall refund to the Department all funds for services rendered. Otherwise, the Department may deduct an equal amount from future reimbursements.

(c) Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in Rule R410-14.

(d) A provider shall reimburse the Department for all overpayments regardless of the reason for the overpayment.

R414-1-15. Medicaid Fraud.

The Department has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63G, Chapter 2, and Section 26-1-17.5,

impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the 90 days preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. Billing Codes.

In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements as found in 45 CFR Part 162.

R414-1-26. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

R414-1-27. Determination of Death.

(1) In accordance with the provisions of Section 26-34-2, the fiduciary responsibility for medically necessary care on behalf of the client ceases upon the determination of death.

(2) Reimbursement for the determination of death by acceptable medical standards must be in accordance with Medicaid coverage and billing policies that are in place on the date the physician renders services.

R414-1-28. Cost Sharing.

(1) An enrollee is responsible to pay the:

(a) hospital a \$220 coinsurance per year;
(b) hospital a \$6 copayment for each non-emergency use of hospital emergency services;

(c) provider a \$3 copayment for outpatient office visits for physician and physician-related mental health services except that no copayment is due for preventive services, immunizations, health education, family planning, and related pharmacy costs; and

(d) pharmacy a \$3 copayment per prescription up to a maximum of \$15 per month;

(2) The out-of-pocket maximum payment for copayments for physician and outpatient services is \$100 per year.

(3) The provider shall collect the copayment amount from the Medicaid client. Medicaid shall deduct that amount from the reimbursement it pays to the provider.

(4) Medicaid clients in the following categories are exempt from copayment and coinsurance requirements;

(a) children;
(b) pregnant women;

(c) institutionalized individuals;
(d) American Indians; and
(e) individuals whose total gross income, before exclusions and deductions, is below the temporary assistance to needy families (TANF) standard payment allowance. These individuals must indicate their income status to their eligibility caseworker on a monthly basis to maintain their exemption from the copayment requirements.

R414-1-29. Provider-Preventable Conditions.

The following applies to inpatient hospital services provided to Medicaid recipients and dual eligible beneficiaries:

(1) In accordance with 76 FR 32837, which is incorporated by reference, Medicaid will not reimburse providers or contractors for provider-preventable conditions as defined in this CMS rule. Providers and contractors are prohibited from submitting claims for payment of these conditions except as permitted in 76 FR 32837 when the provider-preventable condition existed prior to the initiation of treatment by the provider.

(2) Medicaid providers who treat Medicaid eligible patients must report all provider-preventable conditions whether or not reimbursement for the services is sought. Medicaid providers must complete the Provider-Preventable Conditions Report as found at <http://health.utah.gov/medicaid/index.html>. Completed reports must be mailed to one of the following addresses within 30 calendar days of the event, as appropriate:

(a) Via U.S. Post Office: Utah Department of Health; DHCF, BCRP; Attn: Provider-Preventable Conditions Reporting; PO Box 143102; Salt Lake City, UT 84114-3102; or

(b) Via UPS or FedEx: Utah Department of Health; DHCF, BCRP; Attn: Provider-Preventable Conditions Reporting; 288 North 1460 West; Salt Lake City, UT 84116-3231.

KEY: Medicaid

November 15, 2011

Notice of Continuation April 16, 2007

26-1-5

26-18-3

26-34-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-3A. Outpatient Hospital Services.****R414-3A-1. Introduction and Authority.**

This rule defines the scope of outpatient hospital services available to Medicaid clients for the treatment of disorders other than mental disease. This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.20.

R414-3A-2. Definitions.

(1) "Allowed charges" mean actual charges submitted by the provider less any charges for non-covered services.

(2) "CHEC" means Child Health Evaluation and Care and is the Utah specific term for the federally mandated program of Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) for children under the age of 21.

(3) "Clinical Laboratory Improvements Act" (CLIA) is the Centers for Medicare and Medicaid Services (CMS) program that limits reimbursement for laboratory services based on the equipment and capability of the physician or laboratory to provide an appropriate, competent level of laboratory service.

(4) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment.

(5) "Other Practitioner of the Healing Arts" means a doctor of dental surgery or a podiatrist.

(6) "Outpatient" is defined in 42 CFR 440.20.

(7) "Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

R414-3A-3. Client Eligibility Requirements.

Outpatient hospital services are available to categorically and medically needy individuals who are under the care of a physician or other practitioner of the healing arts.

R414-3A-4. Program Access Requirements.

(1) The Department reimburses for outpatient hospital services and supplies only if they are:

(a) furnished in a hospital;

(b) provided by hospital personnel by or under the direction of a physician or dentist;

(c) provided as evaluation and management of illness or injury under hospital medical staff supervision and according to the written orders of a physician or dentist.

(2) All outpatient hospital services are subject to review by the Department.

R414-3A-5. Prepaid Mental Health Plan.

A Medicaid client residing in a county for which a prepaid mental health contractor provides mental health services must obtain authorization for outpatient psychiatric services from the prepaid mental health contractor for the client's county of residence.

R414-3A-6. Services.

(1) Services appropriate in the outpatient hospital setting for adequate diagnosis and treatment of a client's illness are limited to less than 24 hours and encompass medically necessary diagnostic, therapeutic, rehabilitative, or palliative medical services and supplies ordered by a physician or other practitioner of the healing arts.

(2) Outpatient hospital services include:

(a) the service of nurses or other personnel necessary to complete the service and provide patient care during the provision of service;

(b) the use of hospital facilities, equipment, and supplies; and

(c) the technical portion of clinical laboratory and radiology services.

(3) Laboratory services are limited to tests identified by the Centers for Medicare and Medicaid Services (CMS) where the individual laboratory is CLIA certified to provide, bill and receive Medicaid payment.

(4) Cosmetic, reconstructive, or plastic surgery is limited to:

(a) correction of a congenital anomaly;

(b) restoration of body form following an injury; or

(c) revision of severe disfiguring and extensive scars resulting from neoplastic surgery.

(5) Abortion procedures are limited to procedures certified as medically necessary, cleared by review of the medical record, approved by division consultants, and determined to meet the requirements of Section 26-18-4 and 42 CFR 441.203.

(6) Sterilization procedures are limited to those that meet the requirements of 42 CFR 441, Subpart F.

(7) Nonphysician psychosocial counseling services are limited to evaluations and may be provided only through a prepaid mental health plan by a licensed clinical psychologist for:

(a) mentally retarded persons;

(b) cases identified through a CHEC/EPSDT screening; or

(c) victims of sexual abuse.

(8) Outpatient individualized observation of a mental health patient to prevent the patient from harming himself or others is not covered.

(9) Sleep studies are available only in a sleep disorder center accredited by the American Academy of Sleep Medicine.

(10) Hyperbaric Oxygen Therapy is limited to service in a facility in which the hyperbaric unit is accredited by the Undersea and Hyperbaric Medical Society.

(11) Take home supplies and durable medical equipment are not reimbursable.

(12) Prescriptions are not a covered Medicaid service for a client with the designation "Emergency Services Only Program" printed on the Medicaid Identification Card.

R414-3A-7. Prior Authorization.

Prior authorization must be obtained on certain medical and surgical procedures in accordance with Section R414-1-14.

R414-3A-8. Copayment Policy.

Each Medicaid client is responsible for a copayment as established in the Utah Medicaid State Plan and incorporated by reference in Rule R414-1.

R414-3A-9. Reimbursement for Services.

Reimbursement for outpatient hospital services is in accordance with Attachment 4.19-B of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

KEY: Medicaid**November 15, 2011****Notice of Continuation November 8, 2007****26-1-5****26-18-2.3****26-18-3(2)****26-18-4**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-14. Home Health Services.****R414-14-1. Introduction and Authority.**

(1) Home health services are part-time intermittent health care services that are based on medical necessity and provided to eligible persons in their places of residence when the home is the most appropriate and cost effective setting that is consistent with the client's medical need. The goals of home health care are to minimize the effects of disability or pain; promote, maintain, or protect health; and prevent premature or inappropriate institutionalization.

(2) This rule is authorized under Section 26-18-3 and governs the services allowed under 42 CFR 440.70 and 42 CFR, Part 484. 42 U.S.C. Secs. 1395u, 1395x, and 1395y also authorize home health services.

R414-14-2. Definitions.

The following definition applies to home health services. In addition, the Department adopts the definitions in the Home Health Agencies Provider Manual and incorporates them by reference in Section R414-1-5.

(1) "Plan of Care" means a written plan developed cooperatively by home health agency staff and the attending physician. The plan is designed to meet specific needs of an individual, is based on orders written by the attending physician, and is approved and periodically reviewed and updated by the attending physician.

R414-14-3. Client Eligibility Requirements.

Home health services are available to categorically eligible and medically needy individuals.

R414-14-4. Program Access Requirements.

(1) Home health service shall be provided only to an individual who is under the care of a physician. The attending physician shall write the orders on which a plan of care is established and certify the necessity for home health services.

(2) The home health agency may accept a recipient for home health services only if there is a reasonable expectation that a recipient's needs can be met adequately by the agency in the recipient's place of residence.

(3) The attending physician and home health agency personnel must review and sign a total plan of care as often as the severity of the patient's condition requires, but at least once every 60 days in accordance with 42 CFR 440.70.

(4) The home health agency must provide quality, cost-effective care and a safe environment in the home through registered or licensed practical nurses who have adequate training, knowledge, judgement, and skill.

(5) Home health aide services may only be provided pursuant to written instructions and under the supervision of a registered nurse by a person selected and trained to assist with routine care not requiring specialized nursing skills.

(6) Over the long term service period, the cost to provide the required service in the patient's home must be no greater than the cost to meet the client's medical needs in an alternative setting.

(7) A home health agency may provide an initial assessment visit without prior authorization to assess the patient's needs and establish a plan of care. After the initial visit, all home health care and service must be based on prior authorization.

R414-14-5. Service Coverage.

(1) Two levels of home health service are covered: Skilled Home Health Services and Supportive Maintenance Home Health Services.

(2) Skilled nursing service encompasses the expert

application of nursing theory, practice and techniques by a registered professional nurse to meet the needs of patients in their place of residence through professional judgments, through independently solving patient care problems, and through application of standardized procedures and medically delegated techniques.

(3) Home health aide service encompasses assistance with, or direct provision of, routine care not requiring specialized nursing skill. The home health aide is closely supervised by a registered, professional nurse to assure competent care. The aide works under written instructions and provides necessary care for the patient.

(4) Supportive maintenance home health care serves those patients who have a medical condition which has stabilized, but who demonstrate continuing health problems requiring minimal assistance, observation, teaching, or follow-up. This assistance can be provided by a certified home health agency through the knowledge and skill of a licensed practical nurse (LPN) or a home health aide with periodic supervision by a registered nurse. A physician continues to provide direction.

(5) IV therapy, enteral and parenteral nutrition therapy are provided as a home health service either in conjunction with skilled or maintenance care or as the only service to be provided. Specific policy is outlined in the medical supplies program and all requirements of the home health program must be met in relation to orders, plan of care, and 60 day review and recertification.

(6) Physical therapy and speech pathology services are occasionally indicated and approved for the patient needing home health service. Any therapy services offered by the home health agency directly or under arrangement must be ordered by a physician and provided by a qualified licensed therapist in accordance with the plan of care. Occupational therapy and speech pathology services in the home are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

(7) Medical supplies utilized for home health service must be suitable for use in the home in providing home health care, consistent with physician orders, and approved as part of the plan of care.

(8) Medical supplies provided by the home health agency do not require prior approval, but are limited to:

(a) supplies used during the initial visit to establish the plan of care;

(b) supplies that are consistent with the plan of care; and

(c) non-durable medical equipment.

(9) Supportive maintenance home health services is limited in time equal to one visit per day determined by care needs and care giver participation.

(10) A registered nurse employed by an approved, certified home health agency must supervise all home health services. Nursing service and all approved therapy services must be provided by the appropriate licensed professional.

(11) Only one home health provider (agency) may provide service to a patient during any period of time. However, a subcontractor of a home health provider may provide service if the original agency is the only provider that bills for services. A second provider or agency requesting approval of service will be denied.

(12) Home health care provided to a patient capable of self care is not a covered Medicaid benefit.

(13) Personal care services, except as determined necessary in providing skilled care, is not a covered home health benefit.

(14) Housekeeping or homemaking services are not covered home health benefits.

(15) Occupational therapy is not a covered Medicaid benefit except for children covered under CHEC for medically

necessary service.

(16) Home health nursing service beyond the initial evaluation visit requires prior authorization.

(17) All home health service beyond the initial visit, including supplies and therapies, shall be in the plan of care that the home health agency submits for prior authorization. Prior to providing the service, the home health agency must first obtain approval for the level of skilled or maintenance service based on the prior authorization request and a review of the plan of care. If level of service needs change, the home health agency must submit a new prior authorization request.

(18) A home health agency may provide therapy services only in accordance with medical necessity and after receiving prior authorization.

R414-14-6. Reimbursement for Services.

Reimbursement for home health services shall be provided as documented in the Utah Medicaid State Plan, ATTACHMENT 4.19-B. The fee schedule was established after examining usual and customary charges in the industry, applying appropriate discounts, and relying on professional judgment.

KEY: Medicaid

November 15, 2011

Notice of Continuation September 23, 2009

26-1-5

26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-40. Private Duty Nursing Service.****R414-40-1. Introduction and Authority.**

(1) This rule outlines eligibility, access requirements, coverage, limitations, and reimbursement for private duty nursing. This rule is authorized by Sections 26-1-5 and 26-18-3.

(2) Private duty nursing service is an optional Title XIX program authorized by 42 U.S.C. Sec. 1396 et seq., 42 U.S.C. Sec. 1396d(a)(8) and 42 CFR 440.80.

R414-40-2. Recipient Eligibility Requirements.

ESPDT eligible children who are under age 21 and who are either in transition from the hospital to the home or who are ventilator dependent are eligible for private duty nursing service. The recipient must require greater than four hours of continuous skilled nursing care per day.

R414-40-3. Program Access Requirements.

(1) Only a licensed home health agency enrolled as a Medicaid provider may be reimbursed for private duty nursing service.

(2) A recipient must have a written physician order establishing the need for private duty nursing service. The private duty nursing provider must develop a plan of care consistent with the recipient diagnosis, severity of illness, and intensity of service. The patient must require more than four hours of skilled nursing service. If medically necessary nursing service requires four hours or less of skilled nursing, the service is covered under the home health program.

(3) Medicaid providers shall submit an initial prior authorization request with medical documentation that demonstrates the need for nursing service. The home health agency shall submit an initial certification and a recertification at least every 60 days as required by 42 CFR 440.70.

(4) Private duty nursing is only available if a parent, guardian, or primary caregiver is committed to and capable of performing the medical skills necessary to ensure quality care.

(5) The home health agency shall verify that the hospital has provided specialized training for the caregiver before patient discharge to enable the caregiver to provide hands-on care in the home. The private duty nurse initially supervises the caregiver who provides this care to ensure that training has been assimilated to ensure safe, quality patient care.

R414-40-4. Service Coverage for Private Duty Nursing.

(1) Private duty nursing service is a limited benefit that is provided with the expectation that the patient's need for private duty nursing service will decrease over time.

(2) Medicaid covers medically necessary and appropriate private duty nursing service for a limited time to provide skilled nursing care in the home. Medicaid provides private duty nursing service while the private duty nursing service provider trains the recipient's caregivers to provide the necessary care. Once the caregivers have been given sufficient training for the recipient's needs, the private duty nursing service ends. However, a client who still requires more than four hours of ongoing skilled nursing service may receive private duty nursing service as provided in this rule.

(3) The number of private duty nursing (PDN) hours that a patient may receive is based on how the patient scores on the PDN Acuity Grid. The PDN provider shall provide supporting documentation to justify the patient's score. The PDN Acuity Grid must reflect the average daily care given by the nurse during the previous certification period.

(4) After informing the recipient's family or similar representatives who live with the recipient and in coordination and consultation with the physician, the private duty nurse shall

attempt to wean the patient from a device or service and identify new problems.

(5) Private duty nursing is not covered to provide services solely for the following:

(a) custodial or sitter care to ensure the patient is compliant with treatment;

(b) respite care;

(c) monitoring behavioral or eating disorders; and

(d) observation or monitoring medical conditions that do not require skilled nursing care.

(6) Private duty nursing service is not covered if the service is available from another funding source, agency, or program.

R414-40-5. Reimbursement of Services.

(1) Medicaid reimburses nursing service in accordance with the Utah Medicaid State Plan, Attachment 4.19-B.

(2) A private duty nurse caring for two patients in the home shall bill with the UN modifier.

(3) A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.

KEY: Medicaid**December 1, 2011****Notice of Continuation October 14, 2010****26-1-5****26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-54. Speech-Language Pathology Services.****R414-54-1. Introduction and Authority.**

(1) This rule governs the provision of speech-language pathology services.

(2) This rule is authorized by Sections 26-18-3 and 26-18-5.

(3) As required by Section 26-18-3, the Department provides these services in an efficient, economical manner, safeguarding against unnecessary, unreasonable, or inappropriate use of these services.

R414-54-2. Definitions.

(1) The definitions in the Speech-Language Pathology and Audiology Licensing Act, Title 58, Chapter 41, apply to this rule.

R414-54-3. Services.

(1) Speech-language pathology services are optional.

(2) Speech-language pathology services are limited to services described in the Speech-Language Services Provider Manual.

(3) The Speech-Language Services Provider Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.

(4) Speech-language pathology services may be provided by licensed speech-language pathologists, or speech-language pathology aides under the supervision of speech-language pathologists.

R414-54-4. Client Eligibility Requirements.

(1) Speech-language pathology services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

(2) An individual receiving speech-language pathology services may receive speech-language pathology services as described in the Speech-Language Pathology Provider Manual.

(3) An individual receiving speech-language pathology services must meet the criteria established in the Speech-Language Pathology Provider Manual and obtain prior approval if required.

R414-54-5. Reimbursement.

Speech-language pathology services are reimbursed using the fee schedule in the Utah Medicaid State Plan and incorporated by reference in R414-1-5.

KEY: Medicaid, speech-language pathology services**November 15, 2011****26-1-5****Notice of Continuation March 9, 2009****26-18-3**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-59. Audiology-Hearing Services.****R414-59-1. Introduction and Authority.**

(1) This rule governs the provision of audiology-hearing services.

(2) This rule is authorized by Sections 26-18-3 and 26-1-5.

(3) As required by Section 26-18-3, the Department provides these services in an efficient, economical manner, safeguarding against unnecessary, unreasonable, or inappropriate use of these services.

R414-59-2. Definitions.

(1) The definitions in the Speech-Language Pathology and Audiology Licensing Act, Title 58, Chapter 41, apply to this rule.

R414-59-3. Services.

(1) Audiology-hearing services are optional services.

(2) Audiology-hearing services are limited to services described in the Audiology Services Provider Manual.

(3) The Audiology Services Provider Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.

(4) Audiology-hearing services may be provided to an individual only after being referred by a physician. All audiology-hearing services must be provided by a licensed audiologist.

R414-59-4. Client Eligibility Requirements.

(1) Audiology-hearing services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

(2) An individual receiving audiology-hearing services may receive audiology services as described in the Audiology Services Provider Manual.

(3) An individual receiving audiology-hearing services must meet the criteria established in the Audiology Services Provider Manual and obtain prior approval if required.

R414-59-5. Reimbursement.

Audiology services are reimbursed using the fee schedule in the Utah Medicaid State Plan and incorporated by reference in R414-1-5.

KEY: Medicaid, audiology**November 15, 2011****Notice of Continuation October 13, 2010****26-1-5****26-18-3**

R426. Health, Family Health and Preparedness, Emergency Medical Services.**R426-5. Statewide Trauma System Standards.****R426-5-1. Authority and Purpose.**

(1) Authority - This rule is established under Title 26, Chapter 8a, Part 2A, Statewide Trauma System, which authorizes the Department to:

(a) establish and actively supervise a statewide trauma system;

(b) establish, by rule, trauma center designation requirements and model state guidelines for triage, treatment, transport and transfer of trauma patients to the most appropriate health care facility; and

(c) designate trauma care facilities consistent with the trauma center designation requirements and verification process.

(2) This rule provides standards for the categorization of all hospitals and the voluntary designation of Trauma Centers to assist physicians in selecting the most appropriate physician and facility based upon the nature of the patient's critical care problem and the capabilities of the facility.

(3) It is intended that the categorization process be dynamic and updated periodically to reflect changes in national standards, medical facility capabilities, and treatment processes. Also, as suggested by the Utah Medical Association, the standards are in no way to be construed as mandating the transfer of any patient contrary to the wishes of his attending physician, rather the standards serve as an expression of the type of facilities and care available in the respective hospitals for the use of physicians requesting transfer of patients requiring skills and facilities not available in their own hospitals.

R426-5-2. Trauma System Advisory Committee.

(1) The trauma system advisory committee, created pursuant to 26-8a-251, shall:

(a) be a broad and balanced representation of healthcare providers and health care delivery systems; and

(b) conduct meetings in accordance with committee procedures established by the Department and applicable statutes.

(2) The Department shall appoint committee members to serve terms from one to four years.

(3) The Department may re-appoint committee members for one additional term in the position initially appointed by the Department.

(4) Causes for removal of a committee member include the following:

(a) more than two unexcused absences from meetings within 12 calendar months;

(b) more than three excused absences from meetings within 12 calendar months;

(c) conviction of a felony; or

(d) change in organizational affiliation or employment which may affect the appropriate representation of a position on the committee for which the member was appointed.

R426-5-3. Trauma Center Categorization Guidelines.

The Department adopts as criteria for Level I, Level II, Level III, and Pediatric trauma center designation, compliance with national standards published in the American College of Surgeons document: Resources for Optimal Care of the Injured Patient 2006. The Department adopts as criteria for Level IV and Level V trauma center designation the American College of Surgeons document: Resources for Optimal Care of the Injured Patient 1999, except that a Level V trauma center need not have a general surgeon on the medical staff and may be staffed by nurse practitioners or certified physician assistants.

R426-5-4. Trauma Review.

(1) The Department shall evaluate trauma centers and

applicants to verify compliance with standards set in R426-5-2. In conducting each evaluation, the Department shall consult with experts from the following disciplines:

(a) trauma surgery;

(b) emergency medicine;

(c) emergency or critical care nursing; and

(d) hospital administration.

(2) A consultant shall not assist the Department in evaluating a facility in which the consultant is employed, practices, or has any financial interest.

R426-5-5. Trauma Center Categorization Process.

The Department shall:

(1) Develop a survey document based upon the Trauma Center Criteria described in R426-5.

(2) Periodically survey all Utah hospitals which provide emergency trauma care to determine the maximum level of trauma care which each is capable of providing.

(3) Disseminate survey results to all Utah hospitals, and as appropriate, to state EMS agencies.

R426-5-6. Trauma Center Designation Process.

(1) Hospitals seeking voluntary designation and all designated Trauma Centers desiring to remain designated, shall apply for designation by submitting the following information to the Department at least 30 days prior to the date of the scheduled site visit:

(a) A completed and signed application and appropriate fees for trauma center verification;

(b) A letter from the hospital administrator of continued commitment to comply with current trauma center designation standards as applicable to the applicant's designation level;

(c) The data specified under R426-5-8 are current;

(d) Level I and Level II Trauma Centers must submit a copy of the Pre-review Questionnaire (PRQ) from the American College of Surgeons in lieu of the application in 1a above.

(e) Level III Level IV and Level V trauma centers must submit a complete Department approved application.

(2) Hospitals desiring to be designated as Level I and Level II Trauma Centers must be verified by the American College of Surgeons (ACS) within three (3) months of the expiration date of previous designation and must submit a copy of the full ACS report detailing the results of the ACS site visit. A Department representative must be present during the entire ACS verification visit. Hospitals desiring to be Level III, Level IV or Level V Trauma Centers must be designated by hosting a formal site visit by the Department.

(3) The Department and its consultants may conduct observation, review and monitoring activities with any designated trauma center to verify compliance with designation requirements.

(4) Trauma centers shall be designated for a period of three years unless the designation is rescinded by the Department for non-compliance to standards set forth in R426-5-6 or adjusted to coincide with the American College of Surgeons verification timetable.

(5) The Department shall disseminate a list of designated trauma centers to all Utah hospitals, and state EMS agencies, and as appropriate, to hospitals in nearby states which refer patients to Utah hospitals.

R426-5-7. Data Requirements for an Inclusive Trauma System.

(1) All hospitals shall collect, and quarterly submit to the Department, Trauma Registry information necessary to maintain an inclusive trauma system. The Department shall provide funds to hospitals, excluding designated trauma centers, for the data collection process. The inclusion criteria for a trauma patient are as follows:

(a) ICD9 Diagnostic Codes between 800 and 959.9 (trauma); and

(b) At least one of the following patient conditions: admitted to the hospital for 24 hours or longer; transferred in or out of your hospital via EMS transport (including air ambulance); death resulting from the traumatic injury (independent of hospital admission or hospital transfer status; all air ambulance transports (including death in transport and patients flown in but not admitted to the hospital).

(c) Exclusion criteria are ICD9 Diagnostic Codes: 930-939.9 (foreign bodies) 905-909.9 (late effects of injury) 910-924.9 (superficial injuries, including blisters, contusions, abrasions, and insect bites)

The information shall be in a standardized electronic format specified by the Department which includes:

(i) Demographics:

Database Record Number
Institution ID number
Medical Record Number
Social Security Number
Patient Home Zip Code
Sex
Date of Birth
Age Number and Units
Patient's Home Country
Patient's Home State
Patient's Home County
Patient's Home City
Alternate Home Residence
Race

Ethnicity

(ii) Injury:

Date of Injury
Time of Injury
Blunt, Penetrating, or Burn Injury
Cause of Injury Description
Cause of Injury Code
Work Related Injury (y/n)
Patient's Occupational Industry
Patient's Occupation
Primary E-Code
Location E-Code
Additional E-Code
Incident Location Zip Code
Incident State
Incident County
Incident City
Protective Devices
Child Specific Restraint
Airbag Deployment

(iii) Prehospital:

Name of EMS Service
Transport Origin Scene or Referring Facility
Trip Form Obtained (y/n)
EMS Dispatch Date
EMS Dispatch Time
EMS Unit Arrival on Scene Date
EMS Unit Arrival on Scene Time
EMS Unit Scene Departure Date
EMS Unit Scene Departure Time
Transport Mode
Other Transport Mode
Initial Field Systolic Blood Pressure
Initial Field Pulse Rate
Initial Field Respiratory Rate
Initial Field Oxygen Saturation
Initial Field GCS-Eye
Initial Field GCS-Verbal

Initial Field GCS-Motor

Initial Field GCS-Total

Inter-Facility Transfer

(iv) Referring Hospital:

Transfer from Another Hospital (y/n)

Name or Code

Arrival Date

Arrival Time

Discharge Date

Discharge time

Transfer Mode

Admitted or ER

Procedures

Pulse

Capillary Refill

Respiratory Rate

Respiratory Effort

Blood Pressure

Eye Movement

Verbal Response

Motor Response

Glasgow Coma Score Total

Revised Trauma Score Total

(v) Emergency Department Information:

Mode of Transport

Arrival Date

Arrival Time

Discharge Time

Discharge Date

Initial ED/Hospital Pulse Rate

Initial ED/Hospital Temperature

Initial ED/Hospital Respiratory Rate

Initial ED/Hospital Respiratory Assistance

Initial ED/Hospital Oxygen Saturation

Initial ED/Hospital Systolic Blood Pressure

Initial ED/Hospital GCS-Eye

Initial ED/Hospital GCS-Verbal

Initial ED/Hospital GCS-Motor

Initial ED/Hospital GCS-Total

Initial ED/Hospital GCS Assessment Qualifiers

Revised Trauma Score Total

Alcohol Use Indicator

Drug Use Indicator

ED Discharge Disposition

ED Death

ED Discharge Date

ED Discharge Time

(vi) Emergency Department Treatment:

Procedures Done (pick list)

Paralytics used prior to GCS (y/n)

(vii) Admission Information:

Admit from ER or Direct Admit

Admitted from what Source

Time of Hospital Admission

Date of Hospital Admission

Hospital Procedures

Hospital Procedure Start Date

Hospital Procedure Start Time

(viii) Hospital Diagnosis:

ICD9 Diagnosis Codes

Injury Diagnoses

Co-Morbid Conditions

AIS Score for Diagnosis (calculated)

Injury Severity Score

(ix) Quality Assurance Indicators:

Hospital Complications

(x) Outcome:

Discharge Time

Discharge Date

Total Days Length of Stay
Total ICU Length of Stay
Total Ventilator Days
Disposition from Hospital
Destination Facility
(xi)Charges:
Payment Sources

R426-5-8. Trauma Triage and Transfer Guidelines.

The Department adopts by reference the 2009 Resources and Guidelines for the Triage and Transfer of Trauma Patients published by the Utah Department of Health as model guidelines for triage, transfer, and transport of trauma patients. The guidelines do not mandate the transfer of any patient contrary to the judgment of the attending physician. They are a resource for pre-hospital and hospital providers to assist in the triage, transfer and transport of trauma patients to designated trauma centers or acute care hospitals which are appropriate to adequately receive trauma patients.

R426-5-9. Noncompliance to Standards.

(1) The Department may warn, reduce, deny, suspend, revoke, or place on probation a facility designation, if the Department finds evidence that the facility has not been or will not be operated in compliance to standards adopted under R426-5.

(2) A hospital, clinic, health care provider, or health care delivery system may not profess or advertise to be designated as a trauma center if the Department has not designated it as such pursuant to this rule.

R426-5-10. Statutory Penalties.

A person who violates this rule is subject to the provisions of Title 26, Chapter 23.

KEY: emergency medical services, trauma, reporting, trauma center designation
November 16, 2011 **26-8a-252**
Notice of Continuation July 18, 2007

R428. Health, Center for Health Data, Health Care Statistics.

R428-1. Adoption of Health Data Plan.

R428-1-1. Legal Authority.

This rule is promulgated in accordance with Title 26, Chapter 33a.

R428-1-2. Health Data Plan Adoption.

As required by Section 26-33a-104, the Health Data Committee adopts by rule the health data plan dated October 3, 1991.

**KEY: health, health policy, health planning
1991**

26-33a-104

Notice of Continuation November 21, 2011

R428. Health, Center for Health Data, Health Care Statistics.**R428-2. Health Data Authority Standards for Health Data.**
R428-2-1. Legal Authority.

This rule is promulgated under authority granted by Title 26, Chapter 33a.

R428-2-2. Purpose.

This rule establishes the reporting standards which apply to data suppliers, and the classification, control, use, and release of data received by the committee pursuant to Title 26, Chapter 33a.

R428-2-3. Definitions.

The following definitions apply to all of R428.

A. "Office" means the Office of Health Care Statistics within the Utah Department of Health, which serves as staff to the Utah Health Data Committee.

B. "Committee" means the Utah Health Data Committee created by Section 26-1-7.

C. "Data element" means the specific information collected and recorded for the purpose of health care and health service delivery. Data elements include information to identify the individual, the health care provider, the data supplier, the service provided, the charge for service, payer source, medical diagnosis, and medical treatment.

D. "Data release, disclosure, or disclose" means the disclosure or the communication of health care data to any individual or organization outside the committee, its staff, and contracting agencies.

E. "Data supplier" means a health care facility, health care provider, self-funded employer, third-party payer, health maintenance organization, or government department required to provide health data under rules adopted by the committee.

F. "Health Data Plan" means the plan developed and adopted by the Health Data Committee under Chapter 33a, Title 26, Section 104.

G. "Health care provider" means any person, partnership, association, corporation, or other facility or institution that renders or causes to be rendered health care or professional services as a physician, registered nurse, licensed practical nurse, nurse-midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, podiatrist, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech pathologist, certified social worker, social service worker, social service aide, marriage and family counselor, or practitioner of obstetrics, and others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons, and officers, employees, or agents of any of the above acting in the course and scope of their employment.

I. "Health data" means information relating to the health status of individuals, health services delivered, the availability of health manpower and facilities, and the use and costs of resources and services to the consumer.

H. "Identifiable health data" means any item, collection, or grouping of health data that makes the individual supplying or described in the health data identifiable.

J. "Individual" means a natural person.

K. "Order" means a committee action that determines the legal rights, duties, privileges, immunities, or other interests of one or more specific persons, but not a class of persons.

L. "Report" means a compilation, study or data release developed from resource documents to display information in a simplified manner and designed to meet the needs of specific audiences or nontechnical users.

M. "Resource document" means contemplated tabulation formats defined in the Health Data Plan to display information,

documents, or records containing measures relating to health care. These documents are classified as standard, special, and electronic.

R428-2-4. Technical Assistance.

The Office may provide technical consultation to a data supplier upon request and resource availability. The consultation shall be to enable a data supplier to submit health data according to R428.

R428-2-5. Data Classification and Access Requirements.

A. The Utah Health Data Authority Act, Section 108, specifically classifies all information, reports, statements, memoranda, or other data received by the committee as "strictly confidential." All data received under rules of the Utah Health Data Authority Act are strictly confidential. This strict classification means the committee's data are not public, and as such are exempt from the Classification and Release Requirements specified in the Government Records Access And Management Act, Chapter 2, Title 63, Utah Code Annotated. The committee shall establish guidelines for the protection, use and release of the data.

B. Persons having access to data under control of the committee shall not:

1. take any action that might provide information to any unauthorized individual or agency;
2. scan, copy, remove, or review any information to which specific authorization has not been granted;
3. discuss information with unauthorized persons which could lead to identification of individuals;
4. give access to any information by sharing passwords or file access codes.

C. Any person having access to data under control of the committee shall:

1. maintain the data in a safe manner which restricts unauthorized access;
2. limit use of the data to the purposes for which access is authorized;
3. report immediately any unauthorized access.

D. A failure to report known violations by others of responsibilities specified in 3 and 4 above is subject to the same punishment as a personal violation.

E. The Office shall deny a person access to the facilities, services and data as a consequence of any violation of the responsibilities specified in R428-2-5(C) and R428-2-5(D) above.

F. The committee may, pursuant to Chapter 33a, Title 26, Section 110, subject the person to legal prosecution for any unauthorized use, disclosure, or publication of its data.

R428-2-6. Security.

The Office shall implement procedures protecting data confidentiality. These procedures shall ensure the committee's health data against unauthorized access.

R428-2-7. Editing and Validation.

A. The data supplier shall review each health data record prior to submission. The review shall consist of checks for accuracy, consistency, completeness, and conformity.

B. The Office may subject health data to edit checks. The Office may require the data supplier to correct health data failing an edit check. The data supplier may perform data validation before public disclosure.

1. The Office may, by first class U.S. mail, return to the submitting data supplier all health data failing an edit check. The submitting data supplier shall correct all returned health data and resubmit all corrected health data to the Office within 35 calendar days of the date the Office mails the records.

2. Data validation gives the data supplier the right to

review, comment, and provide support for corrections of any information relating to its activities prior to public release. The data supplier shall return the validation document to the Office with comments and support for corrections within 35 calendar days of the date the Office mails the validation document. If the data supplier fails to return the information within the 35 day period, the committee may conclude that the information is correct and suitable for release.

3. The committee may note in its resource documents, reports, and publications that accurate appraisal of a certain category or entity cannot be presented because of a failure to comply with the committee's request for data, edit corrections, or data validation.

R428-2-8. Error Rates.

The committee may establish and order reporting quality standards based on non-reporting or edit failure rates.

R428-2-9. Data Disclosure.

A. The committee may release information, compilations, reports, statements, memoranda, or other data received or derived from its health data as specified in Chapter 33a, Title 26, Sections 107, 108, and 109. The Office may disclose the submitted data as resource documents or reports in either standard, special, or electronic format. The Office may prepare data for disclosure annually as standard or special resource documents specified in the health data plan. If the disclosure identifies a health care provider, the Office must adhere to the procedures specified in R428-2-9(B).

B. Prior to any release of a compilation, report, or resource document in which a health care provider is identified, the Office shall notify the data supplier and the health care provider by first class mail using the last known address. The data supplier and health care provider have the right to:

1. review the information to be disclosed and verify the accuracy of the information contained therein;
2. submit to the Office evidence of errors in the disclosure document;
3. develop written comments or alternate interpretations to the information reported for inclusion with the disclosure;
4. return the disclosure notice, evidence of errors, and comments within 35 calendar days of the date the Office mails the notice. The committee may interpret the failure to return the notice of disclosure within the designated time period as agreement that the reports are acceptable for release in any format outlined in the Health Data Plan.
5. the Office shall correct data it finds to be in error and provide data suppliers and health care providers notification of the corrections subject to the rights specified in R428-2-9(B).

C. The committee may allow exemptions to the notification procedures specified in R428-2-9(B):

1. The Office may release to the data supplier its data elements used to create compilations, reports, or resource documents without notification when a data supplier requests the data it supplied.
2. The Office may make additional disclosures to other requesters of compilations, reports, or resource documents previously reviewed under the procedures specified in R428-2-9(B).

D. The Office may, by its initiative, prepare and disclose special compilations, reports, studies or analyses relating to health care cost, quality, access, health promotion programs, or public health. These actions may be to meet legislative intent or upon request from individuals, government agencies, or private organizations.

E. The committee may make data available for disclosure in computer readable formats.

1. The public data set provides general health care data. The Director of the Office may approve written requests for the

public data set without approval of the committee. Written requests must include the following:

- a. the name, address, and telephone number of the requester;
- b. a statement of the purpose for which the data will be used; and
- c. the starting and ending dates for which data are requested.

2. The design of the research oriented data set is for bona fide research of health care cost, quality, access, health promotion programs, or public health issues. A research oriented data set is available by request to the committee. Requests for a research oriented data set must be accompanied by a completed request form as established by the committee. Request forms are included in Technical Manuals that are available from the Office. The committee requires documentation of the requester's:

- a. need for the research oriented data set to conduct bona fide research;
- b. intent to use the data to study, promote, or improve accessibility, quality, or cost-effective health care;
- c. integrity and ability to safeguard the data from any breach of confidentiality;
- d. competency to effectively use the data in the manner proposed;
- e. affiliation with an institutional review board; and
- f. guarantee that no further disclosure will occur without prior approval of the Office.

R428-2-10. Penalties.

Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

KEY: health, health policy, health planning

August 14, 2002

Notice of Continuation November 30, 2011

26-33a-104

R428. Health, Center for Health Data, Health Care Statistics.**R428-5. Appeal and Adjudicative Proceedings.****R428-5-1. Type of Proceeding.**

A. The actions of the committee and requests for committee action are designated as formal adjudicative proceedings. The committee may at any time before a final order is issued in any adjudicative proceeding convert a formal adjudicative proceeding to an informal adjudicative proceeding, or an informal adjudicative proceeding to a formal adjudicative proceeding if:

1. conversion of the proceeding is in the public interest;
2. conversion of the proceeding does not unfairly prejudice the rights of any party.

R428-5-2. Formal Proceedings.

A. The committee or its designated representative shall preside over a formal proceeding initiated by a notice of committee action or in response to a request for committee action.

B. The content of the notice of committee action shall comply with Section 63-46b-3(2). Formal hearings shall be held at the next regularly scheduled committee meeting unless prior arrangements are made for an alternate date and proper notice is provided all parties.

C. Within 30 calendar days of the mailing date of a notice of committee action, the respondent or his representative shall file with the Bureau and with each person known to have a direct interest a written, signed response that includes:

1. the agency's file number or other reference number;
2. the name of the adjudicative proceeding;
3. a statement of the relief or action sought;
4. a statement of the facts;
5. a statement summarizing the reasons for granting the relief requested.

D. A conference may be scheduled by the Director of the Bureau or the presiding officer to encourage settlement before the hearing.

E. The committee or its designated representative as presiding officer shall have the authority to issue subpoenas at their discretion.

F. Within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue an order that includes:

1. a statement of the presiding officer's findings of fact;
2. a statement of the presiding officer's conclusions of law;
3. a statement of the reasons for the presiding officer's decision;
4. a statement of any relief ordered by the agency;
5. a notice of the right to apply for committee reconsideration;
6. a notice of any right to administrative or judicial review available;
7. the time limits applicable to any reconsideration or review.

R428-5-3. Default and Reconsideration.

A. The presiding officer may enter an order of default against a party if:

1. a party in an informal adjudicative proceeding fails to participate in the adjudicative proceedings;
2. a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or
3. a respondent in a formal adjudicative proceeding fails to file a response within the time frame specified in R428-5-1(3).
4. The order of default shall include a statement of the

grounds for default and shall be mailed to all parties.

5. A defaulted party may seek to have the committee set aside the default order and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the presiding officer.

6. In an adjudicative proceeding begun by the agency, or in an adjudicative proceeding that has other parties besides the party in default, the presiding officer shall, after issuing the order of default, conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

7. In an adjudicative proceeding that has no parties other than the committee and the party in default, the presiding officer shall, after issuing the order of default, dismiss the proceeding.

B. Any party may file a written request for reconsideration with the committee stating the specific grounds upon which relief is requested. The request must be filed within 20 days after:

1. the date that an Order of Review is issued in an informal adjudicative proceeding; or
2. the date that a request for review is denied; or
3. the date that a final order is issued in a formal adjudicative proceeding.

4. The request for reconsideration shall be filed with the committee and one copy shall be sent by mail to each party by the person making the request.

5. The committee may issue a written order granting or denying the request within 30 working days of filing of the request.

6. If the committee does not issue an order granting or denying the request within 30 working days after the request is filed, the request for reconsideration shall be considered denied.

R428-5-4. Judicial Review.

An aggrieved party may obtain judicial review of final committee action upon exhaustion of all available administrative remedies. The aggrieved party shall file a petition for judicial review of final agency action within 30 calendar days after the final committee action is issued or is considered to have been issued under R428-5-4.

R428-5-5. Declaratory Orders.

A. Any person or agency may petition for a committee declaratory ruling of rights, status, or other legal relations under a specific statute or rule by submitting a written petition. The petition shall contain the following information:

1. the specific statute or rule to be reviewed;
2. the situation or circumstances in which applicability is to be reviewed;
3. the reason or need for the applicability review;
4. the name, address, and telephone number where the petitioner can be contacted;
5. the date of submission and signature of the petitioner.

B. The committee or its authorized representative shall review and consider the petition and may issue a declaratory ruling setting forth:

1. the applicability or non-applicability of the specific statute or rule;
2. the reasons for the applicability or non-applicability of the specific statute or rule;
3. any requirements imposed on the agency, petitioner, or any other person as a result of the ruling.

C. The committee may as appropriate:

1. interview the petitioner;
2. consult with counsel or the Attorney General;

3. take any action the committee in its judgment deems necessary to provide that the petition receives adequate review and due consideration.

D. If the committee has not issued a declaratory order within 60 days after receipt of the petition, the petition is denied.

E. The committee will not issue a declaratory order concerning any action which could result in the Department imposing sanctions.

**KEY: health, health policy, health planning
1991
Notice of Continuation November 30, 2011**

26-33a-104

R428-5-6. Informal Proceedings.

A. The committee may convert a formal proceeding to informal as specified under R428-5. The Chairman of the committee or his designated representative shall act as presiding officer in an informal proceeding. No response or other pleading is required subsequent to the receipt of a notice of agency decision unless specifically requested and a hearing is not required to be held.

B. The presiding officer may schedule a conference to encourage settlement before issuing a decision.

C. Before issuing a final order in an informal proceeding, the presiding officer may convert the proceeding to a formal proceeding if such action is deemed to be in the public interest and does not unfairly prejudice the rights of any party.

D. Unless a time frame is specified elsewhere in this chapter, the presiding officer shall, within a reasonable time of receipt of a request for agency action, issue a signed order in writing stating:

1. the decision;
2. the reasons for the decision;
3. notice of the right to any administrative or judicial review available;
4. the time limits for requesting review.

E. 1. Within 30 calendar days of the issuance of an order by the presiding officer, a party aggrieved by the decision may seek review of that order by filing a written request for review by the full committee. The request shall:

- a. be signed by the party requesting review;
- b. state the grounds for review and the relief requested;
- c. be dated the date of mailing; and
- d. be sent by mail to the presiding officer and to each party of the proceeding.

2. Within 15 calendar days of the mailing of the request for review, any party may file a response with the committee. A copy of the response must also be mailed to the presiding officer and each of the parties.

3. The committee may issue a notice granting or denying the request for review within 30 working days of filing of the request. If the committee does not issue a notice granting or denying the request within the 30 day period the request for review shall be considered denied.

4. If a review of the order is granted, the notice shall specify the date a hearing shall be conducted before the full committee.

5. Within a reasonable time from the completion of the hearing, the committee shall issue a written order on review which shall contain:

- a. a designation of the statute or rule permitting or requiring review;
- b. a statement of the issues reviewed;
- c. findings of fact as to each of the issues reviewed;
- d. conclusions of law as to each of the issues reviewed;
- e. the reasons for the disposition;
- f. whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded;
- g. a notice of any right of further administrative reconsideration or judicial review available; and
- h. the time limit applicable to any review.

R428. Health, Center for Health Data, Health Care Statistics.

R428-10. Health Data Authority Hospital Inpatient Reporting Rule.

R428-10-1. Legal Authority.

This rule is promulgated under authority granted by Title 26, Chapter 33a, and in accordance with the Health Data Plan.

R428-10-2. Purpose.

This rule establishes the reporting standards for inpatient discharge data by licensed hospitals. Inpatient discharge data are needed to develop and maintain a statewide hospital inpatient discharge data base.

R428-10-3. Definitions.

These definitions apply to rule R428-10.

- (1) "Office" as defined in R428-2-3(A).
- (2) "Discharge data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a single inpatient hospital stay into a discharge data record.
- (3) "Hospital" means a facility that is licensed under R432-100.
- (4) "Level 1 data element" means a required reportable data element.
- (5) "Level 2 data element" means a data element that is reported when the information is available from the patient's hospital record.
- (6) "Patient Social Security number" is the social security number of the patient receiving inpatient care.
- (7) "Record linkage number" is an irreversible, unique, encrypted number that will replace patient social security number. The Office assigns the number to serve as a control number for data analysis.
- (8) "Uniform billing form" means the uniform billing form recommended for use by the National Uniform Billing Committee.

R428-10-4. Source of Inpatient Hospital Discharge Data Reporting.

The reporting source for hospital inpatient discharge data is Utah licensed hospitals.

- (1) A hospital facility, either general acute care or specialty hospital, shall report discharge data records for each inpatient discharged from its facility.
- (2) A hospital may designate an intermediary, such as the Utah Hospital Association, or may submit discharge data directly to the committee.
- (3) Each hospital is responsible for compliance with these rules. Use of a designated intermediary does not relieve the hospital of its reporting responsibility.
- (4) Each hospital shall designate a department within the hospital and a person responsible for submitting the discharge data records. This person shall also be responsible for communicating with the Office.

R428-10-5. Data Submittal Schedule.

Each hospital shall submit to the Office a single discharge data record for each patient discharged according to the schedule shown in Table 1, Hospital Discharge Data Submittal Schedule, or a schedule mutually agreed upon by the Office and hospital. For a patient with multiple discharges, each hospital shall submit a single discharge data record for each discharge. For a patient with multiple billing claims each hospital shall consolidate the multiple billings into a single discharge data record for submission after the patient's discharge.

TABLE 1
HOSPITAL DISCHARGE DATA SUBMITTAL SCHEDULE

PATIENT'S DATE OF DISCHARGE IS BETWEEN	DISCHARGE DATA RECORD IS DUE BY
January 1 through March 31	May 15
April 1 through June 30	August 15
July 1 through September 30	November 15
October 1 through December 31	February 15

R428-10-6. Data Element Reporting.

Tables 2 and 3 display the reportable data elements by defined level. A hospital shall, as a minimum, report the required level 1 data elements shown in Table 2. Each hospital shall report level 2 data elements shown in Table 3 whenever the information is a part of the hospital's patient record. Beginning July 1, 1993, each patient social security number shall be reported as a level 2 (as available) data element. Beginning January 1, 1995, each hospital shall collect patient social security number as a level 1 (required) data element on the hospital discharge record, and report the patient social security number with the complete discharge record according to the submittal schedule. The Department shall adopt an encryption method to mask patient identity and replace patient social security number with a record linkage number as the control number. The Department may not retain the original record containing patient social security number and shall destroy the original record containing patient social security number after the Department assures the validity of the patient record. The Department of Health may conduct on-site audits to verify the accuracy of all submittals.

Each hospital shall submit the reported data elements on computer diskette, magnetic tape, or as an "electronic copy" of encounter or claim data, through the Utah Health Information Network or another compatible electronic data interchange network. The Office shall accept data that complies with data standards established in R590-164, Uniform Health Billing Rule. The Office shall provide to each hospital, a Hospital Inpatient Discharge Data Submittal Technical Manual which outlines the specifications, format, and types of data to report. The revised Submittal Technical Manual is effective on January 1, 1995.

TABLE 2
REQUIRED LEVEL 1
HOSPITAL INPATIENT DISCHARGE DATA ELEMENTS

CATEGORY	NAME
Provider	
1.	Provider identifier
Patient	
2.	Patient control number
3.	Patient's medical chart number
4.	Patient Social Security Number
5.	Patient's postal zip code for address
6.	Patient's date of birth
7.	Patient's gender
Service	
8.	Admission date
9.	Type of admission
10.	Source of admission
11.	Patient's status
12.	Statement covers period
Charge	
13.	Revenue codes
14.	Units of service
15.	Total charges by revenue code
Payer	
16.	Payer's identification
17.	Patient's relationship to insured
Diagnosis and Treatment	
18.	Principal diagnosis
19.	Other diagnosis codes
20.	External cause of injury code (E-code)
21.	Principal procedure code
22.	Other procedure codes
23.	Procedure coding method, required if coding is not ICD-9
Physician	
24.	Attending physician ID
25.	Other physicians' IDs
Other	

26. Type of bill

TABLE 3
WHEN DATA ELEMENT IS AVAILABLE FROM THE
HOSPITAL'S PATIENT RECORD
LEVEL 2
HOSPITAL INPATIENT DISCHARGE DATA ELEMENTS

CATEGORY	NAME
Patient	
1.	Patient marital status
Payer	
2.	Insured group name
Employer	
3.	Employment status code
4.	Employer name
5.	Employer location
Charge	
6.	Prior payments
7.	Patient Race and Ethnicity
8.	Estimated amount due
Payer	
9.	Certificate/Social Security Number/Health Insurance Claim/Identification Number
Physician	
10.	Resident ID
11.	Resident ID Type

R428-10-7. Exemptions, Extensions, and Waivers.

(1) Hospitals may submit requests for exemptions or waivers to the committee within 60 calendar days of the due date as listed in the hospital discharge data submittal schedule in R428-10-5, Table 1. Exemptions or waivers to the requirements of this rule may be granted for a maximum of one calendar year. A hospital wishing an exemption or waiver for more than one year must submit a request annually.

(2) Requests for extensions must be submitted to the Office at least ten working days prior to the due date as listed in the hospital discharge data submittal schedule. Extensions to the submittal schedule may be granted for a maximum of 30 calendar days. The hospital must separately request each additional 30 calendar day extension.

(3) The committee may grant exemptions or waivers when the hospital demonstrates that compliance imposes an unreasonable cost to the hospital. The Office may grant extensions when the hospital documents that technical or unforeseen difficulties prevent compliance. A petitioner requesting an exemption, extension, or waiver shall make the request in writing. A request for exemption, extension, or waiver must contain the following information:

- (a) the petitioner's name, mailing address, telephone number, and contact person;
- (b) the date the exemption, extension, or waiver is to start and end;
- (c) a description of the relief sought, including reference to the specific sections of the rule;
- (d) a statement of facts, reasons, or legal authority in support of the request; and
- (e) a proposed alternative to the requirement.

(4) A form for exemption, extension, or waiver can be found in the technical manual available from the Office. Exemptions, extensions, or waivers may be granted for the following:

(a) Hospital exemption: All hospitals are subject to the reporting requirements. Reasons justifying an exemption might be a circumstance where the hospital makes no effort to charge any patient for service.

(b) Discharge data consolidation exemption: This exemption allows variation in the data consolidation requirement, such as allowing the hospital to submit multiple records containing the reportable data elements rather than a single consolidated discharge data record.

(c) Reportable data element exemption: Each request for a data element exemption must be made separately.

(d) Submission media exemption: This exemption allows variation in the submission media, such as a paper copy of the uniform billing form.

(e) Submittal schedule extension: The request must specifically document the technical or unforeseen difficulties that prevent compliance.

(f) Submission format waiver: This waiver allows variation in the submission format. Each request must state an alternative transfer electronic media, its format, and the record layout for the discharge data records. Granting of this waiver is dependent on the Office's ability to process the submittal media and format with available computer resources.

R428-10-8. Penalties.

Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

KEY: health, hospital policy, health planning

February 27, 2004 26-33a-104
Notice of Continuation November 30, 2011 26-33a-108

R428. Health, Center for Health Data, Health Care Statistics.**R428-12. Health Data Authority Survey of Enrollees in Health Maintenance Organizations.****R428-12-1. Legal Authority.**

This rule is promulgated under authority granted by Title 26, Chapter 33a (Utah Code Annotated) and in accordance with the Utah Health Plan Performance Measurement Plan.

R428-12-2. Purpose.

This rule establishes the process for the collection of Health Insurance Carrier enrollee satisfaction data from Utah licensed health insurance carriers. The data are needed to promote consumer choice in health plan selection and measure the quality of care provided by Utah licensed health maintenance organizations.

R428-12-3. Definitions.

These definitions apply to rule R428-12:

- (1) "Office" as defined in R428-2-3A.
- (2) "Carrier" means:
 - (a) "Health Maintenance Organization" (HMO) means any person licensed under Title 31A, Chapter 8.
 - (b) a governmental plan as defined in Section 414 (d), Internal Revenue Code.
 - (c) a non-electing church plan as described in Section 410 (d), Internal Revenue Code.
 - (d) "Preferred Provider Organization (PPO)" means all commercial insurance companies engaged in the business of health care insurance in the state of Utah (as defined in 31A-1-301(75)(a) and (b)), and offers a insurance product where an insured member has the choice of using either an in network provider at a discounted rate, also called preferred providers, or any out of network provider at a higher rate, also called non-preferred provider. Payments to preferred and non-preferred providers are paid according the preferred provider contract provisions as described in 31A-22-617(2)(a)(b).
- (3) "Enrollee" means any individual who has entered into a contract with a health maintenance organization for health care or on whose behalf such an arrangement has been made.
- (4) "Eligible Enrollee" means an enrollee who meets the criteria outlined by HEDIS 2009, Volume 3, Specifications for Survey Measures published by NCQA.
- (5) "Sampling Frame" means the carrier enrollment file as described criteria outlined by HEDIS 2009, Volume 3, Specifications for Survey Measures published by NCQA. The sampling frame includes only records that meet the eligibility criteria in R428-12-3(4).
- (6) "Sample file" means the data file containing records of selected eligible enrollees drawn by the survey agency from the carrier's sampling frame.
- (7) "Aggregate statistics" means the total number of enrollees with the particular carrier by age and sex.
- (8) "Survey agency" means an independent contractor on contract with the Office of Health Data Analysis.

R428-12-4. Creating the Sampling Frame.

(1) The sources for enrollment data are health plan carriers licensed in Utah. Each carrier shall include in the sampling frame all eligible enrollees. The carrier may not exclude any record except those that do not meet eligibility criteria as specified in R428-12-3(4).

(2) Each carrier shall create the sampling frame according to the criteria outlined by HEDIS 2009, Volume 3, Specifications for Survey Measures published by NCQA.

(3) The sampling frame and procedures used by the reporting carrier are subject to audit by the Office of Health Data Analysis against aggregate statistics for the submitting carrier.

R428-12-5. Sampling Frame Submission.

(1) The carrier shall create the sampling frame according to the eligibility criteria in R428-12-3(4). The carrier shall copy the sampling frame (formatted as described by HEDIS 2009, Volume 3, Specifications for Survey Measures published by NCQA) using an electronic medium acceptable to the survey agency and send to the survey agency.

(2) The carrier shall fill out the "Sample Description" sheet to be provided by the survey agency and send it with the electronic sample file. Each carrier shall submit to the survey agency the sampling frame for each of its carrier products no later than four weeks after the receipt of the sampling memo from the survey agency.

R428-12-6. Penalties.

Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

R428-12-7. Administration of Survey.

Each year, the Utah Department of Health, in consultation with health plans, will determine the target survey population and the scope of the survey.

KEY: health maintenance organization, performance measurement, health care quality, preferred provider organization

August 6, 2009

26-33a-104

Notice of Continuation November 30, 2011

26-33a-108

R477. Human Resource Management, Administration.**R477-4. Filling Positions.****R477-4-1. Authorized Recruitment System.**

Agencies shall use the DHRM approved recruitment and selection system unless an alternate system has been pre-approved by DHRM.

R477-4-2. Career Service Exempt Positions.

(1) The Executive Director, DHRM, may approve the creation and filling of career service exempt positions, as defined in Section 67-19-15.

(2) Agencies may use any pre-approved process to select an employee for a career service exempt position. Appointments may be made without competitive examination, provided job requirements are met.

(3) Appointments to fill an employee's position who is on approved leave shall only be made temporarily.

(4) Appointments made on a temporary basis shall be career service exempt and:

(a) be Schedule IN, in which the employee:

(i) is hired to work part time indefinitely;

(ii) may not work more than 30 hours per week; and

(iii) shall have a temporary agreement signed by both the hiring official and the employee on an annual basis; or

(b) be Schedule TL, in which the employee:

(i) is hired to work on a time limited basis; and

(ii) shall have a temporary agreement signed by both the hiring official and the employee at least every three years.

(c) may, at the discretion of management, be offered benefits if working a minimum of 20 hours per week.

(d) if the required work hours of the position exceed the 30 hours per week maximum for Schedule IN or if the position exceeds anticipated time limits for Schedule TL, agency management shall consult with DHRM to review possible alternative options.

(5) Only Schedule A, IN or TL appointments made from a hiring list under Subsection R477-4-8 may be considered for conversion to career service.

(6) Disclosure statements shall be obtained and reference and background checks shall be conducted for all Schedule AB, AC, AD and AR new hire appointees.

R477-4-3. Career Service Positions.

(1) Selection of a career service employee shall be governed by the following:

(a) DHRM business practices;

(b) career service principles;

(c) equal employment opportunity principles;

(d) Section 52-3-1, employment of relatives;

(e) reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

R477-4-4. Recruitment and Selection for Career Service Positions.

(1) Prior to initiating recruitment, agencies may administer any of the following personnel actions:

(a) reemployment of a veteran eligible under USERRA;

(b) reassignment within an agency initiated by an employee's reasonable accommodation request under the ADA;

(c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;

(d) reassignment or transfer made in order to avoid a reduction in force, or for reorganization or bumping purposes;

(e) reassignment, transfer, or career mobility of qualified employees to better utilize skills or assist management in meeting the organization's mission;

(f) reclassification; or

(g) conversion from schedule A to schedule B as

authorized by Subsection R477-5-1(3).

(2) Agencies shall use the DHRM approved recruitment and selection system for all career service position vacancies. This includes recruitments open within an agency, across agency lines, or to the general public. Recruitment shall comply with federal and state laws and DHRM rules and procedures.

(a) All recruitment announcements shall include the following:

(i) Information about the DHRM approved recruitment and selection system; and

(ii) opening and closing dates.

(b) Recruitments for career service positions shall be posted for a minimum of seven calendar days.

(3) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Management may make appointments according to the following order:

(a) from the reappointment register created prior to March 2, 2009, provided the applicant applies for the position and meets minimum qualifications.

(b) from a hiring list of qualified applicants for the position, or from another process pre-approved by the Executive Director, DHRM.

R477-4-5. Transfer and Reassignment.

(1) Positions may be filled through a transfer or reassignment.

(a) The receiving agency shall verify the employee's career service status and that the employee meets the job requirements for the position.

(b) Agencies receiving a transfer or reassignment of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.

(c) A career service employee assimilated from another career service jurisdiction shall accrue leave at the same rate as a career service employee with the same seniority.

(2) A reassignment or transfer may include assignment to:

(a) a different job or position with an equal or lesser salary range maximum;

(b) a different work location; or

(c) a different organizational unit.

R477-4-6. Rehire.

(1) A former employee shall compete for career service positions through the DHRM approved recruitment and selection system and shall serve a new probationary period, as designated in the official job description.

(a) The annual leave accrual rate for an employee who is rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.

(b) An employee rehired into a benefited position within one year of separation shall have forfeited sick leave reinstated as Program II sick leave.

(c) An employee rehired into a benefited position within one year of separation due to a reduction in force shall have forfeited sick leave reinstated to Program I and Program II as accrued prior to the reduction in force.

(d) A rehired employee may be offered any salary within the salary range for the position.

R477-4-7. Examinations.

(1) Examinations shall be designed to measure and predict applicant job performance.

(2) Examinations shall include the following:

(a) a detailed position record (DPR) based upon a current job or position analysis;

(b) an initial, impartial screening of the individual's

qualifications;

- (c) impartial evaluation and results; and
 - (d) reasonable accommodation for qualified individuals with disabilities.
- (3) Examinations and ratings shall remain confidential and secure.

R477-4-8. Hiring Lists.

(1) The hiring list shall include the names of applicants to be considered for appointment or conditional appointment to a specific job, job series or position.

(a) An individual shall be considered an applicant when the individual applies for a particular position identified through a specific recruitment.

(b) Hiring lists shall be constructed using the DHRM approved recruitment and selection system.

(c) Applicants for career service positions shall be evaluated and placed on a hiring list based on job, job series or position related criteria.

(d) All applicants included on a hiring list shall be examined with the same examination or examinations.

(2) An individual who falsifies any information in the job application, examination or evaluation processes may be disqualified from further consideration prior to hire, or disciplined if already hired.

(3) The appointing authority shall demonstrate and document that equal consideration was given to all applicants whose final score or rating is equal to or greater than that of the applicant hired.

(4) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

R477-4-9. Job Sharing.

Agency management may establish a job sharing program as a means of increasing opportunities for part-time employment. In the absence of an agency program, individual employees may request approval for job sharing status through agency management.

R477-4-10. Internships.

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to temporary career service exempt positions.

R477-4-11. Volunteer Experience Credit.

(1) Documented job related volunteer experience shall be given the same consideration as similar paid employment in satisfying the job requirements for career service positions.

(a) Volunteer experience may not be substituted for required licensure, POST certification, or other criteria for which there is no substitution in the job requirements in the job description.

(b) Court ordered community service experience may not be considered.

R477-4-12. Reorganization.

When an agency is reorganized, but an employee's position does not change substantially, the agency may not require the employee to compete for his current position.

R477-4-13. Career Mobility Programs.

Employees and agencies are encouraged to promote career mobility programs.

(1) A career mobility is a temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs. Career mobility assignments may be to any salary range.

(2) Agencies may provide career mobility assignments inside or outside state government in any position for which the employee qualifies.

(3) An eligible employee or agency may initiate a career mobility.

(a) Career mobility assignments may be made without going through the competitive process but shall remain temporary.

(b) Career mobility assignments shall only become permanent if:

(i) the position was originally filled through a competitive recruitment process; or

(ii) a competitive recruitment process is used at the time the agency determines a need for the assignment to become permanent.

(4) Agencies shall develop and use written career mobility contract agreements between the employee and the supervisor to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

(5) A participating employee shall retain all rights, privileges, entitlements, tenure and benefits from the previous position while on career mobility.

(a) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position at a salary rate described in R477-6-4(11).

(6) An employee who has not attained career service status prior to the career mobility program cannot permanently fill a career service position until the employee obtains career service status through a competitive process.

R477-4-14. Assimilation.

(1) An employee assimilated by the state from another career service system shall receive career service status after completing a probationary period if originally selected through a competitive examination process judged by the Executive Director, DHRM, to be equivalent to the process used in the state career service.

(a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

R477-4-15. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: employment, fair employment practices, hiring practices

November 7, 2011

Notice of Continuation June 9, 2007

67-19-6

67-20-8

R477. Human Resource Management, Administration.**R477-8. Working Conditions.****R477-8-1. Work Period.**

(1) The state's standard work week begins Saturday and ends the following Friday. Agencies may implement alternative work schedules from among those approved by the Executive Director, DHRM.

(2) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt extended business hours to enhance service to the public.

(3) Agency management shall establish work schedules and may approve a flexible starting and ending time for an employee as long as scheduling is consistent with overtime provisions of Section R477-8-4.

(4) An employee is required to be at work on time. An employee who is late, regardless of the reason including inclement weather, shall, with management approval, make up the lost time by using accrued leave, leave without pay or adjusting their work schedule.

(5) An employee's time worked shall be calculated in increments of 15 minutes. This rule incorporates by reference 29 CFR 785.48 for rounding practices when calculating time worked.

R477-8-2. Telecommuting.

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

(a) establish a written policy governing telecommuting;

(b) enter into a written contract with each participating employee to specify conditions, such as use of state or personal equipment, protecting confidential information, and results such as identifiable benefits to the state and how customer needs are being met;

(c) not allow participating employees to violate overtime rules;

(d) not compensate for normal commute time; and

(e) document telecommuting authorization in the Utah Performance Management system.

R477-8-3. Lunch, Break and Exercise Release Periods.

(1) Each full time work day shall include a minimum of 30 minutes noncompensated lunch period, unless otherwise authorized by management.

(a) Lunch periods may not be used to shorten a work day.

(2) An employee may take a 15 minute compensated break period for every four hours worked.

(a) Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.

(3) Compensated exercise release time may be allowed at agency discretion for up to three days per week for 30 minutes.

(a) Participating agencies shall have a written policy regarding exercise release time.

(b) Work time exercise that is a bona fide job requirement is not subject to this section.

(4) Authorization for exercise time and regular scheduled lunch breaks less than 30 minutes shall be documented in the Utah Performance Management system.

(5) Reasonable daily noncompensated break periods, as requested by the employee, shall be granted for the first year following the birth of a child so that the employee may express breast milk for her child. A private location, other than a restroom, shall be provided.

R477-8-4. Overtime.

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Section 67-19-6.7.

(1) Management may direct an employee to work

overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) prior supervisory approval for all overtime worked;

(b) recordkeeping guidelines for all overtime worked;

(c) verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation standards are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.

(a) An employee may appeal the FLSA designation to the agency human resource field office. Further appeals may be filed directly with the United States Department of Labor, Wage and Hour Division. Sections 67-19-31, 67-19a-301 and Title 63G, Chapter 4 may not be applied for FLSA appeals purposes.

(3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period may not be counted as hours worked when calculating overtime accrual. Hours worked over two or more weeks may not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(a) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or time off at time and one half.

(b) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(4) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by unit number and communicate it to employees. Overtime years shall be set at one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will establish the date for the agency at the last pay period of the calendar year. An agency may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.

(b) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(c) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

(i) at the end of the employee's established overtime year;

(ii) upon assignment to another agency; or

(iii) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

(d) If an FLSA exempt employee's status changes to nonexempt, that employee's compensatory time earned while in exempt status shall lapse if not used by the end of the current overtime year.

(e) The agency head may approve overtime for career service exempt deputy and division directors, but overtime may not be compensated with actual payment. Schedule AB employees may not be compensated for compensatory time except with time off.

(5) Law enforcement, correctional and fire protection employees

(a) To be considered for overtime compensation under this rule, a law enforcement or correctional officer shall meet the following criteria:

- (i) be a uniformed or plainclothes sworn officer;
- (ii) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury, and to prevent and detect crimes;
- (iii) have the power to arrest;
- (iv) be POST certified or scheduled for POST training;

and

- (v) perform over 80% law enforcement duties.

(b) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.

- (i) 171 hours in a work period of 28 consecutive days; or
- (ii) 86 hours in a work period of 14 consecutive days.

(c) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.

- (i) 212 hours in a work period of 28 consecutive days; or
- (ii) 106 hours in a work period of 14 consecutive days.

(d) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

- (i) the Fair Labor Standards Act, Section 207(k);
- (ii) 29 CFR 553.230;
- (iii) the state's payroll period;
- (iv) the approval of the Executive Director, DHRM.

(6) Compensatory Time

(a) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

(b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero in the same pay period that the employee is transferred from one agency to a different agency, promoted, reclassified, reassigned, or transferred to an FLSA exempt position. The pay down for unused compensatory time balances shall be based on the employee's hourly rate of pay in the old position.

(7) Time Reporting

(a) Employees shall complete and submit a state approved biweekly time record that accurately reflects the hours actually worked, including:

- (i) approved and unapproved overtime;
- (ii) on-call time;
- (iii) stand-by time;
- (iv) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and
- (v) approved leave time.

(b) An employee who fails to accurately record time may be disciplined.

(c) Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.

(d) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record may be disciplined.

(e) A Non-exempt employee who believes FLSA rights

have been violated may submit a complaint directly to the Executive Director, or designee, of the Department of Human Resource Management.

(8) Hours Worked: An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be disciplined.

(a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

- (i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;
- (ii) the employee is completely relieved from duty and allowed to leave the job;
- (iii) the employee is relieved until a definite specified time; or
- (iv) the relief period is long enough for the employee to use as the employee sees fit.

(c) On-call time: A FLSA nonexempt employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call. A FLSA exempt employee required by agency management to be available for on-call work may be compensated at agency discretion, not to exceed a rate of one hour for every 12 hours the employee is on-call.

(i) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is available for a call to duty. An employee may not be in on-call status while using leave or while otherwise unable to respond to a call to duty.

(ii) Agencies who enter into on-call agreements with employees shall have an agency policy consistent with this rule and finance policy.

(iii) On-call status shall be designated by a supervisor and shall be in writing and documented in the Utah Performance Management system on an annual basis. Carrying a pager or cell phone shall not constitute on-call time without this written agreement.

(iv) The employee shall record the hours spent in on-call status, and any actual hours worked, on the official time record, for the specific date the hours were incurred, in order to be paid.

(v) An employee may not record on-call hours and actual hours worked for the same period of time. On-call hours, actual hours worked, and leave hours cannot exceed 24 hours in a day.

(vi) An employee shall round on-call hours to the nearest two decimal places. Hours of on-call pay shall be calculated by subtracting the number of hours worked in the on-call period from the number of hours in the on-call period then dividing the result by 12.

(d) Stand-by time: An employee restricted to stand-by at a specified location ready for work shall be paid full-time or overtime, as appropriate. An employee shall be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(e) The meal periods of guards, police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours shall be counted as working time, unless an express agreement excludes the time.

(9) Commuting and Travel Time:

(a) Normal commuting time from home to work and back may not count towards hours worked.

(b) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(c) Time an employee spends traveling on a special one

day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(d) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(e) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to nonworking days, as well as regular working days. However, regular meal period time is not counted.

(10) Excess Hours: An employee may use excess hours the same way as annual leave.

(a) Agency management shall approve excess hours before the work is performed.

(b) Agency management may deny the use of any leave time, other than holiday leave, that results in an employee accruing excess hours.

(c) An employee may not accumulate more than 80 excess hours.

(d) Agency management may pay out excess hours under one of the following:

(i) paid off automatically in the same pay period accrued;

(ii) paid off at any time during the year as determined appropriate by a state agency or division;

(iii) all hours accrued above the limit set by DHRM;

(iv) upon request of the employee and approval by the agency head; or

(v) upon assignment from one agency to another.

R477-8-5. Dual State Employment.

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status (exempt or nonexempt) for any secondary position(s) shall be the same as the primary position.

(4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

(9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions under Subsection R477-9-2(1).

R477-8-6. Reasonable Accommodation.

Reasonable accommodation for qualified individuals with disabilities may be a factor in any employment action. Before notifying an employee of denial of reasonable accommodation, the agency shall consult with the Division of Risk Management.

R477-8-7. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

(1) return to work from injury or illness except as prohibited by federal law;

(2) when management determines that there is a direct threat to the health or safety of self or others;

(3) in conjunction with corrective action, performance or conduct issues, or discipline; or

(4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-8. Temporary Transitional Assignment.

(1) Agency management may place an employee in a temporary transitional assignment when an employee is unable to perform essential job functions due to temporary health restrictions.

(2) Temporary transitional assignments may also be part of any of the following:

(a) when management determines that there is a direct threat to the health or safety of self or others;

(b) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;

(c) where there is a bona fide occupational qualification for retention in a position;

(d) while an employee is being evaluated to determine if reasonable accommodation is appropriate.

R477-8-9. Change in Work Location.

(1) An involuntary change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond the current one way commute, unless:

(a) the change in work location is communicated to the employee at employment; or

(b) the agency either pays to move the employee consistent with Section R25-6-8 and Finance Policy FIACCT 05-03.03, or reimburses commuting expenses up to the cost of a move.

R477-8-10. Agency Policies and Exemptions.

(1) Each agency may write its own policies for work schedules, overtime, leave usage, and other working conditions consistent with these rules.

R477-8-11. Background Checks.

In order to protect the citizens of the State of Utah and state resources and with the approval of the agency head, agencies may establish background check policies requiring specific employees to submit to a criminal background check through the Department of Public Safety, Bureau of Criminal Identification.

(1) Agencies who have statewide responsibility for confidential information, sensitive financial information, or handle state funds may require employees to submit to a background check, including employees who work in other state agencies.

(2) The cost of the background check will be the responsibility of the employing agency.

R477-8-12. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: breaks, telecommuting, overtime, dual employment
November 7, 2011 67-19-6
Notice of Continuation June 9, 2007 67-19-6.7
20A-3-103

R477. Human Resource Management, Administration.**R477-14. Substance Abuse and Drug-Free Workplace.****R477-14-1. Rules Governing a Drug-Free Workplace.**

(1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportation Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:

(a) Provide a safe and productive work environment that is free from the effects of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.

(b) Identify, correct and remove the effects of drug and alcohol abuse on job performance.

(c) Assure the protection and safety of employees and the public.

(2) State employees may not unlawfully manufacture, dispense, possess, distribute, use or be under the influence of any controlled substance or alcohol during working hours, on state property, or while operating a state vehicle at any time, or other vehicle while on duty.

(a) Employees shall follow Subsection R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of \$25,000 or more.

(3) All drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies.

(4) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(5) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.

(6) Employees are subject to one or more of the following drug or alcohol tests:

- (a) reasonable suspicion;
- (b) critical incident;
- (c) post accident;
- (d) return to duty; and
- (e) follow up.

(7) Final applicants for highly sensitive positions, or employees who are final candidates for, transfer to, or are promoted to a highly sensitive position are subject to preemployment drug testing at agency discretion except as required by law.

(a) An employee transferring or promoted from one highly sensitive position to another highly sensitive position is subject to preemployment drug testing at agency discretion except as required by law.

(b) An employee who is reassigned to a highly sensitive position or assigned the duties of a highly sensitive position is not subject to preemployment drug testing.

(8) Employees in highly sensitive positions, as designated by DHRM, are subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol testing of employees in highly sensitive positions shall be conducted at the discretion of the employing agency.

(9) This rule incorporates by reference the requirements of 49 CFR 40.87 (2003).

(10) The State of Utah will use a blood alcohol concentration level of .04 for safety sensitive positions and .08 for all other positions as the cut off for a positive alcohol test except where designated otherwise by federal regulations.

(11) Agencies with employees in federally regulated positions shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current federal regulation and the DHRM Drug and Alcohol

Testing Manual.

(12) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level, when tested before, during, or immediately after performing highly sensitive functions, shall be removed from performing highly sensitive duties for 8 hours, or until another test is administered and the result is less than the applicable federal cut off level.

(13) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level when tested before, during or after performing highly sensitive duties, are subject to discipline.

(14) Management may take disciplinary action if:

(a) there is a positive confirmation test for controlled substances;

(b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level;

(c) management determines an employee is unable to perform assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level.

R477-14-2. Management Action.

(1) Under Rules R477-10, R477-11 and Section R477-14-2, supervisors and managers who receive notice of a workplace violation of these rules shall take immediate action.

(2) Management may take disciplinary action which may include dismissal.

(3) An employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action which may include dismissal. See Section 67-19-33.

(4) An employee who substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample, or attempts to do so, is subject to disciplinary action which may include dismissal.

(5) Management may also take disciplinary action against employees who manufacture, dispense, possess, use, sell or distribute controlled substances or use alcohol, per Rule R477-11, under the following conditions:

(a) if the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of \$25,000.00;

(b) if the employee's action puts employees, clients, customers, patients or co-workers at physical risk.

(6) An employee who has a confirmed positive test for use of a controlled substance or alcohol in violation of these rules may be provided the opportunity for a last chance agreement and be required to agree to participate, at the employee's expense, in a rehabilitation program, under Subsection 67-19-38(3). If this is required, the following shall apply:

(a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient treatment.

(b) The employee shall sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.

(c) All communication shall be classified as private in accordance with Section 63G-2-3.

(d) An employee may be required to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in the previously held position, or a position with a comparable or lower salary range.

(7) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary action.

(8) An employee who has a confirmed positive test for use of a controlled substance or alcohol is subject to follow up testing.

(9) An employee who is convicted for a violation under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing, selling or using a controlled substance, shall notify the agency head of the conviction no later than five calendar days after the conviction.

(a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:

(i) the judicial system;

(ii) other sources;

(iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

R477-14-3. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees

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67-19-6

67-19-18

67-19-34

67-19-35

63G-2-3

67-19-38

R512. Human Services, Child and Family Services.**R512-10. Youth Mentor Program.****R512-10-1. Purpose and Authority.**

(1) The purpose of this rule is to establish criteria for a Youth Mentor Program.

(2) This rule is authorized by Section 62A-4a-102.

R512-10-2. Definition.

(1) Level One: The Youth Mentor Program is an advocacy service for youth and families which provides support and socialization activities, and assists in building self-esteem of youth who are at risk of or have been neglected or abused or who are ungovernable.

(2) Level Two: In areas of the state where parent education programs do not exist, the youth mentor funds may pay for parent education services. The parent education services would be used for the purpose of working with a parent(s) who is lacking in parenting, socialization, and homemaking skills.

(3) Level Three: This level of the Youth Mentor Program is characterized by providing intensive services to youth who may be seriously out of control, may have serious behavioral or emotional problems, may be substance abusers, may be preparing for independent living, or may require stringent costly out-of-home placements if less restrictive interventions are not provided. Intensive youth mentors provide one-on-one intensive supervision that may include assistance to the out-of-home provider in monitoring of behavior, basic living skills training, crisis intervention, as well as linkage to educational, vocational, employment, and recreational services.

R512-10-3. Conditions for Approval.

(1) The youth mentor shall meet the following standards:

(a) The youth mentor shall submit fingerprints to be cleared through the Bureau of Criminal Investigation (BCI) as authorized by Section 62A-4a-202.4. This check must show that the applicant has not been convicted of a felony or certain misdemeanors, which may have an impact in working with children. The Child and Family Services database (USSDS or SAFE) shall be checked for any occurrences of child abuse. If the applicant has a substantiated child abuse report, this information, along with other information, will be taken into consideration during the application process.

(b) The youth mentor will receive a copy of the Department of Human Services "Code of Conduct" and will act accordingly. A signed copy of the Statement of Understanding will be included in the youth mentor's file.

(c) The youth mentor will sign a Motor Vehicle Insurance Certification form in which the youth mentor will certify that no-fault property damage and liability coverage insurance will be maintained on any automobile used in the program.

(d) Compliance with these standards will be monitored by Child and Family Services' regional staff and/or the youth mentor coordinator, based on interviews, collateral contacts, and other appropriate documentation.

R512-10-4. Characteristics and Requirements of Youth Mentor.

(a) The youth mentor shall not discriminate against the youth because of race, color, national origin, sex, religion, or handicap. The youth mentor shall respect the religious and cultural practices of the youth.

(b) The youth mentor shall have the physical health necessary to perform the responsibilities of the position.

(c) The youth mentor shall have no unresolved emotional or mental health needs which impede the youth mentor in performing the responsibilities of the position.

(d) The youth mentor shall be 21 years of age or older.

(e) While working with youth, the youth mentor shall demonstrate maturity, flexibility, the ability to modify

expectations and attitudes, and the ability to accept and respond to the needs of youth.

(f) The youth mentor shall respect the relationship the youth has with the natural parents and Child and Family Services, and shall encourage those relationships.

(g) The youth mentor shall have experience fostering the development of children or shall have the personal characteristics and temperament suited to working with children.

(h) The youth mentor shall not be dependent on the youth mentor payments as the primary source of household income.

(i) A Child and Family Services employee shall not be approved as a youth mentor.

(j) The youth mentor shall not be on probation, parole, or under indictment for a criminal offense, and shall have no history of crimes involving youth.

(k) The youth mentor shall work cooperatively with Child and Family Services, the Juvenile Court, the Guardian ad Litem, the Attorney General, and law enforcement officials as authorized by the supervising caseworker.

(l) The youth mentor shall understand and abide by the requirements that information must be kept confidential.

(m) The youth mentor shall notify the caseworker and guardian of concerns.

(n) The youth mentor shall be trained to provide for the needs of the youth they work with. The training shall be approved by Child and Family Services and may be provided by the youth mentor coordinator or by other educational or social agencies in the community.

(o) The youth mentor shall not use any type of corporal punishment in working with youth. Infliction of bodily pain, discomfort, or degrading/humiliating punishment shall be prohibited.

R512-10-5. Revocation of the Youth Mentor Agreement.

(1) Child and Family Services may revoke certification upon any of the following grounds:

(a) Violation of standards, agreement conditions, or the Department of Human Services Code of Conduct.

(b) Conduct in the provision of service that is or may be harmful to the health or safety of persons receiving the service.

(2) If the above conditions exist, the immediate suspension or revocation of the Youth Mentor Agreement shall be ordered. Written notice shall be sent to the youth mentor and shall contain a statement of the basis for the order. The letter must also inform the youth mentor of the right and procedure to request a reconsideration of the action.

KEY: child welfare, youth advocate

February 9, 2010

Notice of Continuation November 3, 2011

62A-4a-102

62A-4a-106

R523. Human Services, Substance Abuse and Mental Health.**R523-23. On-Premise Alcohol Training and Education Seminar Rules of Administration.****R523-23-1. Authority, Intent, and Scope.**

(1) These rules are adopted under the authority of Section 62A-15-401 authorizing the Division of Substance Abuse and Mental Health to administer the Alcohol Training and Education Seminar Program.

(2) The intent of statute and rules is to require every person to complete the seminar who sells or furnishes alcoholic beverages to the public for on premise consumption in the scope of the person's employment.

(3) These rules include:

- (a) certification of providers;
- (b) approval of the Seminar curriculum;
- (c) the ongoing activities of providers; and
- (d) the process for approval, denial, suspension and revocation of provider certification.

R523-23-2. Definitions.

(1) "Approved Curriculum" means a provider's curriculum which has been approved by the Division in accordance with these rules.

(2) "Certification" means written approval from the Division stating a person or company has met the requirements to become a seminar provider.

(3) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(4) "Division" means the Division of Substance Abuse and Mental Health.

(5) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at the premises of a licensee. A manager may also be a supervisor.

(6) "On-premise consumption" means the consumption of alcoholic products by a person within any building, enclosure, room, or designated area which has been legally licensed to allow consumption of alcohol.

(7) "Seminar" means the Alcohol Training and Education Seminar.

(8) "Server" is an employee who actually makes available, serves to, or provides a drink or drinks to a customer for consumption on the premises of the licensee.

(9) "Supervisor" means an employee who, under the direction of a manager as defined above if the business establishment employees a manager, or under the direction of the owner or president of the corporation if no manager is hired, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the licensee.

R523-23-3. Provider Certification Application Procedure.

(1) A provider seeking first-time certification shall make application to the Division at least 30 days prior to the first scheduled seminar date. A provider seeking recertification to administer the seminar shall make application to the Division at least 30 days prior to expiration of the current certification.

(2) Any seminar conducted by a noncertified provider is void and shall not meet the server training requirements authorized under Section 62A-15-401.

(3) All application forms shall be reviewed by the Division. The Division shall determine if the application is complete and in compliance with Section 62A-15-401 and these rules. If the Division approves the application, the curriculum and determines the provider has met all other requirements, the Division shall certify the provider.

(4) Within 30 days after the Division has taken action, the Division shall officially notify the applicant of the action taken: denial, approval, or request for further information. Notification

of the action taken shall be forwarded in writing to the applicant.

(5) If an application requires additional information of corrective action, a provider may continue to conduct seminars for 30 days from the date of notification. If the provider has not resolved the action required with the Division by that date, the provider is no longer certified to provide the seminar and must cease until all actions are approved by the Division.

R523-23-4. Provider Responsibilities.

(1) For each person completing the seminar, the provider shall electronically submit to the Division the name, last four digits of the person's social security number and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a server for a period which begins at the completion of the seminar and expires three years from this date. Recertification requires the server to complete a new seminar every three years.

(3) The provider shall issue a certification card to the server. The card shall contain at least the name of the server and the expiration date. The provider shall be responsible for issuing any duplicates or lost cards.

(4) The Provider shall implement at least three of the following measures to prevent fraud:

(a) Authentication that the an individual accurately identifies the individual as taking the online course or test;

(b) Measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;

(c) Measures to track the actual time an individual taking the online course or test is actively engaged online;

(d) A seminar provider to provide technical support, such as requiring a telephone number, email, or other method of communication that allows an individual taking the online course or test to receive assistance if the individual is unable to participate online because of technical difficulties;

(e) A test to meet quality standards, including randomization of test questions and maximum time limits to take a test;

(f) A seminar provider to have a system to reduce fraud as to who completes an online course or test, such as requiring a distinct online certificate with information printed on the certificate that identifies the person taking the online course or test, or requiring measures to inhibit duplication of a certificate;

(g) Measures to allow an individual taking an online course or test to provide an evaluation of the online course or test;

(h) A seminar provider to track the Internet protocol address or similar electronic location of an individual who takes an online course or test;

(i) An individual who takes an online course or test to use an e-signature; or

(j) A seminar provider to invalidate a certificate if the seminar provider learns that the certificate does not accurately reflect the individual who took the online course or test.

R523-23-5. Server Responsibilities.

A server is required within 30 days of employment to pass the Seminar.

R523-23-6. Division Responsibilities.

The Division shall maintain the database of servers who have completed the seminar.

R523-23-7. Approved Curriculum.

(1) Each provider must have a curriculum approved by the Division. This curriculum must provide at least three hours of

instruction both for original certification and for any and all recertifications. The contents of an approved curriculum shall include the following components:

(a) Alcohol as a drug and its effect on the body and behavior:

- (i) facts about alcohol;
- (ii) what alcohol is; and
- (iii) alcohol's path through the body.
- (b) Factors influencing the effect of alcohol including:
 - (i) food and digestive factors;
 - (ii) weight, physical fitness and gender factors;
 - (iii) psychological factors;
 - (iv) tolerance; and
 - (v) alcohol used in combination with other drugs.

(c) Recognizing drinking levels:

- (i) explanation of behavioral signs and indications of impairment;

- (ii) classification of behavioral signs; and
- (iii) defining intoxication.

(d) Recognizing the problem drinker and techniques for servers to help control consumption:

- (i) use of classification system;
- (ii) use of alcohol facts;
- (iii) continuity of service; and
- (iv) drink counting.
- (e) Overview of state alcohol laws:
 - (i) Utah liquor distribution and control;
 - (ii) legal age;
 - (iii) prohibited sales;
 - (iv) third party liability and the Dram Shop Law;
 - (v) legal definition of intoxication; and
 - (vi) legal responsibilities of servers.

(f) Techniques for dealing with the problem customer including rehearsal and practice of these techniques.

- (g) Intervention techniques:
 - (i) slowing down service;
 - (ii) offering food or nonalcoholic beverages;
 - (iii) serving water with drinks;
 - (iv) not encouraging reorders; and
 - (v) cutting off service.
- (h) Establishing house rules for regulating alcoholic beverages:

- (i) management and co-workers' support; and
- (ii) dealing with minors; and
- (i) Alternative means of transportation and getting the customer home safely:
 - (i) ask customer to arrange alternative transportation;
 - (ii) call a taxi or transportation service;
 - (iii) accommodations for the night; and
 - (iv) telephone the police.

R523-23-8. Examination.

The examination shall include questions concerning alcohol as a drug and its effect on the body and behavior, recognizing and dealing with the problem drinker, Utah alcohol laws, terminating service, and alternative means of transportation to get the customer safely home. The portion of the exam concerning Utah's alcohol laws shall be uniform questions approved by the Department of Alcoholic Beverage Control or as updated and approved by the Division.

R523-23-9. Alcohol Training and Education Seminar Provider Standards.

(1) The Division may certify an applicant who has a program course that:

- (a) does not have a history of liquor law violations or any convictions showing disregard for laws related to being a responsible liquor provider;
- (b) identifies all program instructors and instructor trainers

and certifies in writing that they have been trained to present the course material and that they have not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, within the last five years;

(c) agrees to notify the Division in writing of any changes in instructors and submit the assurances called for in Subsection R523-23-9(1)(b) for all new instructors;

(d) will establish and maintain course completion records.

(2) All online training courses shall be provided on a secure website.

R523-23-10. Grounds for Denial, Corrective Action, Suspension, and Revocation.

(1) The Division may deny, suspend or revoke certification if:

(a) the provider or applicant violates these rules, as provided in Section 62A-15-401; or

(b) the applicant fails to correctly complete all required steps of the application process as determined by these rules or other rules or statutes referenced in these rules; or

(c) a provider whose certification has been previously denied, suspended or revoked has reapplied without taking the previously required corrective action.

R523-23-11. Corrective Action.

(1) If the Division becomes aware that a provider is in violation of these rules or other rules or statutes referenced in these rules:

(a) within 30 days after becoming aware of the violation, the Division shall identify in writing the specific areas in which the provider is not in compliance and send written notice to the provider; and

(b) within 30 days of notification of noncompliance, the provider shall submit a written plan for achieving compliance. The provider may be granted an extension.

R523-23-12. Suspension and Revocation.

(1) The Director or designee may suspend the certification of a provider as follows:

(a) When a provider fails to respond in writing to areas of noncompliance identified in writing by the Division within the defined period. The defined period is 30-days plus any extensions granted by the Division.

(b) When a provider fails to take corrective action as agreed upon in its written response to the Division.

(c) When a provider fails to allow the Division access to information or records necessary to determine the provider's compliance under these rules and referenced rules and statutes.

(2) The Director or designee may revoke certification of a provider as follows:

(a) A provider or its authorized instructors continue to provide the seminar while the provider is under a suspended certification.

(b) A provider fails to comply with corrective action while under a suspension.

(c) A program has committed a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

R523-23-13. Procedure for Denial, Suspension, or Revocation.

(1) If the Division has grounds for action under these rules, referenced rules, or as required by law, and intends to deny, suspend or revoke certification of a provider, the steps governing the action are as follows:

(a) The Division shall notify the applicant or provider by personal service or by certified mail, return receipt requested, of the action to be taken. The notice shall contain reasons for the action, to include all statutory or rule violations, and a date

when the action shall become effective.

(b) The provider may request an informal hearing with the Director within ten calendar days. The request shall be in writing. Within ten days following the close of the hearing, the Director or designee shall inform the provider or applicant in writing as required under Section 63G-4-203. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under Section 63G-4-203.

KEY: substance abuse, server training, on-premise
November 7, 2011 **62A-15-105(5)**
Notice of Continuation June 22, 2007 **62A-15-401**

R527. Human Services, Recovery Services.**R527-34. Non-IV-A Services.****R527-34-1. Authority and Purpose.**

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-11-107.

2. The purpose of this rule is to outline the services that the Office of Recovery Services/Child Support Services (ORS/CSS) will provide to all Non-IV-A Recipients of child support services.

R527-34-2. Non-IV-A Services.

1. ORS/CSS will provide the following services to recipients of child support services:

- a. Attempt to locate the obligor;
- b. Attempt to collect the current child support amount;
- c. Attempt to collect past-due child support which is owed on behalf of a child, regardless of whether the child is a minor;
- d. Attempt to enforce court-ordered spousal support if the minor child of the parties resides with the obligee and ORS/CSS is enforcing the child support order; ORS/CSS will only continue to collect spousal support after the child has emancipated if:

- i. income withholding is already in effect; and,
- ii. the child(ren) still resides with the obligee;
- e. Attempt to collect child care expenses if the past-due amount has been reduced to a sum-certain judgment;
- f. Attempt to collect ongoing child care expenses if all of the following criteria are met:

- i. the obligor or the obligee made a specific request for ORS/CSS to collect ongoing child care;
- ii. the child care obligation is included as a specific monthly dollar amount in a court order along with a child support obligation; and,
- iii. neither parent is disputing the monthly child care amount;

- g. Attempt to collect medical support if the amount is specified as a monthly amount due in the order or has been reduced to a sum-certain judgment;

- h. Attempt to enforce medical insurance if either parent has been ordered to maintain insurance;

- i. Attempt to establish paternity;
- j. Review the support order for possible adjustment of the support amount, in compliance with R527-231.

2. ORS/CSS adopts the federal regulations as published in 45 CFR 302.33 (2001) which are incorporated by reference. 45 CFR 302.33 provides options which ORS/CSS may elect to implement. ORS/CSS elected to implement the following options:

- a. ORS/CSS has elected to charge no application fee to applicants for child support enforcement services.

- b. ORS/CSS has elected to recover costs from the individual receiving child support enforcement services. The costs which will be recovered are listed in R527-35-1.

- c. ORS/CSS has elected not to recover from the non-custodial parent the costs listed in R527-35-1 which are paid by the individual receiving child support services.

KEY: child support

June 9, 2008

62A-11-107

Notice of Continuation November 17, 2011

R527. Human Services, Recovery Services.**R527-35. Non-IV-A Fee Schedule.****R527-35-1. Authority and Purpose.**

1. The Office of Recovery Services/Child Support Services (ORS/CSS) is authorized to adopt, amend, and enforce rules by Section 62A-11-107.

2. The purpose of this rule is to provide information regarding the ORS/CSS fee schedule for Non-IV-A cases which is authorized by Federal Regulations found at 45 CFR 302.33. This rule outlines when a fee will be charged and the amount that will be assessed on a case that qualifies for a particular fee.

R527-35-2. Non-IV-A Fee Schedule.

Pursuant to 45 CFR 302.33 (2008) the Office of Recovery Services may charge an applicant or recipient of child support services who is not receiving IV-A financial assistance or Medicaid, one or more fees for specific services. These fees are itemized below:

The following fee, which has been established by the federal government:

1. the full IRS enforcement fee of \$122.50 is charged if a case qualifies for full IRS collection services, the obligee requests those services, and the amount of the child support obligation is certified for those services by the United States Secretary of the Treasury.

The following fees, which have been established by the Office:

1. a Parent Locator Service fee of \$20.00. This fee is waived if the case was closed within the last 12 months for the reason CTF (cannot find the non-custodial parent) or AFC (non-custodial parent lives in a foreign jurisdiction);

2. the cost of genetic testing if the alleged father is excluded as the biological father;

3. an administrative fee of \$5.00 per payment processed, not to exceed \$10.00 per month;

4. a fee of \$25.00, to be paid at the time the obligor's federal tax refund is intercepted to offset a Non-IV-A support arrearage if the refund is \$50.00 or more. If the refund is more than \$25.00 but less than \$50.00, the fee is the refund amount minus \$25.00;

5. the Child Support Lien Network (CSLN) fee of \$52.00, to be paid at the time the levy is processed.

KEY: child support**February 23, 2010****45 CFR 302.33****Notice of Continuation November 17, 2011 62A-11-107**

R527. Human Services, Recovery Services.**R527-201. Medical Support Services.****R527-201-1. Authority and Purpose.**

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to specify the responsibilities and procedures for the Office of Recovery Services/Child Support Services for providing medical support services.

R527-201-2. Federal Requirements.

The Office of Recovery Services/Child Support Services, (ORS/CSS), adopts the federal regulations as published in 45 CFR 303.30, 303.31, and 303.32 (2008) which are incorporated by reference in this rule.

R527-201-3. Definitions.

1. Accessibility: Insurance is considered accessible to the child if non-emergency services covered by the health plan are available to the child within 90 minutes or 90 miles of the child's primary residence.

2. National Medical Support Notice (NMSN) is the federally approved form that ORS/CSS shall use, when appropriate, to notify an employer to enroll dependent children in an employment-related group health insurance plan in accordance with a child support order.

3. Cash Medical Support: An obligation to equally share all reasonable and necessary medical and dental expenses of children.

R527-201-4. Limitation of Services.

ORS/CSS shall not:

1. pursue establishment of specific amounts for ongoing medical support,

2. initiate an action to obtain a judgment for uninsured medical expenses, or

3. collect and disburse premium payments to insurance companies.

R527-201-5. Conditions Under Which Non-IV-A Medicaid Recipients May Decline Support Services.

ORS/CSS shall provide child and spousal support services; however, a Non-IV-A Medicaid recipient may decline child and spousal support services if paternity is not an issue and there is an order for the non-custodial parent to provide medical support.

R527-201-6. Securing a Medical Support Provision in the Support Order.

1. Notice to potentially obligated parents: The notice to potentially obligated parents shall include a provision that an administrative or judicial proceeding will occur to:

a. order either parent to purchase and maintain appropriate medical insurance for the children, and

b. order both parents to pay cash medical support. This notification shall be provided when either of the following conditions is met:

a. the state initiates an action to establish a final support order or to adjust an existing child support order; or

b. the state joins a divorce or modification action initiated by either the custodial or the non-custodial parent.

2. If a judicial support order does not include a medical support provision, ORS/CSS shall commence judicial action to modify the order to include a medical support provision.

R527-201-7. Reasonable Cost of Insurance Premiums.

Employment-related or other group coverage that does not exceed 5% of the obligated parent's monthly gross income is generally considered reasonable in cost. However, an employer may not withhold more than the lesser of the amount allowed

under the Consumer Credit Protection Act, the amount allowed by the state of the employee's principal place of employment, or the amount allowed for health insurance premiums by the child support order. If the combined child support and medical support obligations exceed the allowable deduction amount, the employer shall withhold according to the law, if any, of the state of the employee's principal place of employment requiring prioritization between child support and medical support. If the employee's principal place of employment is in Utah, the employer shall deduct current child support before deducting amounts for health insurance coverage. If the amount necessary to cover the health insurance premiums cannot be deducted due to prioritization or limitations on withholding, the employer shall notify ORS/CSS.

R527-201-8. Credit for Premium Payments and Effect of Changes to the Premium Amount Subsequent to the Order.

1. If the order or underlying worksheet does not mention a specific credit for insurance premiums, ORS/CSS shall give credit for the child(ren)'s portion of the insurance premium when the obligated parent provides the necessary verification coverage.

2. ORS/CSS shall notify both parents in writing whenever the credit is changed.

R527-201-9. Enforcement of Obligation to Maintain Medical and Dental Insurance.

1. In Non-IV-A cases and in IV-A Medicaid cases, appropriate steps shall be taken to ensure compliance with orders which require the obligated parent to maintain insurance. Obligated parents shall demonstrate compliance by providing ORS/CSS with policy numbers and the insurance provider name for the dependent children for whom the medical support is ordered.

2. In Non-IV-A cases and in IV-A Medicaid cases, if an obligated parent has been ordered to maintain insurance and insurance is accessible and available at a reasonable cost, ORS/CSS shall use the NMSN to transfer notice of the insurance provision to the obligated parent's employer unless ORS/CSS is notified pursuant to Section 62A-11-326.1 that the children are already enrolled in an insurance plan in accordance with the order.

3. When appropriate, ORS/CSS shall send the NMSN to the obligated parent's employer within two business days after the name of the obligated parent has been entered into the registry of the State Directory of New Hires, matched with ORS/CSS records, and reported to ORS/CSS in accordance with Subsection 35A-7-105(2).

4. The employer shall transfer the NMSN to the appropriate group health plan for which the children are eligible within twenty business days of the date of the NMSN if all of the following criteria are met:

a. the obligated parent is still employed by the employer;

b. the employer maintains or contributes to plans providing dependent or family health coverage;

c. the obligated parent is eligible for the coverage available through the employer; and

d. state or federal withholding limitations, prioritization, or both, do not prevent withholding the amount required to obtain coverage.

5. If more than one coverage option is available under a group insurance plan and the obligated parent is not already enrolled, ORS/CSS in consultation with the custodial parent may select the least expensive option if the option complies with the child support order and benefits the children. The insurer shall enroll the children in the plan's default option or least expensive option in accordance with Subsection 62A-11-326.2(1)(b) unless another option is specified by ORS/CSS.

6. The employer shall determine if the necessary employee

contributions for the insurance coverage are available. If the amounts necessary are available, the employer shall begin withholding when appropriate and remit directly to the plan.

7. In accordance with Subsections 62A-11-326.1(2) and (3), the obligated parent may contest withholding insurance premiums based on a mistake of fact. The employer shall continue withholding under the NMSN until notified by ORS/CSS to terminate withholding insurance premiums.

8. If a parent successfully contests the action to enroll the children in a group health plan based on a mistake of fact, ORS/CSS shall notify the employer to discontinue enrollment and withholding insurance premiums for the children.

9. In accordance with Subsection 62A-11-406(9), the employer shall:

- a. notify ORS/CSS within five days after the obligated parent terminates employment;
- b. provide the office with the obligated parent's last-known address; and
- c. the name and address of any new employer, if known.

10. ORS/CSS shall promptly notify the employer when a current order for medical support is no longer in effect for which ORS/CSS is responsible.

R527-201-10. Coordination of Health Insurance Benefits.

If, at any point in time, a dependent child is covered by the health, hospital, or dental insurance plans of both parents, the health, hospital, or dental insurance plan of the parent whose birthday occurs first in the calendar year, shall be designated as primary coverage for the dependent child. The health, hospital, or dental insurance plan of the other parent shall be designated as secondary coverage for the dependent child.

R527-201-11. Obligated Parent Receiving Medicaid.

In an unestablished paternity case, if the father's income was taken into consideration when determining the household's eligibility for Medicaid, ORS/CSS shall not enforce payment of medical expenses regardless of the medical support provisions in the order, but shall enforce the health insurance provision.

KEY: child support, health insurance, Medicaid

July 8, 2010

Notice of Continuation December 1, 2011

30-3-5
 30-3-5.5
 62A-1-111
 62A-11-103(2)
 62A-11-107
 62A-11-326
 62A-11-326.1
 62A-11-326.2
 62A-11-326.3
 62A-11-406(9)
 63G-4-102 et seq.
 78B-12-102(6)
 78B-12-212
 35A-7-105(2)
 45 CFR 303.30
 45 CFR 303.31
 45 CFR 303.32

R590. Insurance, Administration.**R590-91. Credit Life Insurance and Credit Accident and Health Insurance.****R590-91-1. Purpose and Authority.**

The purpose of this rule is to protect the interests of debtors and the public in this State and to ensure a fair and equitable credit insurance market by establishing a system of reasonable rating, policy form, and operating standards for the transaction of credit life insurance and credit accident and health insurance. This rule is promulgated pursuant to Section 31A-2-201.

R590-91-2. Definitions.

As used in this rule:

A. "Credit Accident and Health Insurance" means insurance as defined in Section 31A-22-802.

B. "Credit Insurance" means both credit life insurance and credit accident and health insurance.

C. "Credit Life Insurance" means insurance as defined in Section 31A-22-802.

D. "Indebtedness" means indebtedness as defined in Section 31A-22-802.

E. "Net Indebtedness" means net indebtedness as defined in Section 31A-22-802.

F. "Net Written Premium" means premium as defined in Section 31A-22-802.

G. "Open-End Credit" means credit extended by a creditor under an agreement in which the creditor reasonably contemplates repeated transactions; the creditor imposes a finance charge from time to time on an outstanding unpaid balance; and the amount of credit available to the debtor is self-replenishing as the debtor repays amounts previously drawn.

R590-91-3. Rights and Treatment of Debtors.

A. Multiple Plans of Insurance. If a creditor makes available to the debtor more than one plan of credit life insurance or more than one plan of credit accident and health insurance, the debtor must be informed of the plans applicable to the specific loan transaction.

B. Substitution. If a creditor requires insurance, the debtor shall be given the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by the debtor or procuring and furnishing the required coverage through any insurer authorized to transact insurance business in this State. If this subsection is applicable, the debtor shall be informed by the creditor of the right to provide alternative coverage before the transaction is completed.

C. Evidence of Coverage.

(1) All credit insurance shall be evidenced by an individual policy, or, in the case of group insurance, by a certificate of insurance.

(a) The individual policy or certificate of insurance shall be delivered to the debtor in accordance with Section 31A-22-806(3) and 70C-6-104. The insurer shall promptly notify the debtor of any delay in providing the insurance.

(b) If the named insurer does not accept the risk, the insurer, if any, shall notify the debtor of the failure to provide the insurance. A substituted insurer, if any, shall deliver the policy or certificate in accordance with Section 31A-22-806(5).

(c) Subsequent certificates are not needed on open-end credit arrangements after the initial indebtedness.

(2) Each individual policy or certificate of insurance shall provide the information required by Section 31A-22-806.

(3) Each policy application must provide the information required by Section 31A-22-806(4)(b) and identify the agent, if any.

D. Claims Processing. All credit insurance claims shall be processed in accordance with Section 31A-26-302.

E. Termination of Group Credit Insurance Policy.

(1) If a debtor is covered by a group credit insurance

policy providing for the payment of single premiums to the insurer, then provisions shall be made by the insurer that in the event of termination of the policy for any reason, insurance coverage with respect to any debtor insured under the policy shall be continued for the entire period for which the single premium has been paid.

(2) If a debtor is covered by a group credit insurance policy providing for the payment of premiums to the insurer on a monthly outstanding balance basis, then the policy shall provide that, in the event of termination of such policy, for whatever reason, termination notice shall be given to the insured debtor at least 30 days prior to the effective date of termination, except where replacement of the coverage by the same or another insurer in the same or greater amount takes place without lapse of coverage. The notice required in this paragraph shall be given by the insurer or, at the option of the insurer, by the creditor.

F. Interest on Premium. If the creditor adds identifiable insurance charges or premiums for credit insurance to the indebtedness, and any direct or indirect finance, carrying, credit, or service charge is made to the debtor on the insurance charges or premiums, the creditor must remit and the insurer shall collect the premium within 60 days after it is added to the indebtedness.

G. Renewal or Refinancing of Indebtedness. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited promptly to the debtor as provided in Section 8.

H. Maximum Aggregate Provisions. A provision in an individual policy or certificate that sets a maximum limit on total payments must apply only to that individual policy or certificate.

I. Voluntary Prepayment of Indebtedness. If a debtor prepays his indebtedness other than as a result of his death or through a lump sum accident and health payment:

(1) Any credit life insurance covering indebtedness shall be terminated and an appropriate refund of the credit life insurance premium shall be paid to the debtor in accordance with Section 8; and

(2) Any credit accident and health insurance covering indebtedness shall be terminated and an appropriate refund of the credit accident and health insurance premium shall be paid to the debtor in accordance with Section 8. If a claim under this coverage is in progress at the time of prepayment, the amount of refund may be determined as if the prepayment did not occur until the payment of benefits terminates. No refund need be paid during any period of disability for which credit disability benefits are payable. A refund shall be computed as if prepayment occurred at the end of the disability period.

J. Involuntary Prepayment of Indebtedness. If an indebtedness is prepaid by the proceeds of a credit life insurance policy covering the debtor or by a lump sum payment of a disability claim under a credit insurance policy covering the debtor, then it shall be the responsibility of the insurer to see that the following are paid to the insured debtor if living or to the beneficiary, other than the creditor, named by the debtor or to the debtor's estate:

(1) In the case of prepayment by the proceeds of a credit life insurance policy, or by the proceeds of a lump sum total and permanent disability benefit under credit life coverage, an appropriate refund of the credit accident and health insurance premium in accordance with Section 8;

(2) In the case of prepayment by a lump sum disability claim, an appropriate refund of the credit life insurance premium in accordance with Section 8;

(3) In either case, the amount of the benefits in excess of the amount required to repay the indebtedness after crediting any unearned interest or finance charges.

K. Amounts to be Insured:

(1) Credit life insurance benefits shall be consistent with the premium charge.

The initial amount of credit life insurance may not exceed the total amount payable under the contract of indebtedness. Credit life insurance may provide benefits in amounts which do not exceed, but may be less than, the scheduled amount of indebtedness, including unearned interest or finance charges, or the actual amount of unpaid indebtedness, whichever is greater. Credit life insurance on preauthorized lines of credit not exceeding the commitment period may be written for the preauthorized amount on a nondecreasing or level term plan. The death benefit amount shall be that amount for which premiums are paid. Whenever the amount of insurance exceeds the unpaid indebtedness, that excess is payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.

(2) The total amount of indemnity payable by credit accident and health insurance in the event of disability, as defined in the policy, may not exceed, but may be less than the aggregate of the periodic scheduled unpaid installments of the indebtedness. The amount of each periodic indemnity payment may not exceed the total amount payable under the contract of indebtedness divided by the number of periodic installments.

L. Dividends on participating individual policies of credit insurance shall be payable to the individual insureds.

R590-91-4. Policy Forms, Filing and Reserves.

A. Permissible Forms. Credit life insurance and credit accident and health insurance shall be issued only in the forms defined in Section 31A-22-803.

B. Filing Requirements.

(1) All policy forms, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders to be delivered or issued for delivery in this State shall be filed with the commissioner as required by Sections 31A-21-201, 31A-22-807, and 31A-22-808.

(2) An actuarial memorandum, signed and dated, must be included in each rate and form filing. The memorandum must identify the following:

(a) types of coverage: gross, net, decreasing, level, single life, joint life, full term or truncated;

(b) types of loans to be insured: open-end, closed end;

(c) durations of the loans and durations of the coverage.

Refer to Section 31A-22-801(2)(a);

(d) methods of premium charge: single premium or monthly outstanding balance;

(e) schedules of premium rates and formulas for each type of coverage;

(f) methods of refund calculation and formulas for each type of coverage; and

(g) reserve bases.

(3) All filings are subject to the general filing requirements of the Utah Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings, Rule R590-228. The commissioner may prohibit a form if the benefits provided are not reasonable in relation to the premium charged.

C. The minimum reserve basis for credit life insurance issued to be effective prior to January 1, 2008 shall be the 1980 Commissioner's Standard Ordinary Table (1980 CSO) with interest at 5-1/2% per annum.

D. The minimum reserve basis for active lives on credit accident and health insurance issued to be effective prior to January 1, 2008 shall be the amount of the premium refund available to the insured.

E. The minimum reserve basis for disabled lives on credit

accident and health insurance issued to be effective prior to January 1, 2008 shall be the 1987 Commissioner's Group Disability Table (1987 CGDT) with interest at 5-1/2% per annum.

R590-91-5. Reasonableness of Benefits in Relation to Premium.

A. General Standard. Under Section 31A-22-807, benefits provided by credit insurance policies must be reasonable in relation to the premium charged. This requirement is deemed to be satisfied if the premium rate charged develops or may be reasonably expected to develop a loss ratio of not less than 50% for credit life insurance and not less than 55% for credit accident and health insurance.

B. Nonstandard Coverage. If any insurer files for approval of any form providing coverage different from that described in Sections 6 and 7, the insurer shall demonstrate to the satisfaction of the commissioner that the premium rates to be charged for the coverage will develop or may be reasonably expected to develop a loss ratio not less than that contemplated for standard coverage at the premium rates described in these sections.

C. Coverage Without Separate Charge. If no specific charge is made to the debtor for credit insurance, the standards of Subsection A above and the deviation standards of Section 11 are not required to be used. For purposes of this subsection, it will be considered that the debtor is charged a specific amount for insurance if an identifiable charge for insurance is disclosed in the credit or other instrument furnished the debtor which sets out the financial elements of the credit transactions, or if there is a differential in finance, interest, service or other similar charge made to debtors who are in like circumstances, except for their insured or noninsured status. Any such charge which exceeds the premium rate standards set out in Sections 6 and 7 as adjusted pursuant to Section 9 must be filed with the commissioner.

R590-91-6. Credit Life Insurance Prima Facie Rates.

A. Premium Rate. Credit life insurance prima facie premium rates for the insured portion of an indebtedness payable in equal monthly installments, where the insured portion of the indebtedness decreases uniformly by the amount of the monthly installment paid, shall be as set forth in paragraphs (1) and (2). Paragraphs (3), (4), and (5) refer to prima facie premium rates for other types of benefits either alone or in combination with the type of benefits applicable to (1) and (2).

(1) Outstanding balance: \$0.65 per month per \$1,000 of outstanding insured indebtedness if premiums are payable on a monthly outstanding balance basis;

(2) Single Premium Decreasing Term: If premiums are payable on a single premium basis, the following formula shall be used to develop single premium rates from the outstanding balance rate:

$Sp = (N + 1)/20 (Op)$ where Sp is the single term premium per \$100 of initial insured indebtedness, N is the credit term in months, and Op is the monthly outstanding balance rate per \$1,000 of outstanding insured indebtedness.

(3) Single Premium - Level Term: If premiums are payable on a single premium basis when the benefit provided is level term, the following formula shall be used to develop single premium rates from the outstanding balance rate:

$Sp = N/10 (Op)$ where Sp is the single term premium per \$100 of initial insured indebtedness, N is the credit term in months, and Op is the monthly outstanding balance rate per \$1,000 of outstanding insured indebtedness.

(4) Joint coverage rate on basis (1), (2), or (3) of Subsection A may be no greater than one hundred and seventy percent (170%) of the specific rate for that type of coverage.

(5) A combination of the appropriate rate for level term and the appropriate rate for decreasing term, with equal decrements, shall be used, if coverage provided is a combination of level term and decreasing term, with equal decrements.

(6) If the benefits provided are other than those described in Subsection A above, rates for these benefits shall be actuarially consistent with the rates provided in Paragraphs (1), (2), and (3).

B. The premium rates in Subsection A shall apply to all policies providing credit life insurance, to be issued either with or without evidence of insurability, to be offered to all eligible debtors, and containing:

(1) No exclusions other than suicide within one year of the incurred indebtedness;

(2) Either no age restrictions or age restrictions making ineligible for coverage debtors 65 or over at the time the indebtedness is incurred or debtors having attained age 66 or over on the maturity date of the indebtedness; and

(3) Insurance written in connection with an open-end credit plan may exclude from the classes eligible for insurance classes of debtors determined by age, and provide for the cessation of insurance or reduction in the amount of insurance upon attainment of not less than age 65.

(4) On insurance written in connection with open-end credit plans where the amount of insurance is based on or limited to the outstanding unpaid balance, no provision excluding or denying a claim for death resulting from a preexisting condition except for those conditions for which the insured debtor received medical diagnosis or treatment within six months preceding the effective date of coverage and which caused or substantially contributed to the death of the insured debtor within six months following the effective date of coverage. The effective date of coverage for each part of the insurance attributable to a subsequent advance or increase to the outstanding balance is the date on which the advance or increase is posted to the plan account. Such preexisting condition exclusion shall apply to the initial indebtedness and all subsequent advances on an individual basis, only where evidence of individual insurability has not been required.

R590-91-7. Credit Accident and Health Insurance Prima Facie Rates.

A. Premium Rate. Credit accident and health insurance prima facie premium rates for the insured portion of an indebtedness repayable in equal monthly installments, where the insured portion of the indebtedness decreases uniformly by the amount of the monthly installment paid, shall be as set forth in paragraphs (1) and (2). Paragraphs (3), (4), (5), and (7) refer to prima facie premium rates for other types of benefits either alone or in combination with the type of benefits applicable to (1) and (2).

(1) If premiums are payable on a single-premium basis for the duration of the coverage, the premiums shall be as indicated on the attached chart which is available from the Insurance Department.

(2) If premiums are paid on the basis of a premium rate per month per thousand of outstanding insured indebtedness, these premiums shall be computed according to the following formula, or according to a formula approved by the commissioner which produces rates actuarially equivalent to the single premium rates in Table I:

$$OPn = 20/n+1 (SPn)$$

where SPn = Single Premium Rate per \$100 of initial insured indebtedness repayable in n equal monthly installments;

OPn = Monthly Outstanding Balance Premium Rate per \$1,000;

n = Original payment period, in months.

(3) The actuarial equivalent of paragraphs (1) and (2) shall be used if the coverage provided is a constant maximum

indemnity for a given period of time.

(4) An appropriate combination of the premium rate for a constant maximum indemnity for a given period of time and the premium rate for a maximum indemnity which decreases in equal amounts per month shall be used if the coverage provided is a combination of a constant maximum indemnity for a given period of time after which the maximum indemnity begins to decrease in equal amounts per month.

(5) If the benefits provided are other than those described above, rates for these benefits shall be actuarially consistent with rates provided in Paragraphs (1), (2), (3), and (4).

(6) The outstanding balance rate for credit accident and health insurance may be either a term specified rate or may be a single composite term outstanding balance rate applicable to all loans made under an open-end credit plan.

(7)(a) For an open-end credit plan, the monthly rate per \$1,000 of outstanding principal balance shall be the rate calculated using the formula in paragraph (2) where n is the number of monthly indemnity payments required to completely extinguish the debt. The rate shall be further reduced to appropriately account for critical period if applicable.

(b) The critical period factors shall be filed with the department and shall not exceed the factors based on the 1968 Credit A and H Two Composite Tables published by the NAIC (Proceedings - 1968 Vol. II).

B. The premium rates in Subsection A shall apply to all policies providing credit accident and health insurance, to be issued with or without evidence of insurability, to be offered to all eligible debtors, and containing:

(1) No provision excluding or denying a claim for disability resulting from preexisting conditions except for those conditions for which the insured debtor received medical advice, diagnosis, or treatment within six months preceding the effective date of the debtor's coverage and which caused loss within the six months following the effective date of coverage.

(2) No other provision which excludes or restricts liability in the event of disability caused in a specified manner except that it may contain provisions excluding or restricting coverage in the event of normal pregnancy and intentionally self-inflicted injuries.

(3) No actively at work test may require that the debtor be employed more than 30 hours per week.

(4) No age restrictions or only age restrictions making ineligible for coverage debtors 65 or over at the time the indebtedness is incurred or debtors who will have attained age 66 or over on the maturity date of the indebtedness.

(5) A daily benefit equal in amount to one-thirtieth of the monthly benefit payable under the policy for the indebtedness.

(6) A definition of disability, which is no more restrictive than one requiring that during the first 12 months of disability the insured shall be unable to perform the principal duties of his occupation at the time the disability occurred, and thereafter unable to perform the principal duties of any occupation for which the insured is reasonably fitted by education, training, or experience. This paragraph may not apply to lump sum disability coverage.

(7) Insurance written in connection with an open-end credit plan may exclude from the classes eligible for insurance classes of debtors determined by age, and provide for the cessation of insurance or reduction in the amount of insurance upon attainment of not less than age 65.

R590-91-8. Refund Formulas.

A. Refund formulas which any insurer desires to use must be filed with and approved by the commissioner prior to use. Refund formulas used must develop refunds which are at least as favorable to the debtor as the following methods which are deemed the minimum requirements for the plans described.

(1) Pro Rata Method. The pro rata unearned gross

premium method shall be deemed to produce the minimum refund amount to be used for level term credit insurance, and for credit insurance coverages under which premiums are collected from the debtor on a basis other than the single premium basis.

Refund = t/n (original gross single premium) where t = the number of remaining months;

n = the original loan term in months.

(2) Rule of 78 method. The Rule of 78 or sum of the digits unearned premium method shall be deemed to produce the minimum refund amount to be used for insurance coverage which reduces in equal amounts per month and for which the premiums are collected on a single premium basis.

Refund = $(t(t+1)/n(n+1))$ (original gross single premium) where t = the number of remaining months; n = the original loan term in months.

(3) Combination Methods. An appropriate combination of the pro rata method and the Rule of 78 method or, at the option of the insurer, the pro rata method shall be used for credit life insurance provided as a combination of level and decreasing term coverage and for credit accident and health insurance wherein the insured is covered for a constant maximum indemnity for a given period of time, after which the maximum indemnity begins to decrease in equal amounts per month.

B. For net indebtedness insurance and for other types of insurance and other modes of premium payment, each insurer shall file for approval and include in the policy appropriate formulas and/or factors for refunds, or reference to such formulas and factors that are on file with the commissioner. For net indebtedness, either the actuarial method also known as the U.S. Rule or pure premium method, or an arithmetic average of refunds due under Pro-Rata and Rule of 78 Methods will be acceptable.

C. In the event of termination, no charge for credit insurance may be made for the first 15 days of a loan month and a full month may be charged for 16 days or more of a loan month, unless refunds are made on a pro rata basis for each day within the loan month.

D. If the total of all refunds due a debtor (or joint debtors) is less than \$5.00, no refund need be made.

R590-91-9. Experience Reports and Adjustment of Prima Facie Rates.

A. Each insurer doing Credit Insurance business in this state shall annually file with the commissioner and the NAIC Support and Services Office a report of credit life insurance and credit accident and health business written on a calendar year basis. Each insurer shall utilize the Credit Insurance Experience Exhibit as approved by the National Association of Insurance Commissioners. The report shall contain data separately for this state. The filing shall be made in accordance with and no later than the due date in the Instructions to the Annual Statement.

B. Whenever deemed necessary, the commissioner will publish by order, after a hearing, Prima Facie Rates before September 1. The new prima facie rates shall be effective January 1 of the following year.

R590-91-10. Rating Standards - Filing Requirements.

A. Requirement to File the Four Year Loss Ratio Test.

(1) Insurers with more than \$250,000 of credit insurance premium earned in Utah in the most recent four year period shall annually file an experience report to determine whether benefits are reasonable in relation to premiums based on the loss ratio test in Section 31A-22-807(4). The loss ratio shall be calculated at the rates actually used in each year. The insurer may also file an adjusted loss ratio report that adjusts premium to the most recent premium rates. The Four Year Loss Ratio Report is due one month after the due date of the experience exhibit required by Section 9.

(2) Insurers whose loss ratios are less than the minimum

loss ratio by ten percentage points or more shall file a rating and benefits plan that meets the requirements of Subsection B. Insurers who would be required to decrease rates by more than 10% may phase in decreases in annual 10% increments.

B. Filing Standards.

(1) Insurers filing for a rate deviation, including those required to file under Subsection 1 above, shall submit an actuarial memorandum that shows that the premium rate does not exceed the sum of:

(a) 50% of the prima facie rate or its actuarial equivalent; and

(b) the expected losses.

(2) The calculation of expected losses shall take into account the following:

(a) the actual loss experience to the extent credible;

(b) the degree of underwriting used in marketing the product; and

(c) the relative mortality and morbidity of Utah experience when using national experience or actuarial tables.

R590-91-11. Rating Procedures - Direct Business Only.

A. Use of Rates Higher Than Prima Facie Rates.

An insurer may file for approval and use rates that are higher than prima facie rates if it can be expected that the use of those higher rates will produce a minimum loss ratio that is required by Section 31A-22-807.

B. Use of Rates Lower Than Filed Rates.

An insurer may use a rate that is lower than its filed rate without notice to the commissioner.

R590-91-12. Disclosure to Debtor.

A. When a premium or identifiable charge is payable by a debtor for credit insurance coverage, certain information must be disclosed to the debtor at the time the debtor applies for the insurance. The disclosures shall be made to the principal debtor and copies given to the debtor and retained in accordance with State and Federal law. These disclosures shall be made prominently and in close proximity to the space for the signature indicating the election to obtain the coverage. These disclosures may be made in conjunction with the Federal Truth-in-Lending disclosure, a Notice of Proposed Insurance, the application for insurance, or in the individual insurance policy or certificate. The following items must be included in the disclosure:

(1) the optional nature of the coverage;

(2) the premium or identifiable charge separately listed by type of coverage;

(3) eligibility requirements including health restrictions and at work requirements; and

(4) any age restrictions in regard to eligibility for insurance coverage at the time the indebtedness is incurred or in regard to cessation of coverage due to attainment of age.

B. If at any time during the term of the loan, the insurance is insufficient to pay off the scheduled outstanding balance of the loan, this fact must be clearly and prominently disclosed to the prospective insured on the policy or certificate.

C. All credit insurance policies and certificates shall clearly describe the amount of the benefit and the term of coverage. Whenever the amount of credit life insurance exceeds the unpaid indebtedness, such fact shall be clearly disclosed in the policy or group certificate; and such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.

D. If any policy or certificate has a preexisting condition exclusion, such exclusion shall be clearly and prominently disclosed.

R590-91-13. Unfair Marketing Practices.

The commissioner finds that violations of this rule when engaged in by licensees of the department in connection with

the sale or placement of credit insurance, or as an inducement, are misleading, deceptive, or unfairly induce the purchase of credit insurance and constitute unfair methods of competition and shall be in violation of Unfair marketing practices under Section 31A-23a-402.

R590-91-14. 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 the rule and the application of the provision to other persons or circumstances may not be affected.

R590-91-15. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule on the effective date.

KEY: insurance law

May 29, 2008

31A-2-201

Notice of Continuation November 23, 2011

R590. Insurance, Administration.**R590-195. Car Rental Related Licensing Rule.****R590-195-1. 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-106(2)(b) that authorizes car rental related insurance as a limited line of authority of a limited line producer license type;
- (3) Subsection 31A-23a-110(1) that authorizes the commissioner to prescribe the form in which licenses covered under Chapter 23a are to be issued; and
- (4) Subsection 31A-23a-111(10) that authorizes the commissioner to prescribe by rule the license renewal and reinstatement procedures for licenses covered under Chapter 23a.

R590-195-2. Purpose and Scope.

- (1) The purpose of this rule is to establish uniform criteria and procedures for the initial and renewal licensing of car rental related insurance limited line producer individuals and agencies, and to set standards of licensing and conduct for those in the car rental related insurance business in the State of Utah.
- (2) This rule applies to all individuals and entities engaged in the issuance of car rental related insurance contracts or policies.

R590-195-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Sections 31A-1-301, 31A-23a-102, and the following:

- (1) "Car rental related insurance" means any contract of insurance issued as a part of an agreement of rental of passenger automobiles and trucks to a gross vehicle weight of 45,000 pounds, for a period of 30 days or less; and
- (2) "Car rental related license" means a limited line producer license type with a car rental related insurance limited line of authority.

R590-195-4. Agency License and Renewal.

- (1) A car rental related license is issued for a two year license period and requires no examination or continuing education.
- (2) A car rental related license must be renewed at the end of the two year licensing period in accordance with Chapter 23a of Title 31A and any applicable department rule regarding license renewal.
- (3) Licensing is applicable to an individual or entity involved in the soliciting, quoting, marketing, or issuing of car rental related insurance and must be licensed in accordance with Chapter 23a of Title 31A and applicable department rules regarding individual and agency licensing.
 - (a) A car rental related license may be held by:
 - (i) an individual; or
 - (ii) an entity.
 - (b) An individual licensed under this rule must be:
 - (i) appointed by an insurer underwriting a car rental related insurance policy that the individual sells; or
 - (ii) designated to act by an agency licensed under this rule.
 - (c) An agency licensed under this rule must:
 - (i) be appointed by an insurer underwriting a car rental related insurance policy that the agency sells; and
 - (ii) have a designated responsible licensed individual at each location at which the agency is soliciting, quoting, marketing or selling car rental related insurance.
- (4) An agency licensed under the terms of this rule may employ a non-licensed individual employed as a rental counter sales representative in soliciting, quoting, marketing or selling

car rental related insurance. Such non-licensed individual must be:

- (i) trained and supervised in the sale of car rental related insurance products; and
- (ii) responsible to a licensed individual designated by the agency at each location where a car rental related insurance product is sold.

R590-195-5. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-195-6. Enforcement Date.

The commissioner will begin enforcing this rule on the effective date of the rule.

R590-195-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance licensing

November 17, 2011

Notice of Continuation March 11, 2009

31A-2-201

31A-23a-106

31A-23a-110

31A-23a-111

R590. Insurance, Administration.**R590-212. Requirements for Interest Bearing Accounts Used by Title Insurance Agencies for Trust Fund Deposits.****R590-212-1. 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. Authority to promulgate rules defining the type of accounts to be used for deposited trust funds is provided in Subsection 31A-23a-409(2)(b).

R590-212-2. Purpose.

This rule specifies the characteristics of a depository account that may be used by a title insurance agency to deposit trust funds.

R590-212-3. Scope.

This Rule applies to all title insurers, title insurance agencies and title insurance producers and all employees, representatives and any other party working for or on behalf of said entities, whether as a full time or part time employee, or as an independent contractor.

R590-212-4. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301, 31A-23a-102 and the following:

- (1) "Demand deposit account" refers to a federally insured deposit account from which withdrawals may be made by check and the depositor or a holder of a check drawn on the account has a legal right to immediate payment from the bank upon presentation of the check or other withdrawal request.
- (2) "Depositor" refers to a title insurance agency that has deposited, in a qualifying trust account, funds it holds in trust in connection with a real estate transaction.
- (3) "Repurchase agreement" is an agreement in which a bank agrees to sell to a depositor a security or other asset at a specified price with a commitment to repurchase the security, or other asset, at a later date for a specified price.
- (4) "Sweep account" refers to a demand deposit account subject to an agreement authorizing the bank to withdraw from the account funds exceeding a specified amount and deposit those funds into an interest bearing account, purchase specified securities subject to a repurchase agreement, or purchase shares of a mutual fund, then redeposit those funds into the demand account, when needed, to pay checks presented for payment or other request for withdrawal.
- (5) "Trust account" means an account denominated as a trust account in which the depositor is trustee.
- (6) "Money market mutual fund" means a mutual fund that is registered and authorized under applicable federal and state securities laws to sell its shares to the public and managed to maintain a par value of \$1 per share.

R590-212-5. Account Requirements.

- (1) Authority to Retain Earnings on Funds Held in Trust. Subsection 31A-23a-406(1) permits a title insurance agency to retain earnings on funds held in a qualifying trust account if authorized by the contract between the trustee and the person on whose behalf the funds are held.
- (2) Responsibility for Compliance. Each depositor is responsible for determining that the terms and conditions of an account, in which it deposits funds held in trust, comply with the requirements of this rule.
- (3) Records Required. Each title insurance agency must retain adequate records of all deposits in a trust account, including those utilizing a sweep feature, to establish individual account balances for all persons whose funds are held in trust.

(4) Qualified Accounts. Funds subject to this rule must be deposited or held in:

- (a) a deposit account insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund or any successor federal deposit insurance; or
- (b) a sweep account if it meets all of the following qualifications:
 - (i) funds are initially deposited into a federally insured demand deposit account;
 - (ii) the bank, in accordance with an agreement with the depositor, withdraws funds exceeding a specific balance in the account to purchase:
 - (A) U.S. Government securities on behalf of the depositor that are held in a segregated account in the bank subject to a repurchase agreement with the bank.
 - (B) shares in a money market mutual fund that only holds obligations of the U.S. Treasury or Agencies of the U.S. Government, and
 - (iii) the bank is obligated and able to repurchase the securities or sell or redeem the shares or interest at any time at par and deposit the funds in the demand deposit account to maintain a minimum balance and pay withdrawals.

(5) Obligation of Depositor for Losses. A depositor may only deposit funds into a sweep account if it agrees to reimburse a trust beneficiary for any decline in value below par of the funds deposited, regardless of the cause of the decline in value.

(6) Authorization and Disclosure Obligation. Any depositor who uses an account described in Subsection R590-212-5.(4)(b) must:

- (a) receive written authorization from those persons on whose behalf the funds are deposited stating that the depositor may receive all earnings which may be realized from the trust fund deposit; and
- (b) provide full written disclosure to all persons on whose behalf the funds are deposited, explaining the characteristics of a sweep account deposit as described in U.A.C. Rule R590-212-5(4)(b).

R590-212-6. Penalties.

Subject to the provisions of the Utah Administrative Procedures Act, violators of this rule shall be subject to forfeitures, suspension or revocation of their insurance license or Certificate of Authority, and any other penalties or measures as are determined by the commissioner in accordance with law.

R590-212-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such 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, title
July 12, 2002**

Notice of Continuation November 23, 2011

**31A-2-201
31A-23a-409**

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-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, 25, 26 and 35 is to be made to the commissioner;

(3) Subsections 31A-23a-111(10), 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, 25, 26, and 35;

(4) 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;

(5) 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 ;and

(6) Subsections 31A-23a-302(2) 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 and 26.

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; and
- (ii) 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, 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-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) "SIRCON" means an electronic application software provided by Sircon Corporation or its acquiring parent company, Vertafore, Inc.

(11) "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) 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, 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, 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, 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 of 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 of the document to 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. 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) below.

(2) 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.

R590-244-7. 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.

(3) A renewed individual license shall expire on the last day of the licensee's birth month every two years, unless renewed.

(4) 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 (5) below.

(5) A bail bond agency license shall expire annually on August 14th, unless renewed.

(6) 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.

(7) 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.

(8) 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.

R590-244-8. 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 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 new contracts and appointments with insurers or new

agency designations before the reinstated licensee can resume doing business.

R590-244-9. 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 after the identified effective date of appointment 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.

R590-244-10. 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.

R590-244-11. 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.

R590-244-12. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-244-13. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-244-14. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: insurance licensing requirements
November 17, 2011**

31A-2-201
31A-23a-104
31A-23a-110
31A-23a-111
31A-23a-115
31A-23a-302
31A-25-201
31A-25-208
31A-26-202
31A-26-210
31A-26-213
31A-35-104
31A-35-301
31A-35-401
31A-35-406

R597. Judicial Performance Evaluation Commission, Administration.**R597-3. Judicial Performance Evaluations.****R597-3-1. Evaluation Cycles.**

- (1) For judges not serving on the supreme court:
- (a) The mid-term evaluation cycle. Except as provided in subsection (4) the mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends 2 1/2 years later, on June 30th of the third year preceding the year of the judge's next retention election.
- (b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the judge's next retention election.
- (2) For justices serving on the supreme court:
- (a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends 2 1/2 years later, on June 30th of the seventh year preceding the year of the justice's next retention election.
- (b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends four years later, on June 30th of the third year preceding the year of the justice's next retention election.
- (c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the justice's next retention election.
- (3) Transition Evaluation Cycles
- (a) For judges standing for retention election in 2012:
- (i) The mid-term evaluation cycle for attorney surveys shall begin on January 1, 2008 and end on December 31, 2009.
- (ii) The mid-term evaluation cycle for all other survey categories shall begin in 2009 and end on January 31, 2010.
- (iii) The retention evaluation cycle for all surveys shall begin no later than July 1, 2010, and end on June 30, 2011.
- (b) For judges not on the supreme court standing for retention election in 2014:
- (i) The mid-term evaluation cycle for surveys of attorneys and jurors shall begin in 2009 and finish on June 30, 2011.
- (ii) The mid-term evaluation cycle for all pilot program categories shall begin no later than July 1, 2010, and end on June 30, 2011.
- (iii) The retention evaluation cycle will be as described in R597-3-1(1)(b), supra.
- (c) For supreme court justices standing for retention election in 2014:
- (i) The mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2011.
- (ii) The mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010, and end on June 30, 2011.
- (iii) The retention evaluation cycle shall be as described in R597-3-1(2)(b)-(c).
- (d) For judges not on the supreme court standing for retention election in 2016:
- (i) Except as provided in subsection (4), the mid-term evaluation cycle shall begin on July 1, 2011 and end two years later on June 30, 2013.
- (ii) The retention evaluation cycle shall be as described in R597-3(1)(b), supra.
- (e) For supreme court justices standing for retention election in 2016:
- (i) The initial evaluation cycle shall be combined with the mid-term evaluation, beginning in 2009 and ending on June 30, 2013.
- (ii) The combined initial/mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30,

2013.

(iii) The combined initial/mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010.

(iv) The retention evaluation cycle shall be as described in R597-3-1(2)(c).

R597-3-2. Survey.

- (1) General provisions.
- (a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.
- (b) The commission shall post on its website the survey questionnaires upon which the judge shall be evaluated at the beginning of the survey cycle.
- (c) The commission may select retention survey questions from among the midterm survey questions.
- (d) Periodically, reviews may be conducted to ensure compliance with administrative rules governing the survey process.
- (e) The commission may consider narrative survey comments that cannot be reduced to a numerical score.
- (2) Respondent Classifications
- (a) Attorneys
- (i) Identification of survey respondents. Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle. Attorneys who have been confirmed as judges during the evaluation cycle shall be excluded from the attorney pool.
- (ii) Number of survey respondents.
- (A) For each judge who is the subject of a survey, the surveyor shall identify the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5%.
- (B) In the event that the attorney appearance list from the Administrative Office of the Courts contains an insufficient number of attorneys with one trial appearance or at least three total appearances before the evaluated judge to achieve the required confidence level, then the surveyor shall supplement the survey pool with other attorneys who have appeared before the judge during the evaluation cycle.
- (iii) Sampling. The surveyor shall design the survey to comply with generally-accepted principles of surveying. All attorneys with one trial appearance or at least three total appearances before the evaluated judge shall be surveyed.
- (iv) Distribution of surveys. Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey. The contractor shall determine the maximum number of survey requests sent to a single attorney based on an analysis of the Administrative Office of the Courts appearance data at the time of the survey. In no event shall any attorney receive more than nine survey requests.
- (b) Jurors
- (i) Identification and number of survey respondents. All jurors who participate in deliberation shall be eligible to receive an online juror survey.
- (ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall collect email addresses from all jurors. If email addresses are not available, street addresses shall be collected. The bailiff or clerk shall transmit all such addresses to the surveyor within 24 hours of collection. The surveyor shall administer the survey online and deliver survey results electronically to each judge. Paper surveys may be sent to those jurors who do not have access to email.
- (c) Court Staff
- (i) Definition of court staff who have worked with the

judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and also includes those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge include, but are not limited to:

- (A) judicial assistants;
 - (B) case managers;
 - (C) clerks of court;
 - (D) trial court executives;
 - (E) interpreters;
 - (F) bailiffs;
 - (G) law clerks;
 - (H) central staff attorneys;
 - (I) juvenile probation and intake officers;
 - (J) other courthouse staff, as appropriate;
 - (K) Administrative Office of the Courts staff.
- (f) Juvenile Court Professionals

(i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.

(ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:

- (A) Division of Child and Family Services ("DCFS") child protection services workers;
- (B) Division of Child and Family Services ("DCFS") case workers;
- (C) Juvenile Justice Services ("JJS") Observation and Assessment Staff;
- (D) Juvenile Justice Services ("JJS") case managers;
- (E) Juvenile Justice Services ("JJS") secure care staff;
- (F) Others who provide substantive professional services on a regular basis to the juvenile court.

(iii) Beginning with juvenile court judges standing for retention in 2014, juvenile court professionals shall be included as an additional survey respondent group for both the midterm and retention evaluation cycles.

(3) Anonymity and Confidentiality

(a) Definitions

(i) Anonymous.

(A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.

(B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.

(C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.

(ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.

(iii) The raw form of survey results consists of all quantitative survey data that contributes to the minimum score on the judicial performance survey.

(iv) The summary form of survey results consists of quantitative survey data in aggregated form.

R597-3-3. Courtroom Observation.

(1) General Provisions.

(a) Courtroom observations shall be conducted according

to the evaluation cycles described in R597-3-1(1) and (2), supra.

(b) The commission shall provide notice to each judge at the beginning of the survey cycle of the courtroom observation process and of the instrument to be used by the observers.

(2) Courtroom Observers.

(a) Selection of Observers

(i) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.

(ii) Courtroom observers shall be selected by the commission staff, based on written applications and an interview process.

(b) Selection Criteria. Observers with a broad and varied range of life experiences shall be sought. The following persons shall be excluded from eligibility as courtroom observers:

- (i) persons with a professional involvement with the state court system, the justice courts, or the judge;
- (ii) persons with a fiduciary relationship with the judge;
- (iii) persons within the third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);
- (iv) persons lacking computer access or basic computer literacy skills;
- (v) persons currently involved in litigation in state or justice courts;
- (vi) convicted felons;
- (vii) persons whose background or experience suggests they may have a bias that would prevent them from objectively serving in the program.

(c) Terms and Conditions of Service

(i) Courtroom observers shall serve at the will of the commission staff.

(ii) Courtroom observers shall commit to one one-year term of service.

(iii) Courtroom observers may serve up to three one-year terms, subject to annual renewal at the discretion of the commission.

(iv) Courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the commission.

(d) Training of Observers

(i) Courtroom observers must satisfactorily complete a training program developed by the commission before engaging in courtroom observation.

(ii) Elements of the training program shall include:

- (A) Orientation and overview of the commission process and the courtroom observation program;
- (B) Classroom training addressing each level of court;
- (C) In-court group observations, with subsequent classroom discussions, for each level of court;
- (D) Training on proper use of observation instrument;
- (E) Training on confidentiality and non-disclosure issues;
- (F) Such other periodic trainings as are necessary for effective observations.

(3) Courtroom Observation Program.

(a) Courtroom Requirements

(i) During each midterm and retention evaluation cycle, a minimum of four different observers shall observe each judge subject to that evaluation cycle.

(ii) Each observer shall observe each judge in person while the judge is in the courtroom and for a minimum of two hours while court is in session. The observations may be completed in one sitting or over several courtroom visits.

(iii) If a judge sits in more than one geographic location at the judge's appointed level or a justice court judge serves in more than one jurisdiction, the judge may be observed in any location or combination of locations in which the judge holds court.

(iv) When the observer completes the observation of a

judge, the observer shall complete the observation instrument, which will be electronically transferred to the commission or the third party contractor for processing.

(b) Travel and Reimbursement

(i) All travel must be preapproved by the executive director.

(ii) All per diem and lodging will be reimbursed, when appropriate, in accordance with Utah state travel rules and regulations.

(iii) Travel reimbursement forms shall be submitted on a monthly basis or whenever the observer has accumulated a minimum of 200 miles of travel.

(iv) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is sought.

(v) Overnight lodging

(A) Overnight lodging is reimbursable when the courtroom is located over 100 miles from home base and court is scheduled to begin before 9:30 a.m., with any exceptions preapproved by commission staff.

(B) Multiple overnight lodging is reimbursable where the commission staff determines it is cost-effective to observe several courtrooms in a single trip.

(v) Each courtroom observer must provide a social security number or tax identification number to the commission in order to process state reimbursement.

(4) Principles and Standards used to evaluate the behavior observed.

(a) Procedural fairness, which focuses on the treatment judges accord people in their courts, shall be used to evaluate the judicial behavior observed in the courtroom observation program.

(b) To assess a judge's conduct in court with respect to procedural fairness, observers shall respond in narrative form to the following principles and behavioral standards:

(i) Neutrality, including but not limited to:

(A) displaying fairness and impartiality toward all court participants;

(B) acting as a fair and principled decision maker who applies rules consistently across court participants and cases;

(C) explaining transparently and openly how rules are applied and how decisions are reached.

(D) listening carefully and impartially;

(ii) Respect, including but not limited to:

(A) demonstrating courtesy toward attorneys, court staff, and others in the court;

(B) treating all people with dignity;

(C) helping interested parties understand decisions and what the parties must do as a result;

(D) maintaining decorum in the courtroom.

(E) demonstrating adequate preparation to hear scheduled cases;

(F) acting in the interests of the parties, not out of demonstrated personal prejudices;

(G) managing the caseload efficiently and demonstrating awareness of the effect of delay on court participants;

(H) demonstrating interest in the needs, problems, and concerns of court participants.

(iii) Voice, including but not limited to:

(A) giving parties the opportunity, where appropriate, to give voice to their perspectives or situations and demonstrating that they have been heard;

(B) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents.

(C) attending, where appropriate, to the participants' comprehension of the proceedings.

(c) Courtroom observers may also be asked questions to

help the commission assess the overall performance of the judge with respect to procedural fairness.

R597-3-4. Minimum Performance Standards.

(1) In addition to the minimum performance standards specified by statute or administrative rule, the judge shall:

(a) Demonstrate by a preponderance of the evidence, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants.

(b) Meet all performance standards established by the Judicial Council, including but not limited to:

(i) annual judicial education hourly requirement;

(ii) case-under-advisement standard; and

(iii) physical and mental competence to hold office.

(2) No later than October 1st of the year preceding each general election year, the Judicial Council shall certify to the commission whether each judge standing for retention election in the next general election has satisfied its performance standards.

R597-3-5. Public Comments.

(1) Persons desiring to comment about a particular judge with whom they have had first-hand experience may do so at any time, either by submitting such comments on the commission website or by mailing them to the executive director.

(2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than November 1st of the year preceding the election in which the judge's name appears on the ballot.

(3) Persons submitting comments pursuant to this section must include their full name, address, and telephone number with the submission.

(4) All comments must be based upon first-hand experience with the judge.

**KEY: judicial performance evaluations, judges, evaluation cycles, surveys
November 23, 2011**

78A-12

R608. Labor Commission, Antidiscrimination and Labor, Fair Housing.

R608-1. Utah Fair Housing Rules.

R608-1-1. Authority and Purpose.

Pursuant to Section 57-21-8(2)(a), the Utah Labor Commission adopts this rule to establish the procedures necessary to implement the Utah Fair Housing Act.

R608-1-2. Definitions.

The following definitions are in addition to the definitions set forth in Section 57-21-2 of the Utah Fair Housing Act

A. "Act" means the Utah Fair Housing Act, Chapter 21, Title 57.

B. "Commissioner" means the Commissioner of the Utah Labor Commission.

C. "Complaint" means an allegation of an unlawful housing practice, filed with the Division in compliance with these rules. "Complaint" includes amended or supplemental complaints.

D. "Court" means the district court in the judicial district of the state of Utah in which the asserted unfair housing practice occurred, or if this court is not in session at that time, then any judge of any court.

E. "Unlawful housing practice" means any discriminatory housing practice prohibited by the Act.

R608-1-3. Reliance on State and Federal Precedent.

The Division and Commission will consider relevant State and Federal precedent in interpreting and applying the Act.

R608-1-4. Computation of Time Limits.

A. A Determination, Order, or Notice required by the Act or this rule is deemed issued on the date on the face of the Determination, Order or Notice.

B. A complaint, response, request for reconsideration, or election is considered to be "filed" on the date it is received by the Division or Commission, whether by mail or by personal delivery. Each such document shall be date stamped by Division staff on the date of receipt.

C. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing will be allowed.

R608-1-5. Designation of Proceedings as Informal-Exception.

A. All proceedings pursuant to the Act and this rule are hereby designated as informal adjudicatory proceedings for purposes of the Utah Administrative Procedures Act, Title 63, Chapter 46b, except that proceedings before the Commission's Adjudication Division for de novo review of the Director's Determination and Order are formal proceedings.

B. Court proceedings are subject to the court's rules of procedure.

R608-1-6. Complaints-Filing-Time Limits-Amendment and Withdrawal.

A. Any person aggrieved by an unlawful housing practice may file a complaint with the Division.

1. The complaint must be in the form designated by the Division and verified by the complainant.

2. The complaint shall contain the complainant's concise statement setting forth, to the extent reasonably possible, the following information:

a. The specific basis for complainant's belief that an unlawful housing practice has occurred, with relevant dates, places and the names of any individual participating in the alleged unlawful housing practice;

b. The specific basis for the complainant's belief that the alleged conduct is subject to the Act; and the dates and places of such unlawful housing practices;

c. The specific damages the complainant believes he or she has suffered as a result of the unlawful housing practice.

B. Division staff shall be available during normal business hours to provide reasonable assistance to complainants in completing and filing complaints.

C. Pursuant to Section 57-21-9(1), the complaint must be filed with the Division within 180 days after the alleged unlawful housing practice occurred.

D. The Director shall permit a complaint to be reasonably and fairly amended or supplemented, either by the Division or by the complainant, in order to accomplish the purpose of the Act. Such amendment or supplement may include additional respondents identified in the investigation as persons engaged in the unlawful housing practice on which the complaint is based. Procedures for filing and processing an amended or supplemental complaint shall be the same as for filing an original complaint.

E. With the Director's approval, a complainant may withdraw a complaint at any time by submitting a signed request for withdrawal to the Division.

R608-1-7. Notice Requirements.

A. Within ten days of the filing of a complaint, the Division shall provide notice by registered mail to the complainant, including:

1. The date the complaint was filed with the Division;
2. A copy of the complaint;
3. The time limits applicable to the complaint and investigation process;
4. A statement of the complainant's rights and obligations under the Act;

5. A statement of the complainant's right to commence a private civil action in state or federal court, with a statement of applicable time limits for commencing such action;

6. A statement advising the complainant that retaliation against any person, or individual associated with that person, who is filing, testifying, assisting, or participating in an investigation, conciliation or administrative proceeding, is a discriminatory housing practice prohibited by the Act; and

7. A statement, if applicable, that the terms of any rental agreement remain in effect.

B. Within ten days of the filing of a complaint, the Division shall provide notice by registered mail to the respondent, which notice shall include:

1. Identification of the alleged unlawful housing practice on which the complaint is based;
2. The date the complaint was filed with the Division;
3. A copy of the complaint;
4. A statement of time limits applicable to the complaint and investigation process;

5. A statement of the respondent's rights and obligations under the Act, including respondent's obligation to submit a response to the complaint, as required by R608-1-8.

6. A statement informing the respondent of the complainant's right to commence a private civil action in state or federal court, with a statement of applicable time limits for commencing such action;

7. A statement advising the respondent that retaliation against any person, or individual associated with that person,

who is filing a complaint, testifying, assisting, or participating in an investigation, conciliation, or administrative proceeding, is a discriminatory housing practice prohibited by the Act.

R608-1-8. Response to Complaint.

A. A respondent shall file a signed response to the complaint with the Division within 10 days from the date of the notice required by R608-1-7.B.

B. The response must address each allegation contained in the complaint, including any available and relevant data and information regarding respondent's business practices.

C. Division staff shall be available during normal business hours to provide reasonable assistance to respondents in completing and filing responses.

D. Failure to file a response may result in the Division concluding its investigation based on information provided by the complainant and such other information as is reasonably available to the Division. Alternatively, the Commission may use its subpoena powers to compel production of the information required by this rule.

R608-1-9. Investigation-Report.

A. Within 30 days of the filing of a complaint, the Division shall commence proceedings to thoroughly investigate and, if possible, conciliate the complaint.

B. The Division shall complete its investigation within 100 days after filing of a complaint. If the Division is unable to do, it shall notify the parties in writing of the reason for the delay.

C. The Division may, with reasonable notice to the parties, conduct on-site visits, interviews, and fact-finding conferences, and take such other action as is reasonably necessary to investigate the complaint. Pursuant to Section 57-21-8(2)(c) of the Act, the Commission may issue subpoenas to compel production of necessary evidence. Additionally, a party's unjustified failure to cooperate with the Division's reasonable investigative requests may result in the Division concluding its investigation based on such other information as is available to the Division.

D. The Division shall prepare a final investigative report on each complaint, which shall include:

1. A summary of all contacts with complainants and respondents, including the dates of such contacts;
2. A summary of contacts with witnesses, including the dates of contact; and
3. A summary of pertinent records.

R608-1-10. Determination.

A. On completion of the investigation, the Director shall review the investigative report and determine whether reasonable cause exists to believe that an unlawful housing practice has occurred.

B. If the Director finds no reasonable cause to believe that an unlawful housing practice has occurred, the Director shall issue a determination dismissing the complaint. The complainant may then take such other action as described in R608-1-12.

C. If the Director finds reasonable cause to believe that an unlawful housing practice has occurred, the Director shall take such further action as described in Rule R608-1-13.

R608-1-11. Conciliation.

A. During the period beginning with the filing of the complaint and ending with the Director's determination, the Division shall, to the extent feasible, engage in conciliation to settle the matter or, in accordance with HUD procedures, enter into an enforcement agreement.

1. Conciliation proceedings are confidential pursuant to Section 57-21-9(7)(a).
2. Any conciliation agreement shall be subject to approval

by the Director.

3. Any party can enforce the signed and approved conciliation agreement in court proceedings.

B. Nothing in these rules prevents complainants and respondents from settling a complaint through their own efforts. However, the Division will not dismiss the complaint until the parties' settlement agreement has been submitted to, and approved by, the Director.

R608-1-12. Order of Dismissal-Reconsideration-Right to Private Civil Action.

A. If the Director finds no reasonable cause to believe that an unlawful housing practice has occurred, or is about to occur, the Director shall issue a Determination and Order dismissing the Complaint.

B. The complainant may ask the Director to reconsider such order of dismissal by complying with the requirements of Section 63G-4-302 of the Utah Administrative Procedures Act.

C. The Director shall issue a decision either granting or denying the request for reconsideration.

1. If the Director grants reconsideration, the Director shall reopen the investigation, amend the Director's prior Determination and Order, or take such other necessary action.

2. If the Director denies reconsideration, the Director's Determination and Order is not subject to any additional agency or judicial review. However, the complainant may commence a private civil action pursuant to Section 57-21-12(1).

R608-1-13. Order Finding Unlawful Housing Practice-Appeal-Choice of Forum.

A. If the Director concludes that an unlawful housing practice has occurred, the Division shall informally attempt to eliminate or correct the unlawful housing practice by conducting a conciliation conference pursuant to R608-1-11.

B. If conciliation is unsuccessful, the Director shall issue a determination ordering appropriate relief as authorized by Section 57-21-11. The Director's determination shall be made public unless the Director determines that the matter involves a privacy interest entitled to protection by law, or that disclosure is not required to further the purposes of the Act.

C. A respondent disagreeing with the Director's determination may obtain de novo review by filing a written request for review with the Director within 30 days from the date the Director's determination.

1. If no timely request for de novo review is filed, the Director's determination is the Commission's final order and not subject to additional agency or judicial review.

2. If a timely request for de novo review is filed, the Director shall:

- a. Notify the parties of such request for review by regular mail at their last known address of record; and
- b. Inform the parties that the review proceeding will be conducted by the Commission's Adjudication Division unless any party elects to have such review conducted in court.

3. Any election for court review must be received by the Director within 20 days of the date of mailing of the Director's notice.

R608-1-14. Representation of Complainants.

A. If a respondent has requested de novo review of the Director's Determination, the Commission shall consider whether the Determination is supported by substantial evidence.

B. If the Commission concludes the Determination is supported by substantial evidence, the Commission shall provide legal representation to support the Determination in the de novo review proceeding.

C. If the Commission concludes the Determination is not supported by substantial evidence, the Commission shall not provide legal representation to support the Determination in the

de novo review proceeding.

D. The Commission shall notify the parties of its conclusion regarding the existence or nonexistence of substantial evidence to support the Director's Determination within twenty days from the date the respondent files a request for de novo review.

E. The Commission's conclusion regarding the existence or nonexistence of substantial evidence to support the Director's Determination is not subject to further agency or judicial review.

R608-1-15. Procedures For De novo Review.

A. If, in accordance with the provisions of these rules, a de novo review proceeding is to be conducted by the Commission's Adjudication Division, the following standards apply:

1. The Division shall refer the matter to the Adjudication Division, which shall designate an Administrative Law Judge to serve as presiding officer;

2. The proceeding shall be conducted as a formal agency adjudicative proceeding pursuant to the relevant provisions of the Utah Administrative Procedures Act, Title 63G, Chapter 4;

3. Within 30 days from referral, the Administrative Law Judge shall schedule an evidentiary hearing to be held within 120 days of the referral, unless it is impracticable to do so;

4. Any aggrieved party may intervene in the action;

5. The Commission shall make final administrative disposition of the complaint within one year after the complaint is filed unless it is impracticable to do so. If the agency is unable to make a final administrative disposition within one year, the Commission shall notify the parties in writing of the reason for the delay.

B. If, in accordance with the provisions of these rules, a de novo review proceeding is to be conducted in court, the following standards apply:

1. If, pursuant to Rule R608-1-14, the Commission has concluded the Director's Determination is supported by substantial evidence, the Commission shall commence a court action to support the Determination. Such action shall be commenced within 30 days from the date of the election for court review.

2. If, pursuant to Rule R608-1-14, the Commission has concluded the Determination is not supported by substantial evidence, the Commission shall not commence a court action to support the Determination. In such case, the complainant may commence a civil action in a court of competent jurisdiction as provided by the Act.

R608-1-16. Declaratory Orders.

A. Purpose. As required by Section 63G-4-503, this rule provides the procedures for submission, review, and disposition of petitions for agency Declaratory Orders on the applicability of statutes, rules, and orders governing or issued by the agency.

B. Petition Form and Filing.

1. The petition shall be addressed and delivered to the Director who shall mark the petition with the date of receipt.

2. The petition shall:

a. be clearly designated as a request for an agency Declaratory Order;

b. clearly identify the statute, rule, or order to be reviewed;

c. describe in detail the situation or circumstances in which applicability is to be reviewed;

d. describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

e. include an address and telephone number where the petitioner can be contacted during normal business hours;

f. declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

g. be signed by the petitioner.

C. Review.

1. the agency shall not review a petition for a Declaratory Order that is:

a. not within the jurisdiction and competency of the agency;

b. trivial, irrelevant, or immaterial; or

c. otherwise excluded by state or federal law.

2. The Director shall promptly review and consider the petition and may:

a. meet with the petitioner;

b. consult with counsel or the Attorney General; or

c. take any action consistent with law that the agency deems necessary to provide adequate review and due consideration of the petition.

3. The Director may issue a Declaratory Order pursuant to Section 63G-4-503(6).

D. Administrative Review.

1. Administrative review of the Director's Declaratory Order shall be conducted pursuant to Section 63G-4-302.

R608-1-17. Assistance Animals.

A. General

1. Pursuant to the Utah Fair Housing Act and the federal Fair Housing Act, this rule defines the circumstances in which an individual with a disability is entitled to an assistance animal as a reasonable accommodation in a dwelling that would otherwise restrict or prohibit the presence of an animal. The term "assistance animals" as used in this rule means animals that assist, support, or provide service to persons with disabilities and may include or otherwise be referred to as service animals, emotional support animals, assistive animals, or therapy animals.

2. The assistance animal must be necessary to afford the individual an equal opportunity to use and enjoy a dwelling or to participate in the housing service or program. This requires a demonstrable relationship between the individual's disability and the assistance the animal provides.

a. Housing providers are entitled to verify the existence of the individual's disability as well as the need for the assistance animal as an accommodation for that disability if either is not readily apparent. Accordingly, an individual proposing an assistance animal as a reasonable accommodation for a disability may be required to provide documentation from a physician, psychiatrist, or other qualified healthcare professional that the animal provides support that alleviates a symptom or effect of the disability.

b. Housing providers need not permit an assistance animal as an accommodation to a person with a disability if the provider demonstrates that allowing the assistance animal would impose an undue financial or administrative burden or would fundamentally alter the nature of a housing facility, program or service.

c. Housing providers are not required to provide an accommodation that poses a direct threat to the health or safety of others. Thus, if a particular assistance animal has a history of dangerous behavior, if the animal is out of control and its handler does not take effective action to control it, the housing provider is not required to accept the assistance animal.

B. Relationship of this rule to other laws addressing service animals.

1. The federal Fair Housing Act, the Utah Fair Housing Act and this rule establish the standards for assistance animals as a reasonable accommodation in housing.

2. This rule does not apply to use of service animals in public areas, common carriers, public conveyances, public accommodations or places of amusement, which are governed by standards set forth in Utah Code Ann. Section 62A-5b-101 et seq., "Rights and Privileges of a Person with a Disability."

KEY: housing, fair housing, discrimination, time
November 21, 2011 57-21-1 et seq.
Notice of Continuation October 5, 2011 63G-4-102 et seq.

R612. Labor Commission, Industrial Accidents.**R612-2. Workers' Compensation Rules-Health Care Providers.****R612-2-1. Definitions.**

- A. All definitions in Rule R612-1 apply to this section.
- B. "Medical Practitioner" - means any person trained in the healing arts and licensed by the State in which such person practices.
- C. "Global Fee Cases" - are those flat fee cases where fees include pre-operative and follow-up or aftercare.
- D. "Usual and Customary Rate (UCR)" is the rate of payment to a dental provider using Ingenix, or a similar service, for charges for services for a particular zip code.
- E. Unless otherwise specified, the term "insurer" includes workers' compensation insurance carriers and self-insured employers.

R612-2-2. Authority.

This rule is enacted under the authority of Section 34A-1-104 and Section 34A-2-407.

R612-2-3. Filings.

A. Within one week following the initial examination of an industrial patient, nurse practitioners, physicians and chiropractors shall file "Form 123 - Physicians' Initial Report" with the carrier/self-insured employer, employee, and the division. This form is to be completed in as much detail as feasible. Special care should be used to make sure that the employee's account of how the accident occurred is completely and accurately reported. All questions are to be answered or marked "N/A" if not applicable in each particular instance. All addresses must include city, state, and zip code. If modified employment in #29 is marked "yes," the remarks in #29 must reflect the particular restrictions or limitations that apply, whether as to activity or time per day or both. Estimated time loss must also be given in #29. If "Findings of Examination" (#17) do not correctly reflect the coding used in billing, a reduction of payment may be made to reflect the proper coding. A physician, chiropractor, or nurse practitioner is to report every initial visit for which a bill is generated, including first aid, when a worker reports that an injury or illness is work related. All initial treatment, beyond first aid, that is provided by any health care provider other than a physician, chiropractor, or nurse practitioner must be countersigned by the supervising physician and reported on Form 123 to the Industrial Accidents Division and the insurance carrier or self-insured employer.

B. 1. Any medical provider billing under the restorative services section of the Labor Commission's adopted Resource-Based Relative Value Scale (RBRVS) or the Medical Fee Guidelines shall file the Restorative Services Authorization (RSA) form with the insurance carrier or self-insured employer (payor) and the division within ten days of the initial evaluation.

2. Upon receipt of the provider's RSA form, the payor has ten days to respond, either authorizing a specified number of visits or denying the request. No more than eight visits may be incurred during the authorization process.

3. After the initial RSA form is filed with the payor and the division, an updated RSA form must be filed for approval or denial at least every six visits until a fixed state of recovery has been achieved as evidenced by either subjective or objective findings. If the medical provider has filed the RSA form per this rule, the payor is responsible for payment, unless compensability is denied by the payor. In the event the payor denies the entire compensability of a claim, the payor shall so notify the claimant, provider, and the division, after which the provider may then bill the claimant.

4. Any denial of payment for treatment must be based on a written medical opinion or medical information. The denial notification shall include a copy of the written medical opinion

or information from which the denial was based. The payor is not liable for payment of treatment after the provider, claimant, and division have been notified in writing of the denial for authorization to pay for treatment. The claimant may then become responsible for payment.

5. Any dispute regarding authorization or denial for treatment will be determined from the date the division received the RSA form or notification of denial for payment of treatment.

6. The claimant may request a hearing before the Division of Adjudication to resolve compensability or treatment issues.

7. Subjective objective assessment plan/procedure (SOAP notes) or progress notes are to be sent to the payor in addition to the RSA form.

8. Any medical provider billing under the Restorative Services Section of the RBRVS or the Commission's Medical Fee Guidelines who fails to submit the required RSA form shall be limited to payment of up to eight visits for a compensable claim. The medical provider may not bill the patient or employer for any remaining balances.

C. S.O.A.P. notes or progress reports of each visit are to be sent to the payor by all medical practitioners substantiating the care given, the need for further treatment, the date of the next treatment, the progress of the patient, and the expected return-to-work date. These reports must be sent with each bill for the examination and treatment given to receive payment. S.O.A.P. notes are not to be sent to the division unless specifically requested.

D. "Form 110 - Release to Return to Work" must be mailed by either the medical practitioner or carrier/employer to the employee and the division within five calendar days of release.

E. The carrier/employer may request medical reports in addition to regular progress reports. A charge may be made for such additional reports, which charge should accurately reflect the time and effort expended by the physician.

R612-2-4. Hospital or Surgery Pre-Authorization.

Any ambulatory surgery or inpatient hospitalization other than a life or limb threatening admission, allegedly related to an industrial injury or occupational disease, shall require pre-authorization by the employer/insurance carrier. Within two working days of a telephone request for pre-authorization, the employer/carrier shall notify the physician and employee of approval or denial of the surgery or hospitalization, or that a medical examination or review is going to be obtained. The medical examination/review must be conducted without undue delay which in most circumstances would be considered less than thirty days. If the request for pre-authorization is made in writing, the employer/carrier shall have four days from receipt of the request to notify the physician and employee. If the employee chooses to be hospitalized and/or to have the surgery prior to such pre-authorization or medical examination/review, the employee may be personally responsible for the bills incurred and may not be reimbursed for the time lost unless a determination is made in his/her favor.

R612-2-5. Regulation of Medical Practitioner Fees.

Pursuant to Section 34A-2-407(9):

A. The Labor Commission of Utah:

1. Establishes and regulates fees and other charges for medical provider services as required for the treatment of a work-related injury or illness.

2. Adopts and by this reference incorporates the Ingenix Essential RBRVS, 2011 1st Quarter Emergency Update ("RBRVS"), as the method for calculating reimbursement and the Ingenix 2011 Current Procedural Coding Expert ("CPT").

a. The non-facility total unit value will apply in calculating the reimbursement, except that procedures provided in a facility setting shall be reimbursed at the facility total unit value and the

facility may bill a separate facility charge.

b. The CPT coding guidelines and 2011 First Quarter RBRVS, 1761 Edition, are subject to the Utah Labor Commission's Medical Fee Guidelines and the following Labor Commission conversion factors for medical care rendered for a work-related injury or illness, effective December 1, 2011: (Conversion Rates below EFFECTIVE December 1, 2011, to be used with the RBRVS procedural Unit value as per specialty.)

Anesthesiology \$40.00 (1 unit per 15 minutes of anesthesia);

Medicine, E and M \$44.00;

Evaluation and Management codes 99201 - 99204 and 99211 - 99214 \$44.00;

Pathology and Laboratory \$50.00;

Radiology \$51.00;

Restorative Services \$44.00;

Surgery \$36.00;

All 20000 codes, codes 49505 thru 49525 and all 60000 codes of the CPT-4 coding guidelines \$56.00.

3. Adopts and incorporates by this reference the Utah Labor Commission's 2012 Medical Fee Guidelines, effective December 1, 2011. The Utah Medical Fee Guidelines can be obtained from the division for a fee sufficient to recover costs of development, printing, and mailing or can be downloaded at the Labor Commission's website at <http://laborcommission.utah.gov/Provider%20Page.html#WorkersCompensation>.

4. Decides appropriate billing procedure codes when disputes arise between the medical practitioner and the employer or its insurance carrier. In no instance will the medical practitioner bill both the employer and the insurance carrier.

B. Employees cannot be billed for treatment of their work-related injuries or illnesses.

C. Discounting from the fees established by the Labor Commission is allowed only through specific contracts between a medical provider and a payor for treatment of work-related injury or illness.

D. Restocking fee 15%. Rule R612-2-16 covers the restocking fee.

E. Dental fees are not published. Rule R612-2-18 covers dental injuries.

F. Ambulance fees are not published. Rule R612-2-19 covers ambulance charges.

G. For procedures not covered by other provisions of this rule, medical providers have three options.

1. Medical providers may request preauthorization for a procedure from the insurance carrier.

2. Medical providers may present evidence to Medical Fee Committee for incorporating a procedure into the Commission's fee schedule. However, such incorporation will have prospective effect only.

3. Medical providers may apply for hearing before the Commission's Adjudication Division pursuant to Subsection 34A-2-801(1)(c) to establish a reasonable fee for the procedure.

R612-2-6. Fees in Cases Requiring Unusual Treatment.

The RBRVS scheduled fees are maximum fees except that fees higher than RBRVS scheduled may be authorized by the Commission when extraordinary difficulties encountered by the physician justify increased charges and are documented by written reports.

R612-2-7. Insurance Carrier's Privilege to Examine.

The employer or the employer's insurance carrier or a self-insured employer shall have the privilege of medical examination of an injured employee at any reasonable time. A copy of the medical examination report shall be made available to the Commission at any time upon request of the Commission.

R612-2-8. Who May Attend Industrial Patients.

A. The employer has first choice of physicians; but if the employer fails or refuses to provide medical attention, the employee has the choice of physicians.

B. An employee of an employer with an approved medical program may procure the services of any qualified practitioner for emergency treatment if a physician employed in the program is not available for any reason.

R612-2-9. Changes of Doctors and Hospitals.

A. It shall be the responsibility of the insurance carrier or self-insured employer to notify each claimant of the change of doctor rules. Those rules are as follows:

1. If a company doctor, designated facility or PPO is named, the employee must first treat with that designated provider. The insurance carrier or self-insured employer shall be responsible for payment for the initial visit, less any health insurance copays and subject to any health insurance reimbursement, if the employee was directed to and treated by the employer's or insurance carrier's designated provider, and liability for the claim is denied and if the treating physician provided treatment in good faith and provided the insurance carrier or self-insured employer a report necessary to make a determination of liability. Diagnostic studies beyond plain x-rays would need prior approval unless the claimed industrial injury or occupational illness required emergency diagnosis and treatment.

2. The employee may make one change of doctor without requesting the permission of the carrier, so long as the carrier is promptly notified of the change by the employee.

(a) Physician referrals for treatment or consultation shall not be considered a change of doctor.

(b) Changes from emergency room facilities to private physicians, unless the emergency room is named as the "company doctor", shall not be considered a change of doctor. However, once private physician care has begun, emergency room visits are prohibited except in cases of:

(i) Private physician referral, or

(ii) Threat to life.

3. Regardless of prior changes, a change of doctor shall be automatically approved if the treating physician fails or refuses to rate permanent partial impairment.

B. Any changes beyond those listed above made without the permission of the carrier/self-insurer may be at the employee's own expense if:

1. The employee has received notification of rules, or

2. A denial of request is made.

C. An injured employee who knowingly continues care after denial of liability by the carrier may be individually responsible for payment. It shall be the burden of the carrier to prove that the patient was aware of the denial.

D. It shall be the responsibility of the employee to make the proper filings with the division when changing locale and doctor. Those forms can be obtained from the division.

E. Except in special cases where simultaneous attendance by two or more medical care practitioners has been approved by the carrier/employer or the division, or specialized services are being provided the employee by another physician under the supervision and/or by the direct referral of the treating physician, the injured employee may be attended by only one practitioner and fees will not be paid to two practitioners for similar care during the same period of time.

F. The Director of the Division of Industrial Accidents may authorize an injured worker to be examined by another physician for the purpose of obtaining a further medical examination or evaluation pertaining to the medical issues involved, and to obtain a report addressing these medical issues in all cases where:

1. The treating physician has failed or refused to give an

impairment rating, and/or

2. A substantial injustice may occur without such further evaluation.

G. The Commission has jurisdiction to decide liability for medical care allegedly related to an industrial accident.

R612-2-10. One Fee Only to be Paid in Global Fee Cases.

In a global fee case which is transferred from one doctor to another doctor, one fee only will be paid, apportioned at the discretion of the Commission. Adequate remuneration shall also be paid to the medical practitioner who renders first aid treatment where the circumstances of the case require such treatment.

R612-2-11. Surgical Assistants' Fees.

Fees, in accordance with the Commission's adopted Resource-Based Relative Value Scale (RBRVS), in addition to the global fee for surgical services, will be paid surgical assistants only when specifically authorized by the employer or insurance carrier involved, or in hospitals where interns and residents are not available and the complexity of the surgery makes a surgical assistant necessary.

R612-2-12. Separate Bills.

Separate bills must be presented by each surgeon, assistant, anesthetist, consultant, hospital, special nurse, or other medical practitioner within 30 days of treatment on a HCFA 1500 billing form so that payment can be made to the medical practitioner who rendered the service. All bills must contain the federal ID number of the person submitting the bill.

R612-2-13. Interest for Medical Services.

A. All hospital and medical bills must be paid promptly on an accepted liability claim. All bills which have been submitted properly on an accepted liability claim are due and payable within 45 days of being billed unless the bill or a portion of the bill is in dispute. Any portion of the bill not in dispute is payable within 45 days of the billing.

B. Per Section 34A-2-420, any award for medical treatment made by the Commission shall include interest at 8% per annum from the date of billing for the medical service.

R612-2-14. Hospital Fees Separate.

Fees covering hospital care shall be separate from those for professional services and shall not extend beyond the actual necessary hospital care. When it becomes evident that the patient needs no further hospital treatment, he/she must be discharged. All billings must be submitted on a UB92 form and be properly itemized and coded and shall include all appropriate documentation to support the billing. There shall not be a separate fee charged for the necessary documentation in billing for payment of hospital services. The documentation of hospital services shall include at a minimum the discharge summary. The insurance carrier may request further documentation if needed in order to determine liability for the bill.

R612-2-15. Charges for Ordinary Supplies, Materials, or Drugs.

Fees covering ordinary dressing materials or drugs used in treatment shall not be charged separately but shall be included in the amount allowed for office dressings or treatment.

R612-2-16. Charges for Special or Unusual Supplies, Materials, or Drugs.

A. Charges for special or unusual supplies, materials, or drugs not included as a normal and usual part of the service or procedure shall, upon receipt of an itemized and coded billing, be paid at cost plus 15% restocking fees.

B. For purposes of part A above, the amount to be paid

shall be calculated as follows:

1. Applicable shipping charges shall be added to the purchase price of the product;

2. The 15% restocking fee shall then be added to the amount determined in sub part 1;

3. The amount of taxes paid on the purchase of the supplies, materials, or drugs shall then be added to the amount determined in sub part 2, which sum shall constitute the total amount to be paid.

R612-2-17. Fees for Unscheduled Procedures.

Fees for medical or surgical procedures not appearing in the Commission's adopted RBRVS current fee schedule are subject to the Commission's approval and should be submitted to the Commission when the physician and employer or insurance carrier do not agree on the value of the service. Such fees shall be in proportion as nearly as practicable to fees for similar services appearing in the RBRVS.

R612-2-18. Dental Injuries.

A. This rule establishes procedures to obtain dental care for work-related dental injuries and sets fees for such dental care.

B. Initial Treatment.

1. If an employer maintains a medical staff or designates a company doctor, an injured worker seeking dental treatment for work-related injuries shall report to such medical staff or doctor and follow their instructions.

2. If an employer does not maintain a medical staff or designate a company doctor, or if such staff or doctor are not available, an injured worker may consult a dentist to obtain immediate care dental for injuries caused by a work-related accident. The insurer shall pay the dentist providing this initial treatment at 70% of UCR for the services rendered.

C. Subsequent care by initial treatment provider.

1. If additional treatment is necessary, the dentist who provided initial treatment may submit to the insurer a request for authorization to continue treatment. The transmission date of the request must be verifiable. The request itself must include a description of the injury, the additional treatment required, and the cost of the additional treatment. If the dentist proceeds with treatment without authorization, the dentist must accept 70% of UCR as payment in full and may not charge any additional sum to the injured worker.

2. The insurer shall respond to the request for authorization within 10 working days of the request's transmission. This 10-day period can be extended only with written approval of the Industrial Accidents Division. If the insurer does not respond to the dentist's request for authorization within 10 working days, the insurer shall pay the cost of treatment as contained in the request for authorization.

3. If the insurer approves the proposed treatment, the insurer shall send written authorization to the dentist and injured worker. This authorization shall include the anticipated payment amount.

4. On receipt of the insurer's written authorization, and if the dentist accepts the payment provisions therein, the dentist may proceed to provide the approved services. The dentist must accept the amount to be paid by the insurer as full payment for those services and may not bill the injured worker for any additional amount.

D. Subsequent care by other providers.

1. If the dentist who provided initial treatment does not agree to the payment offered by the insurer, the insurer shall within 20 calendar days direct the injured worker to a dentist located within a reasonable travel distance who will accept the insurer's payment offer.

2. If the insurer cannot locate another dentist to provide the necessary services, the insurer shall attempt to negotiate a

satisfactory reimbursement with the dentist who provided initial treatment. The negotiated reimbursement may not include any balance billing to the claimant.

3. If the insurer is successful in arranging treatment with another dentist, the insurer shall notify the injured worker.

4. If, after having received notice that the insurer has arranged the services of another dentist, the injured worker chooses to obtain treatment from a different dentist, the insurer shall only be responsible for payment at 70% of UCR. Under the circumstances of this subsection (4), the treating dentist may bill the injured worker for the difference between the dentist's charges and the amount paid by the insurer.

E. Payment or treatment disputes that cannot be resolved by the parties may be submitted to the Labor Commission's Adjudication Division for decision, pursuant to the Adjudication Division's established forms and procedures.

R612-2-19. Ambulance Charges.

Ambulance charges must not exceed the rates adopted by the State Emergency Medical Service Commission for similar services.

R612-2-20. Travel Allowance and Per Diem.

A. An employee who, based upon his/her physician's advice, requires hospital, medical, surgical, or consultant services for injuries arising out of and in the course of employment and who is authorized by the self-insurer, the carrier, or the Commission to obtain such services from a physician and/or hospital shall be entitled to:

1. Subsistence expenses of \$6 per day for breakfast, \$9 per day for lunch, \$15 per day for dinner, and actual lodging expenses as per the state of Utah's in-state travel policy provided:

(a) The employee travels to a community other than his/her own place of residence and the distance from said community and the employee's home prohibits return by 10:00 p.m., and

(b) The absence from home is necessary at the normal hour for the meal billed.

2. Reasonable travel expenses regardless of distance that are consistent with the state of Utah's travel reimbursement rates, or actual reasonable costs of practical transportation modes above the state's travel reimbursement rates as may be required due to the nature of the disability.

B. This rule applies to all travel to and from medical care with the following restrictions:

1. The carrier is not required to reimburse the injured employee more often than every three months, unless:

(a) More than \$100 is involved, or

(b) The case is about to be closed.

2. All travel must be by the most direct route and to the nearest location where adequate treatment is reasonably available.

3. Travel may not be required between the hours of 10:00 p.m. and 6:00 a.m., unless approved by the Commission.

4. Requests for travel reimbursement must be submitted to the carrier for payment within one year of the authorized medical care.

5. Travel allowance shall not include picking up prescriptions unless documentation is provided substantiating a claim that prescriptions cannot be obtained locally within the injured worker's community.

6. The Commission has jurisdiction to resolve all disputes.

R612-2-21. Notice to Health Care Providers.

Any notice from a carrier denying further liability must be mailed to the Commission and the patient on the same day as it is mailed to the health care provider. Where it can be shown, in fact, that a medical care provider and the injured employee have received a denial of further care by the insurance carrier or self-

insured employer, further treatment may be performed at the expense of the employee. Any future ratification of the denial by the Commission will not be considered a retroactive denial but will serve to uphold the force and effect of the previous denial notice.

R612-2-22. Medical Records.

A. Workers' compensation insurers, employers and the Utah Labor Commission need access to health information of individuals who are injured on the job or who have work-related illness in order to process or adjudicate claims, or to coordinate care under Utah's workers' compensation system. Generally, this health information is obtained from health care providers who treat these individuals and who may be covered by federal "HIPAA" privacy rules.

The HIPAA Privacy Rule specifically recognizes the legitimate need of the workers' compensation system to have access to individuals' health information to the extent authorized by State law. See 45 CFR 164.512(1). The Privacy Rule also recognizes the importance of permitting disclosures required by other laws. See 45 CFR 164.512(a). Therefore, disclosures permitted by this rule for workers' compensation purposes or otherwise required by this rule do not conflict with and are not prohibited by the HIPAA Privacy Rule.

B. A medical provider, without authorization from the injured workers, shall:

1. For purposes of substantiating a bill submitted for payment or filing required Labor Commission forms, such as the "Physician's Initial Report of Injury/Illness" or the "Restorative Services Authorization," disclose medical records necessary to substantiate the billing, including drug and alcohol testing, to:

a. An employer's workers' compensation insurance carrier or third party administrator;

b. A self-insured employer who administers its own workers' compensation claims;

c. The Uninsured Employers' Fund;

d. The Employers' Reinsurance Fund; or

e. The Labor Commission as required by Labor Commission rules.

2. Disclose medical records pertaining to treatment of an injured worker, who makes a claim for workers' compensation benefits, to another physician for specialized treatment, to a new treating physician chosen by the claimant, or for a consultation regarding the claimed work related injury or illness.

C. 1. Except as limited in C(3), a medical provider, whose medical records are relevant to a workers' compensation claim shall, upon receipt of a Labor Commission medical records release form, or an authorization form that conforms to HIPAA requirements, disclose his/her medical records to:

a. An employer's insurance carrier or third party administrator;

b. A self-insured employer who administers its own workers' compensation claims;

c. An agent of an entity listed in B(1)(a through e), which includes, but is not limited to a case manager or reviewing physician;

d. The Uninsured Employers' Fund;

e. The Employers' Reinsurance Fund;

f. The Labor Commission;

g. The injured worker;

h. An injured workers' personal representative;

i. An attorney representing any of the entities listed above in an industrial injury or occupational disease claim.

2. Medical records are relevant to a workers' compensation claim if:

a. The records were created after the reported date of the accident or onset of the illness for which workers' compensation benefits have been claimed; or

b. The records were created in the past ten years (15 years

if permanent total disability is claimed) and;

i. There is a specific reason to suspect that the medical condition existed prior to the reported date of the claimed work related injury or illness or

ii. The claim is being adjudicated by the Labor Commission.

3. Medical records related to care provided by a psychiatrist, psychologist, obstetrician, or care related to the reproductive organs may not be disclosed by a medical provider unless a claim has been made for a mental condition, a condition related to the reproductive organs, or the claimant has signed a separate, specific release for these records.

D. A medical provider, who has treated an injured worker for a work related injury or illness, shall disclose information to an injured workers' employer as to when and what restrictions an injured worker may return to work.

E. Requests for medical records beyond what sections B, C, and D permit require a signed approval by the director, the medical director, a designated person(s) within the Industrial Accidents Division or an administrative law judge if the claim is being adjudicated.

F. A party affected by the decision made by a person in section E may appeal that decision to the Adjudication Division of the Labor Commission.

G. Upon receipt and within the scope of this rule, an injured worker shall provide those entities or person listed in C(1) the names, address, and dates of medical treatment (if known) of the medical providers who have provided medical care within the past 10 years (15 years for permanent total disability claim) except for those medical providers names in C(3). Labor Commission form number 307 "Medical Treatment Provider List" must be used for this purpose. Parties listed in C(1) of this rule must provide each medical provider identified on form 307 with a signed authorization for access to medical records. A copy of the signed authorization may be sent to the medical providers listed on form 307.

H. An injured worker may contest, for good reason, a request for medical records created prior to the reported date of the accident or illness for which the injured worker has made a claim for benefits by filing a complaint with the Labor Commission. Good reason is defined as the request has gone beyond the scope of this rule or sensitive medical information is contained in a particular medical record.

I. 1. Any party obtaining medical records under authority of this rule may not disclose those medical records, without a valid authorization, except as required by law.

2. An employer may only use medical records obtained under the authority of this rule to:

a. Pay or adjudicate workers' compensation claims if the employer is self-insured;

b. To assess and facilitate an injured workers' return to work;

c. As otherwise authorized by the injured worker.

3. An employer obtaining medical records under authority of this rule must maintain the medical records separately from the employee's personnel file.

J. Any medical records obtained under the authority of this rule to make a determination regarding the acceptance of liability or for treatment of a condition related to a workers' compensation claim shall only be used for workers' compensation purposes and shall not be released, without a signed release by the injured worker or his/her personal representative, to any other party. An employer shall make decisions related only to the workers' compensation claim based on any medical information received under this rule.

K. When any medical provider provides copies of medical records, other than the records required when submitting a bill for payment or as required by the Labor commission rules, the following charges are presumed reasonable:

1. A search fee of \$15 payable in advance of the search;

2. Copies at \$.50 per page, including copies of microfilm, payable after the records have been prepared and

3. Actual costs of postage payable after the records have been prepared an sent. Actual cost of postage are deemed to be the cost of regular mail unless the requesting party has requested the delivery of the records by special mail or method.

4. The Labor Commission will release its records per the above charges to parties/entities with a signed and notarized release from the injured worker unless the information is classified and controlled under the Government Records Access and Management Act (GRAMA).

L. No fee shall be charged when the RBRVS or the Commission's Medical Fee Guidelines require specific documentation for a procedure or when medical providers are required to report by statute or rule.

M. An injured worker or his/her personal representative may obtain one copy of each of the following records related to the industrial injury or occupational disease claim, at no cost, when the injured worker or his/her personal representative have signed a form by the Industrial Accidents Division to substantiate his/her industrial injury/illness claim;

1. History and physical;

2. Operative reports of surgery;

3. Hospital discharge summary;

4. Emergency room records;

5. Radiological reports;

6. Specialized test results; and

7. Physician SOAP notes, progress notes, or specialized reports.

(a) Alternatively, a summary of the patients records may be made available to the injured worker or his/her personal representative at the discretion of the physician.

R612-2-23. Adjusting Resource-Based Relative Value Scale (RBRVS) Codes.

A. When adjusting any medical provider's bill who has billed per the Commission's adopted RBRVS the adjusting entity shall provide one or more of the following explanations as applies to the down coding when payment is made to the medical provider:

1. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of history for the code billed.

2. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of examination for the code billed.

3. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of medical decision making for the code billed.

4. Code 99202, 99203, 99204, or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of history and exam for the code billed.

5. Code 99213, 99214 or 99215 - the submitted documentation for an established patient did not meet the two key components lacking in the level of history and exam that the code billed.

6. Code 99213, 99214 or 99215 - the submitted documentation for an established patient did not meet the two key components lacking in the level of history and medical decision making for the code billed.

7. Code 99213, 99214 or 99215 - the submitted documentation for the established patient did not meet the two key components lacking in the level of exam and medical decision making for the code billed.

B. The above explanations may be abbreviated, with a

legend provided, to accommodate the space of computerized messages.

R612-2-24. Review of Medical Payments.

A. Health care providers and payors are primarily responsible to resolve disputes over fees for medical services between themselves. However, in some cases it is necessary to submit such disputes to the Division for resolution. The Commission therefore establishes the following procedure for submission and review of fees for medical services.

1. The provider shall submit a bill for services rendered, with supporting documentation, to the payor within one year of the date of service;

2. The payor shall evaluate the bill according to the guidelines contained in the Commission's Medical Fee Guidelines and RBRVS and shall pay the provider the appropriate fee within 45 days as required by Rule R612-2-13.

3. If the provider believes that the payor has improperly computed the fee under the RBRVS, the provider or designee shall request the payor to re-evaluate the fee. The provider's request for re-evaluation shall be in writing, shall describe the specific areas of disagreement and shall include all appropriate documentation. The provider shall submit all requests for re-evaluation to the payor within one year of the date of the original payment.

4. Within 30 days of receipt of the written request for re-evaluation, the payor shall either pay the additional fee due the provider or respond with a specific written explanation of the basis for its denial of additional fees. The payor shall maintain proof of transmittal of its response.

B. If the provider continues to disagree with the payor's determination of the appropriate fee, the provider shall submit the matter to the Division by filing with the Division a written explanation of the disagreement. The provider's explanation shall include copies of:

1. The provider's original bill and supporting documentation;

2. The payor's initial payment of that bill;

3. The provider's request for re-evaluation and supporting documentation; and

4. The payor's written explanation or its denial of additional fees.

C. The Division will evaluate the dispute according to the requirements of the Medical Fee Guidelines and RBRVS and, if necessary, by consulting with the provider, payor, or medical specialists. Within 45 days from the date the Division receives the provider's request, the Division will mail its determination to both parties.

D. Any party aggrieved by the Division's determination may file an application for hearing with the Division of Adjudication to obtain formal adjudication of the dispute.

E. A payor seeking reimbursement from a provider for overpayment of a bill shall submit a written request to the provider detailing the circumstances of the payment requested within one year of submission of the bill.

1. Providers should make appropriate reimbursements, or respond in writing detailing the reasons why repayment will not be made, within 90 days or receipt of a written request from a payor.

2. If a dispute as to reimbursement occurs, an aggrieved party may request resolution of the dispute by the Labor Commission.

R612-2-25. Injured Worker's Right to Privacy.

A. No agent of the employer or the employer's insurance carrier shall be present during an injured worker's visit with a medical provider, unless agreed upon by the claimant.

B. If an agent of the employer or the employer's insurance carrier is excluded from the medical visit, the medical provider

and the injured worker shall meet with the agent at the conclusion of the visit so as to communicate regarding medical care and return to work issues.

R612-2-26. Utilization Review Standards.

A. As used in this subsection:

1. "Payor" means a workers' compensation insurance carrier, a self-insured employer, third-party administrator, uninsured employer or the Uninsured Employers' Fund, which is responsible for payment of the workers' compensation claim.

2. "Health Care Provider" means a provider of medical services, including an individual provider, a health-service plan, a health-care organization, or a preferred-provider organization.

3. "Request for Authorization" means any request by a physician for assurance that appropriate payment will be made for a course of proposed medical treatment, including surgery or hospitalization, or any diagnostic studies beyond plain X-rays.

4. "Utilization Review," as authorized in Section 34A-2-111, is a process used to manage medical costs, improve patient care, and enhance decision-making. Utilization review includes, but is not limited to, the review of requests for authorization to treat, and the review of bills, for the purpose of determining whether the medical services provided were or would be necessary, to treat the effects of the injury/illness. Utilization review does not include bill review for the purpose of determining whether the medical services rendered were accurately billed. Nor does it include any system, program, or activity in connection with making decisions concerning whether a person has sustained an injury or illness which is compensable under Section 34A-2 or 34A-3.

5. "Reasonable Attempt" is defined as at least two phone calls and a fax, or three phone calls, within five business days from date of the payor's receipt of the physician's request for review.

B. Any utilization review system shall establish an appeals process which utilizes a physician(s) for a final decision by the insurer, should an initial review decision be contested. The payor may establish levels of review that meet the following criteria:

1. Level I--Initial Request and Review. A payor may use medical or non-medical personnel to initially apply medically-based criteria to a request for authorization for payment of a specific treatment. The treating physician must send all the necessary documentation for the payor to make a decision regarding the treatment recommended. The payor must then notify the physician within five business days of the request for authorization of payment for the treatment, by a method which provides certification of transmission of the document, of either an acceptance or a denial of the request. A denial for authorization of payment for a recommended treatment utilizing the Commission's form, Form 223, must be sent to the provider with the criteria used in making the determination to deny payment for the treatment. A copy of the denial must also be mailed to the claimant. Level I--Request and Review does not include authorization requests for services billed from the Restorative section of the Resource-Based Relative Value Scale (RBRVS). Requests for authorization for restorative services are governed by rule R612-2-3(B).

2. Level II--Review. A physician, who has been denied authorization of payment for treatment, or has received no response within five business days from the request for authorization for payment at Level I review, may request a physician's review by sending the completed portion of the Commission form 223 to the payor. Such a request for review may be filed by any physician who has been denied authorization for payment for restorative services beyond the initial eight visits as authorized by Rule R612-2-3(B). The requesting physician must include the times and days that he/she is available to discuss the case with the reviewing physician, and

must be reasonably available during normal business hours. The payor's physician representative must complete the review within five business days of the treating physician's request for review. Before the insurer's physician representative may issue a denial of an authorization for payment to treat, a reasonable effort must have been made to contact the requesting treating physician to discuss the differing aspects of the case. Failure by the payor to respond within five business days, by a method which provides certification of transmission, to a denial for authorization for payment for treatment, shall constitute an authorization for payment of the treatment. The payor's denial to pay for the recommended treatment must be issued on Commission's form 223, and the denial must be accompanied by the criteria that was used in making the decision to deny authorization, along with the name and speciality of the reviewing physician. The denial to authorize payment for treatment must then be sent to the physician, the claimant, and the Commission. The payor shall notify the Commission if an additional five days is needed in order to contact the treating physician or to review the case. An additional extension of time may be requested from the Commission to accommodate highly unusual circumstances or particularly difficult cases.

C. Upon receipt of denial of authorization for payment for medical treatment at Level II, the Commission will facilitate, upon the request of the claimant, the final disposition of the case. If the parties agree, the medical dispute may be resolved by the Commission through binding mediation or medical review. If there is not agreement among the parties, the Commission will resolve the dispute through formal adjudication. The payor shall be responsible for sending the claimant the Commission appeals information when the denial for authorization for payment for medical treatment is sent to the claimant.

D. If the medical treatment requested is not an emergency, and treatment is rendered by the physician after, receiving notice of the utilization standards encompassed in this rule, the following shall apply:

1. The Commission shall, if the disputed medical treatment is ultimately determined to be compensable as an expense necessary to treat the industrial injury or occupational disease, order that the physician be reimbursed at only 75% of the amount otherwise payable had appropriate authorization been timely obtained. The injured worker shall not be liable for any additional payment to the physician above the 75%.

2. Neither the worker's employer or its workers' compensation insurer shall be liable for any portion of the cost of disputed medical treatment, if that treatment is ultimately determined not to be compensable as an expense necessary to treat an industrial injury or occupational disease.

3. A worker may become liable for the cost of the disputed medical treatment, if that treatment is ultimately determined not to be compensable as an expense necessary to treat the industrial injury or occupational disease.

4. Except for any co-pays or deductibles under the worker's health insurance plan, the penalty provision in D(1) and D(3) shall not apply if the physician performs the medical treatment in question, having been preauthorized in writing to do the same by a health insurer or other non-worker's compensation insurance payor.

5. The penalty provisions in D(1) shall not apply to medical treatment rendered in emergency situations, which are defined as a threat to life or limb.

6. The Commission shall notify a physician, in writing, of reported violations of this rule. Repeated violations of this rule by a physician may result in a report from the Commission to the Department of Commerce, Division of Occupational/Professional Licensing.

Protocol.

A. Authority. Pursuant to authority granted by Section 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, the Utah Labor Commission establishes the following standards and procedures for Commission approval of medical treatment and quality care guidelines.

B. Standards:

1. Scientifically based: Section 34A-2-111(2)(c)(i)(B)(VII)(Aa) of the Act requires that guidelines be scientifically based. The Commission will consider a guideline to be "scientifically based" when it is supported by medical studies and/or research.

2. Peer reviewed: Section 34A-2-111(2)(c)(i)(B)(VII)(Bb) of the Act requires that guidelines be peer reviewed. The Commission will consider a guideline to be "peer reviewed" when the medical study's content, methodology, and results have been reviewed and approved prior to publication by an editorial board of qualified experts".

3. Other standards: Pursuant to its rulemaking authority under Section 34A-2-111(2)(c)(i)(B)(VII), the Utah Labor Commission establishes the following additional standards for medical treatment and quality care guidelines.

a. The guidelines must be periodically updated and, subject to Commission discretion, may not be approved for use unless updated in whole or in part at least biannually;

b. Guideline sources must be identified;

c. The guidelines must be reasonably priced;

d. The guidelines must be easily accessible in print and electronic versions.

C. Procedure: Pursuant to Section 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, a party seeking Commission action to approve or disapprove a guideline shall file a petition for such action with the Labor Commission.

KEY: workers' compensation, fees, medical practitioner
November 21, 2011 34A-2-101 et seq.
Notice of Continuation April 28, 2008 34A-3-101 et seq.
34A-1-104

R612-2-27. Commission Approval of Health Care Treatment

R698. Public Safety, Administration.**R698-5. Hazardous Chemical Emergency Response Commission.****R698-5-1. Adoption, Title, Purpose, and Prohibitions.**

Pursuant to Section 63K-3-301(2), Utah Code Annotated 1953, the Department of Public Safety adopts minimum rules establishing a state hazardous chemical emergency response commission advisory committee, the creation, modification or dissolving of local emergency planning committees, and supervising the overall planning and direction of the local emergency planning committees.

R698-5-2. Definitions.

2.1 "Advisory Committee" means State Emergency Response Commission Advisory Committee.

2.2 "EPCRA" means Emergency Planning and Community Right-to-Know Act of 1986.

2.3 "LEPC" means Local Emergency Planning Committee.

2.4 "SERC" means State Hazardous Chemical Emergency Response Commission.

2.5 "SERC Advisory Committee" means State Hazardous Chemical Emergency Response Commission Advisory Committee.

2.6 "USC" means United States Code.

R698-5-3. State Emergency Response Commission Advisory Committee.

3.1 There is created by the Department of Public Safety, the State Hazardous Chemical Emergency Response Commission Advisory Committee, whose duties are to provide direction to the SERC in the following matters: the creation, modification or dissolving of local emergency planning committees; methods and procedures to improve the effectiveness of the LEPC; the review of LEPC hazardous materials emergency response plans; the development of procedures for collection, processing, use and public access to information submitted as required by EPCRA; procedures for the distribution of funding to each LEPC obtained through the US Department of Transportation Hazardous Materials Emergency Preparedness Grant; assist in stated hazardous materials emergency response planning efforts; and, the review of the Statewide Hazardous Materials Plan (ESF10).

3.2 The Advisory Committee's members shall be appointed by the SERC, shall serve four year terms, and shall consist of the following members:

3.2.1 A member representing the hazardous chemical transportation industry.

3.2.2 Two members representing fixed site regulated industries.

3.2.3 A member representing the environmental cleanup contractors.

3.2.4 A member representing the local health departments.

3.2.5 A member representing the urban LEPC.

3.2.6 A member representing the rural LEPC.

3.2.7 A member representing the Hazardous Materials Advisory Council.

3.2.8 A member representing established environmental interest groups.

3.2.9 A member representing the Utah National Guard.

3.2.10 Two members from the general public.

3.3 The Advisory Committee shall meet quarterly or as directed, and a majority of the members shall be present to constitute a quorum.

3.4 The Advisory Committee shall select one of its members to act in the position of chair, and another member to act as vice chair. The chair and vice chair shall serve one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the first quarter of each calendar year. If voted upon by the Advisory Committee,

the vice chair will become the chair the next succeeding calendar year.

3.5 If an Advisory Committee member has two or more unexcused absences during a 12 month period, from regularly scheduled meetings, it is considered grounds for dismissal pending review by the SERC.

3.6 A member of the Advisory Committee that cannot be in attendance, may have a representative of their respective organization attend and vote by proxy for that member or the member may have another Advisory Committee member vote by proxy, if submitted and approved by the chair prior to the meeting.

3.7 The Chair or Vice Chair of the Advisory Committee shall report to the SERC the activities of the Advisory Committee at regularly scheduled SERC meetings. A member of the Advisory Committee may report to the SERC the activities of the Advisory Committee in the absence of the Chair or Vice Chair.

3.8 The Advisory Committee shall consider all subjects presented to them, subjects assigned to them by the SERC, and shall report their recommendations to the SERC at scheduled SERC meetings.

3.9 One-half of the members of the Advisory Committee shall be reappointed or replaced by the SERC every two years. When a vacancy occurs in the Advisory Committee, a replacement shall be appointed by the SERC to complete the remainder of the term.

3.10 Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

3.10.1 Members may decline to receive per diem and expenses for their service.

3.11 State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

3.11.1 State government officer and employee members may decline to receive per diem and expenses for their service.

3.12 Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

3.12.1 Local government members may decline to receive per diem and expenses for their service.

R698-5-4. Local Emergency Planning Committee.

4.1 The creation, modification or dissolution of an LEPC shall be approved by the SERC.

4.2 A jurisdiction requesting the formation of an LEPC shall provide the following information to the SERC Advisory Committee:

4.2.1 A plan for coordinating the proposed additional LEPC with the county LEPC and/or any other city formed LEPC in that county.

4.2.2 An assessment of the jurisdiction's population and hazardous materials risk, to include but not limited to fixed facilities, rail, highways, and hazardous material pipelines.

4.2.3 A determination of how that agency, if allowed to form an LEPC, would meet all federal LEPC standards as identified in 42 USC Chapter 116.

4.3 An LEPC wishing to dissolve shall submit the following to the SERC Advisory Committee:

4.3.1 Reasons why the dissolution is in the best interest of

the public served by the LEPC,

4.3.2 A formal agreement with another LEPC addressing:

4.3.2.1 The assumption of LEPC duties identified in 42 USC Chapter 116,

4.3.2.2 The transfer of remaining LEPC operational funds,

4.3.2.3 The assumption of outstanding LEPC financial obligations,

4.3.3 A plan to notify facilities located within the jurisdiction of the dissolving LEPC who submitted chemical inventory or chemical emergency planning information to the LEPC within the previous year, providing notice of the LEPC dissolution and providing the name and mailing address of the LEPC assuming the dissolving LEPC duties.

4.4 By July 1 of each year LEPCs shall submit to the SERC Advisory Committee: a current list of voting members, the group or organization represented by each voting member, a designation of and contact information for the LEPC chair, or co-chairs, and vice-chairs.

4.5 The SERC Advisory Committee shall evaluate information submitted in accordance with Sections 4.2, 4.3 or 4.4 of these rules and shall make a recommendation to the SERC concerning LEPC creation, modification or dissolution.

4.6 The SERC shall include the recommendation of the SERC Advisory Committee, all information submitted to the SERC Advisory Committee, and comments of directly affected LEPCs, in its decision to approve or disapprove the formation, modification or dissolution of an LEPC.

4.7 The LEPC shall coordinate its overall planning and direction with the SERC. The SERC shall supervise the overall planning and direction of the LEPC.

4.8 The LEPC shall submit a copy of their hazardous materials emergency response plan to the SERC for review.

4.9 The SERC shall approve the amount of US Department of Transportation Hazardous Materials Emergency Preparedness Grant funding to be given to each LEPC and shall establish criteria for that funding to be awarded.

R698-5-5. Adjudicative Proceedings.

5.1 All adjudicative proceedings performed by the SERC shall proceed informally as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

5.2 An agency whose request to create, modify or dissolve an LEPC is denied by the SERC shall have an opportunity for a hearing before the SERC if requested by that agency within 20 days after receiving notice.

5.3 All adjudicative proceedings, other than criminal prosecution taken by the SERC, shall commence in accordance with UCA, Section 63G-4-201.

5.4 The SERC shall act as the hearing authority, and shall convene after timely notice to all parties involved. The members of the SERC acting as the hearing authority shall consist of the Commissioner of Public Safety and the Executive Director of the Department of Environmental Quality. The SERC shall also be joined when acting as the hearing authority by a representative from the Attorney General's Office.

5.5 After acting as the hearing authority, the SERC shall direct the secretary to issue a signed order to the agency involved giving the decision of the SERC within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

5.6 Reconsideration of the SERC decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

5.7 Judicial review of all final SERC actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63G-4-402.

R710. Public Safety, Fire Marshal.**R710-9. Rules Pursuant to the Utah Fire Prevention and Safety Act.****R710-9-1. Title, Authority, and Adoption of Codes.**

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention and Safety Act", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, deputizing Special Deputy State Fire Marshals, procedures to amend incorporated references, establishing board subcommittees, enforcement of the rules of the State Fire Marshal, requirements for the firefighter support restricted account, regulation of novelty lighters, and amendments and additions.

1.4 There is further adopted as part of these rules the following codes which are incorporated by reference:

1.4.1 International Fire Code (IFC), 2009 edition, excluding appendices, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act, except as amended by provisions listed in R710-9-10, et seq.

1.5 Copies of the above code are on file in the Division of Administrative Rules and the Office of the State Fire Marshal.

R710-9-2. Definitions.

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Committee" means the Firefighter Support Restricted Account Advisory Committee.

2.4 "Dwelling Unit" means one or more rooms arranged for the use of one or more individuals living together, as in a single housekeeping unit normally having cooking, living, sanitary, and sleeping facilities. For purposes of this standard, dwelling unit includes hotel rooms, dormitory rooms, apartments, condominiums, sleeping rooms in nursing homes, and similar living units.

2.5 "Division" means State Fire Marshal.

2.6 "IFC" means International Fire Code.

2.7 "LFA" means Local Fire Authority.

2.8 "Premixed" means the mixing of antifreeze with water that is prepared by the manufacturer with a quality control procedure that ensures that the antifreeze and water solution does not separate.

2.9 "Restricted Account" means Firefighter Support Restricted Account.

2.10 "SFM" means State Fire Marshal or authorized deputy.

2.11 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.12 "UCA" means Utah Code Annotated, 1953.

R710-9-3. Conduct of Board Members and Board Meetings.

3.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

3.2 A quorum shall be required to approve any action of the Board.

3.3 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that

particular issue.

3.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less than 21 days before the regularly scheduled Board meetings.

3.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

3.6 The division shall provide the Board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least 14 days prior to the scheduled Board meeting.

3.7 A Board members standing on the Board shall come under review after two unexcused absences in one year from regularly scheduled board meetings. The Board members name shall be submitted to the governors office for status review.

R710-9-4. Deputizing Persons to Act as Special Deputy State Fire Marshals.

4.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

4.2 Pursuant to Section 53-7-101 et seq., special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancy classifications listed in the International Fire Code.

4.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

4.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

4.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

R710-9-5. Procedures to Amend the International Fire Code.

5.1 All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for presentation to the Board at the next regularly scheduled Board meeting.

5.2 Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the Board may be delayed in presentation until the next regularly scheduled Board meeting.

5.3 Upon presentation of a proposed amendment, the Board shall do one of the following:

5.3.1 accept the proposed amendment as submitted or as modified by the Board;

5.3.2 reject the proposed amendment;

5.3.3 submit the proposed amendment to the Board Amendment Subcommittee for further study; or

5.3.4 return the proposed amendment to the requesting agency, accompanied by Board comments, allowing the requesting agency to resubmit the proposed amendment with modifications.

5.4 The Board Amendment Subcommittee shall report its recommendation to the Board at the next regularly scheduled Board meeting.

5.5 The Board shall make a final decision on the proposed amendment at the next Board meeting following the original submission.

5.6 The Board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

5.7 When approved by the Board, the requesting agency shall provide to the division within 45 days, the completed

ordinance.

5.8 The division shall maintain a list of amendments to the IFC that have been granted by the Board.

5.9 The division shall make available to any person or agency copies of the approved amendments upon request, and may charge a reasonable fee for multiple copies in accordance with the provisions of UCA, 63-2-203.

R710-9-6. Fire Advisory and Code Analysis Committee.

6.1 There is created by the Board a Fire Advisory and Code Analysis Committee whose duties are to provide direction to the Board in the matters of fire prevention and building codes.

6.2 The committee shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve for a term of three years, and shall consist of the following members:

6.2.1 A representative from the State Fire Marshal's Office.

6.2.2 The Code Committee Chairman of the Fire Marshal's Association of Utah.

6.2.3 A fire marshal or fire inspector from a local fire department or fire district.

6.2.4 A representative from the Department of Health.

6.2.5 The Chief Elevator Inspector from the Utah Labor Commission.

6.2.6 A representative from the Department of Human Services.

6.2.7 A representative from Forestry, Fire and State Lands.

6.3 This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

6.4 The Council shall meet as directed by the Board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

6.5 The Council shall select one of its members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

6.6 The chair or vice chair of the council shall report to the Board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

R710-9-7. Enforcement of the Rules of the State Fire Marshal.

7.1 Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

7.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

7.3 Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

7.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

7.4.1 Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

7.4.2 Public and private schools.

7.4.3 Privately owned colleges and universities.

7.4.4 Institutional occupancies as defined in Section 9-2 of this rule.

7.4.5 Places of assembly as defined in Section 9-2 of this rule.

7.5 The Board shall require prior to approval of a grant the following:

7.5.1 That the applying fire agency be actively participating in the statewide fire statistics reporting program.

7.5.2 The Board shall also require that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

R710-9-8. Fire Prevention Board Budget and Amendment Sub-Committees.

8.1 There is created two Fire Prevention Board Sub-Committees known as the Budget Subcommittee and the Amendment Subcommittee. The subcommittees membership shall be appointed from members of the Board.

8.2 Membership on the Sub-Committee shall be by appointment of the Board Chair or as volunteered by Board members. Membership on the Sub-Committee shall be limited to four Board members.

8.3 The Sub-Committee shall meet as necessary and shall vote and appoint a chair to represent the Sub-Committee at regularly scheduled Board meetings.

R710-9-9. Firefighter Support Restricted Account.

9.1 There is created by the Board a Firefighter Support Restricted Account Advisory Committee whose duties are to provide direction to the Division in the distribution of funds in the Restricted Account.

9.2 The Committee shall be appointed by the Division, approved by the Board, and shall consist of the following members:

9.2.1 Two representatives from the Utah State Firemen's Association.

9.2.2 Two representatives from the Utah State Fire Chiefs Association.

9.2.3 Two representatives from the Professional Firefighters of Utah.

9.2.4 One representative from the general public.

9.3 The Committee members shall serve for a term of three years, shall meet as directed by the Division, and a majority of members shall be present to constitute a quorum.

9.4 The Committee shall select one of its members to act in the position of chair, the chair shall serve for a term of one year, and the chair shall be a voting member only in the event of a tie vote.

9.5 The Committee shall assist the Division in preparing application forms to be used to apply for distributions from the Restricted Account.

9.6 The Division shall set a specific time period each year for the receiving of applications, the review of applications by the committee, and the distribution of the Restricted Account funds.

9.7 The Division shall distribute the Restricted Account funding to charitable organizations meeting the requirements listed in UCA 53-7-109(4), and to be expended for only the purposes allowed in accordance with UCA 53-7-109(5)(b).

9.8 In the event of a conflict in the distribution of the Restricted Account funds, an appeal for resolution shall be made to the Board. The Board shall be the final authority in the resolution of the conflict.

R710-9-10. Regulation of Novelty Lighters.

10.1 All novelty lighters that have been identified as toy-like lighters by the Novelty and Toy-Like Lighter Assessment Committee, and placed by picture and description on the Utah Department of Public Safety, State Fire Marshal Website, Toy and Novelty Lighter Initiative, Toy-like Lighters Disavowed

List, <http://publicsafety.utah.gov/firemarshal>, shall not be sold or offered for sale in the State of Utah.

R710-9-11. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board for application statewide:

11.1 IFC, Chapter 9, Section 903.3.1.1 is amended by adding the following subsection: 903.3.1.1.2 Antifreeze Limitations. The use of antifreeze in new automatic sprinkler systems installed in accordance with NFPA 13, shall be limited to a maximum concentration of 38% premixed propylene glycol or 48% premixed glycerin and the capacity of the system shall not exceed 150 gallons.

11.2 IFC, Chapter 9, Section 903.3.1.2 is amended by adding the following subsection: 903.3.1.2.2 Antifreeze Limitations. The use of antifreeze in new automatic sprinkler systems installed in accordance with NFPA 13R, shall be limited to a maximum concentration of 38% premixed propylene glycol or 48% premixed glycerin and the capacity of the system shall not exceed 150 gallons.

11.3 IFC, Chapter 9, Section 903.3.1.3 is amended by adding the following subsection: 903.3.1.3.1 Antifreeze Limitations. The use of antifreeze in new automatic sprinkler systems installed in accordance with NFPA 13D, shall be limited to a maximum concentration of 38% premixed propylene glycol or 48% premixed glycerin and the capacity of the system shall not exceed 150 gallons.

11.4 IFC, Chapter 9, Section 903.5 is amended to add the following subsection: 903.5.1 Tag and Information. A tag shall be attached to the riser indicating the date the antifreeze solution was tested. The tag shall also indicate the type and concentration of antifreeze solution by volume with which the system is filled, the date the antifreeze was replaced if applicable, the name of the contractor that tested and/or replaced the antifreeze solution, the contractor's license number, a statement indicating if the entire system was drained and replaced with antifreeze, and a warning to test the concentration of the antifreeze solutions at yearly intervals.

R710-9-12. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-9-13. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-9-14. Adjudicative Proceedings.

14.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

14.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the IFC, the appealing party may petition the Board to act as the board of appeals.

14.3 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

14.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63G-4-201.

14.5 The Board shall act as the hearing authority, and shall

convene as an appeals board after timely notice to all parties involved.

14.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

14.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

14.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

**KEY: fire prevention, law
November 21, 2011
Notice of Continuation June 8, 2007**

53-7-204

R746. Public Service Commission, Administration.**R746-409. Pipeline Safety.****R746-409-1. General Provisions.**

A. Scope and Applicability -- To enable the Commission to carry out its duties regarding pipeline safety under Chapter 13, Title 54, the following rules shall apply to persons owning or operating an intrastate pipeline facility as defined in that chapter, or a segment of that chapter including, but not limited to, master meter systems, as well as persons engaged in the transportation of gas.

B. Adoption of Parts 190, 191, 192, 198, and 199 -- The Commission hereby adopts, and incorporates by this reference, CFR Title 49, Parts 190, 191, 192, 198, and 199, as amended, October 1, 2010. Persons owning or operating an intrastate pipeline facility in Utah, or a segment thereof, as well as persons engaged in the transportation of gas, shall comply with the minimum safety standards specified in those Parts of CFR Title 49.

R746-409-2. Definitions.

For purposes of these rules, the following terms shall bear the following meanings:

- A. "CFR" means the Code of Federal Regulations;
- B. "Commission" means the Public Service Commission of Utah;
- C. "Division" means the Division of Public Utilities, Utah Department of Commerce;
- D. "Part 190" means CFR Title 49, Part 190 entitled, Pipeline Safety Program Procedures.
- E. "Part 191" means CFR Title 49, Part 191, entitled, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports.
- F. "Part 192" means CFR Title 49, Part 192 entitled, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.
- G. "Part 198" means CFR Title 49, Part 198 entitled, Regulations for Grants to Aid State Pipeline Safety Program.
- H. "Part 199" means CFR Title 49, part 199 entitled, Drug Testing.

R746-409-3. Inspections.

A. Authorized Inspector -- A person employed or authorized by the Commission or the director of the Division, upon presenting appropriate credentials, is authorized to enter upon, inspect and examine, during normal business hours, the records and properties of a person in possession or control of them, if the records and properties are relevant to determining the compliance with applicable state and federal statutes, rules and regulations.

B. Reasons for Inspection -- Inspections are ordinarily conducted pursuant to one of the following:

1. routine scheduling;
2. a complaint received from a member of the public;
3. information obtained from a previous inspection;
4. pipeline accident or incident;
5. when deemed appropriate by the Commission.

C. Testing -- To the extent necessary to carry out its responsibilities, the Commission may require testing of portions of intrastate pipeline facilities which have been involved in or affected by an accident.

D. Further Action -- When information obtained from an inspector or from other appropriate sources indicates that further action is warranted, the Division shall issue a warning letter and, if necessary, initiate proceedings before the Commission.

R746-409-4. Accidents or Incidents Reports and Annual Reports.

A. U.S. Department of Transportation -- An operator shall

report to the U.S. Department of Transportation (800-424-8802) accidents or incidents involving its pipeline facilities operated within the state of Utah that cause personal injuries requiring in-patient hospitalization, fatality, or estimated damage to property totaling \$50,000 or more.

B. Commission Notification -- The Commission shall be notified of the accidents or incidents as soon as possible, consistent with public welfare and safety. In those instances where a telephonic report to the United States Department of Transportation is required, a similar report of the accident or incident shall be made by telephone to:

Utah Division of Public Utilities
Lead Pipeline Safety Engineer
P.O. Box 146751
Salt Lake City, Utah 84145-6751
Telephone: 801-530-6673
801-530-6652
800-874-0904

C. Written Report -- An operator, except for master meter systems, shall furnish to the Commission, within 30 days after the occurrence of a reportable accident or incident, a written report of the accident or incident. The report may be made on the standard USDOT form designated Accident or Incident Report, or on a form acceptable to the Commission showing the same information. If certain information is not available, the incomplete report should be submitted indicating this unavailability. When the information becomes available, a supplemental report will be submitted.

D. Annual Report -- An operator, except for master meter systems, shall submit an annual report for that system on DOT form RSPA F 7100.1-1. This report must be submitted annually, not later than March 15, for the preceding calendar year. Operators who file annual reports to federal agencies in accordance with 49 CFR, part 191, are required to file copies of the reports with this Commission. Annual reports may be sent to the same address as noted in Subsection R746-409-4B.

R746-409-5. Operation and Maintenance Plans.

An operator of natural gas transportation facilities, except for master meter operators and liquid propane operators, shall file with the Commission for review by the Division of Public Utilities, a plan for the operation and maintenance of pipeline facilities owned or operated by it, and shall subsequently file changes in the plan. The plan shall cover gas transmission facilities, distribution facilities, and those gathering or production facilities located in non-rural areas. Master meter operators and liquid propane gas operators shall have at their distribution facility a plan for the operation and maintenance of their pipeline facilities. The essential requirements stated in Title 49 CFR Part 192.605, shall be covered by the plan. If the Commission, on recommendation of the Division, finds the plan inadequate for safe operation, the Commission shall, after notice and opportunity for a hearing, require revision of the plan.

R746-409-6. Emergency Plan.

An operator, except for master meter operators and liquid propane operators, shall file with the Commission, for review by the Division, a plan of written procedures to minimize the hazard resulting from a gas line emergency. The plan shall cover gas transmission facilities, distribution facilities and those gathering or production facilities located in non-rural areas. Master meter operators and liquid propane operators shall have at their distribution facilities a plan to minimize hazards resulting from an incident involving their gas facilities. The essential requirements stated in Title 49 CFR Part 192.615 shall be covered by the plan. If the Commission, on recommendation of the Division, finds the plan inadequate for safe operation, the Commission shall, after notice and opportunity for a hearing, require the plan to be revised.

R746-409-7. Cathodic Protection and Leak Surveys.

A. Cathodic Protection -- Operators of gas transportation facilities who do not have cathodic protection on their metallic underground piping system shall install cathodic protection, in accordance with 49 CFR, Subpart I, unless exempted as per Part 192.455(2)(b) on it within one year after establishment of the Commission rules, unless a time exemption is approved by the Commission.

B. Leak Survey -- A gas detector leak survey shall be conducted on master metered facilities, which were not cathodically protected prior to the Commission rules, at intervals not exceeding 15 months, but at least once each calendar year. The surveys shall be performed annually for at least five years after the date of the installation of cathodic protection.

R746-409-8. Remedies.

A. Rules of Practice and Procedure -- The Commission's Rules of Practice and Procedure, R746-100, shall govern and control proceedings before the Commission regarding pipeline safety, with the exception of the additional remedies and procedures specified herein.

B. Hazardous Facility Order -- If the Commission finds, after notice and a hearing, that a particular intrastate pipeline facility is hazardous to life or property, it may issue a Hazardous Facility Order requiring the owner or operator of the intrastate pipeline facility to take corrective action. Civil penalties set forth in Section 54-13-6 may also be imposed. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair replacement, or other action as may be appropriate.

C. Waiver of Notice and Hearing -- The Commission may waive the requirement for notice and hearing in Subsection (B) above before issuing an order pursuant to this section when it or the Division determines that the failure to do so would result in the likelihood of serious harm to life or property. However, the Commission shall include in the order an opportunity for hearing as soon as practicable after issuance of the order.

D. Hazardous Conditions -- The Commission may find an intrastate pipeline facility to be hazardous under paragraph 2 of this section if:

1. under the facts and circumstances the Commission determines the particular facility is hazardous to life or property; or

2. the intrastate pipeline facility, or a component thereof, has been constructed or operated with equipment, material, or technique which the Commission determines is hazardous to life or property, unless the operator involved demonstrates to the satisfaction of the Commission that, under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous to life or property.

E. Considerations -- In making a determination under paragraph (D)(2) of this section, the Commission may consider, if relevant:

1. the characteristics of the pipe and other equipment used in the intrastate pipeline facility involved, including its age, manufacturer, physical properties, including its resistance to corrosion and deterioration, and the method of its manufacture, construction, or assembly;

2. the nature of the materials transported by the facility, including their corrosive and deteriorative qualities, the sequence in which the materials are transported, and the pressure required for the transportation;

3. the aspects of the areas in which the intrastate pipeline facility is located, in particular the climatic and geologic conditions, including soil characteristics, associated with the areas, and the population density and population and growth patterns of such areas;

4. a recommendation of the National Transportation Safety

Board issued in connection with an investigation conducted by the board;

5. other factors as the Commission may consider appropriate.

F. Contents of Hazardous Facility Order -- A Hazardous Facility Order issued by the Commission shall contain the following information:

1. a finding that the pipeline facility is hazardous to life or property;

2. the relevant facts which form the basis for the finding;

3. the legal basis for the order;

4. the nature and description of particular corrective action required of the respondent;

5. the date by which the required action must be taken or completed and, where appropriate, the duration of the order.

G. No Longer Hazardous -- The Commission shall rescind or suspend a Hazardous Facility Order whenever it determines that the facility is no longer hazardous to life or property.

**KEY: rules and procedures, safety, pipelines
November 7, 2011**

Notice of Continuation October 6, 2011

54-13-3

54-13-5

54-13-6

R907. Transportation, Administration.**R907-60. Handling of Publications Prepared by the Utah Department of Transportation Either for Sale or Free Copy.****R907-60-1. Authority and Purpose.**

To place the responsibility for handling of publications prepared by the Utah Department of Transportation either for sale or free distribution.

R907-60-2. Procedure.

(1) If the publication is of a technical or non technical nature and is for sale to the public or others because of demand, the Cashier in the Comptroller's Office shall receive the fees charged for the publication and issue a receipt. The originator shall issue the publication to persons with a receipt for payment of the publication.

(2) If the publication is of a public information nature, public hearing transcripts, environmental statements, traffic counts, State and county maps, the Community Relations Division shall have available for sale or free copy those publications.

(3) If the publication is not of a public information nature, is for internal distribution, but may be of interest to the public, and is free of charge, it should be available from the Community Relations Division.

KEY: printing, government paperwork, transportation research, standards

1987**63G-2-102****Notice of Continuation November 14, 2011**

R909. Transportation, Motor Carrier.**R909-2. Utah Trucking Guide.****R909-2-1. Authority.**

This rule is enacted under the authority of Sections 72-7-406.

R909-2-2. Applicability.

All commercial motor vehicle operators and motor carriers engaged in the movement of over dimensional and over weight vehicles and loads must comply with permit conditions as specified in the Utah Trucking Guide.

R909-2-3. Adoption of the Utah Trucking Guide.

Permit conditions as specified in July 19, 2011 edition of the Utah Trucking Guide, Chapters 14 thru 27, 29, 31 thru 33 and 36 are hereby incorporated by reference. These conditions apply to all private, common, and contract carriers.

R909-2-4. Annual Review of Permit Regulations and Conditions.

(1) During the regularly scheduled Motor Carrier Advisory Board meeting in May of each year, the board will review permit conditions and regulations as needed. The board is not required to review each of these items every year.

(2) This meeting will provide a forum for interested parties to provide evidence in support of regulation or permit condition modification.

(3) All interested parties must notify the Department of Transportation Motor Carriers Division of these issues by April 1st of each year to ensure placement on the agenda.

(4) Any approved changes to permit conditions or regulations will be noted in the Utah Trucking Guide, and the revised edition of the Utah Trucking Guide will be incorporated into this rule.

**KEY: trucks, safety regulations, permits
November 21, 2011**

72-1-102
72-1-201
72-7-406
72-7-408
72-9-303
72-9-701
72-9-702

R920. Transportation, Operations, Traffic and Safety.**R920-6. Snow Tire and Chain Requirements.****R920-6-1. Purpose.**

The purpose of this rule is to allow a Region Director of the Utah Department of Transportation to designate travel restrictions on certain state highways located in the State of Utah, that may not be safely traversed by the public or which would tend to create a hazard or hamper road maintenance activities, unless the vehicle traversing said highway is adequately equipped with certain safety devices.

R920-6-2. Authority.

The authority for this rule is in Sections 72-1-201 and 72-3-102; Title 72, Chapter 4, Part 1, Transportation Code, and Sections 41-6a-302 and 41-6a-1636.

R920-6-3. Provisions.

(1) Locations shall be designated by the Department of Transportation's Region Director after coordinating with the local Utah Highway Patrol office. The designations by the Region Director shall be established through a Traffic Engineering Order (TEO) from the Division of Traffic and Safety to the Region Director's office wherein the designated highway is located.

(2) The Utah Department of Transportation's Division of Traffic and Safety shall maintain and annually publish a listing of those highways so designated for distribution to:

- (a) Utah Department of Transportation Region Offices;
- (b) Utah Highway Patrol;
- (c) county offices; and
- (d) local law enforcement officials.

(3) When any designated highway is so restricted no vehicle shall be allowed or permitted the use of the highway, during the period between October 1 and April 30, or when conditions warrant due to adverse, or hazardous weather or roadway conditions, as determined by the Utah Department of Transportation, unless:

- (a) said vehicle is equipped with either:
 - (i) steel link chains or have chains in possession; or
 - (ii) mounted snow tires; (tires with an M/S designation with or without studs);
 - (iii) elastomeric tire chains, designed for use with radial tires; or
 - (iv) four-wheel drive vehicles with a minimum of two mounted snow tires.

(4) Radial tires without snow tread do not meet the requirements.

(5) An operator of a commercial vehicle with four or more drive wheels, other than a bus, shall affix tire chains to at least four of the drive wheel tires.

(6) An operator of a bus or recreational vehicle shall affix tire chains to at least two of the drive wheel tires.

R920-6-4. Responsibilities.

(1) Authorized personnel on location to enforce this rule, may permit vehicles not equipped with the traction aids defined in the preceding paragraph to travel a designated state highway if, in the opinion of said personnel, the vehicle may do so without endangering the public safety or creating a hazard to or interference with, highway maintenance operations.

(2) The Utah Department of Transportation requests the Utah Highway Patrol, or designated local law enforcement agency, to enforce this rule. The Utah Highway Patrol may request to enforce this rule be enforced by contacting the Region Director, or designated Department of Transportation representative where designated highway is located.

(3) The Utah Department of Transportation will notify the county officials of counties in which highways are so restricted, as outlined above.

(4) All authority shall rest with the Executive Director or his designee to control use of highways where avalanche danger and other threats to the public safety are concerned.

(5) The Region Director or designee shall work with the Utah Highway Patrol in establishing working criteria for the adequate enforcement of the above provisions.

KEY: tires, snow**November 21, 2011****Notice of Continuation August 13, 2007****41-6a-1636****72-1-201****72-3-102****41-6a-302**

R926. Transportation, Program Development.**R926-3. Class B and Class C Road Funds.****R926-3-1. Authority.**

Utah Code Ann. Sections 72-2-109, 72-3-103, and 72-3-104 authorize the Utah Department of Transportation and city and county officials to mutually adopt rules governing the expenditure of class B and class C road funds.

R926-3-2. Purpose.

The following rules are to govern the expenditure of class B and C road funds as mutually agreed on by the City and County Joint Highway Committee and the Utah Department of Transportation.

R926-3-3. Incorporation of B and C Regulations by Reference.

The Department incorporates by reference the latest UDOT publication "Regulations Governing Class B and Class C Road Funds" dated April 29, 2011. This may be found on website <http://www.udot.utah.gov>.

KEY: transportation policy, highway finances, highway, roads

**November 21, 2011 72-2-107 through 72-2-110
Notice of Continuation September 19, 2011**

R930. Transportation, Preconstruction.**R930-2. Public Hearings.****R930-2-1. Definitions.**

- (1) "UDOT" means Utah Department of Transportation.
- (2) "FHWA" means Federal Highway Administration.

R930-2-2. Coordination with Other Laws and Regulations.

(1) In order to promote greater public involvement in the highway program the Utah Department of Transportation will conduct public hearings or afford opportunities for public hearings on highway projects in accordance with state and federal laws. Hearing procedures contained in 23 CFR 771, 40 CFR Parts 1500-1508 and 23 USC 128, Public Hearings are herewith incorporated by reference.

(2) The provisions of R930-2 may be waived by the Executive Director of the Utah Department of Transportation or, on Federal-aid projects, the Federal Highway Administrator if it is determined that the construction of a project is urgently needed because of a national emergency, a natural disaster or a catastrophic failure.

R930-2-3. When Hearings are Held or Opportunities Afforded.

Public hearings will be held or an opportunity for public hearing afforded on all highway projects where the project is on new location; where the project would have a substantially different social, economic or environmental effect; or where the project would essentially change the layout or function of connecting roads or streets. Uniform public hearing procedures shall be established and practiced in such a manner to insure that:

- (1) The public is given ample notification of each public hearing and such public hearing will be held at a time and place convenient to those concerned.
- (2) All interested persons shall have an opportunity to become fully acquainted with highway proposals of concern to them and to express their views at those stages of development when flexibility to respond to those views still exists.
- (3) The Utah Transportation Commission has an opportunity to consider the testimony or comments of any interested person or group having properly submitted such testimony or comments in accordance with published instructions.

R930-2-4. Types of Hearings.

The Utah Department of Transportation will hold location hearings to discuss general location alternatives and environmental documents, if any; design hearings to discuss the design details of a proposal; or combined location and design hearings. The Utah Department of Transportation may afford an opportunity for such hearings to satisfy this rule.

R930-2-5. Notice - Project Public Hearings.

On each public hearing, the UDOT Community Involvement Officer will arrange for at least two notices to be published in a daily newspaper with statewide circulation. The first notice shall be published at least two weeks prior to the public hearing. The second notice shall be published five to ten days prior to the public hearing. Additional notice may also be published in local weekly or shopper newspapers with circulation in the project area.

Notices shall contain the date, time and place of the public hearing in addition to identifying the proposed project or hearing subject in a clear and easily understood manner. Notices shall also contain information pertaining to the submission of testimony for those unable to attend the public hearing.

Affirmative consideration will be given to minorities in advertising all project public hearings, where appropriate.

R930-2-6. Hearing Conduct.

All public hearings held pursuant to this section will be conducted by a member of the Utah Transportation Commission, his representative, normally the UDOT Community Involvement Officer, or by a local official. The hearing shall be conducted impartially.

R930-2-7. Notice - Opportunities for Public Hearings.

When an Opportunity for Public Hearing is provided, the UDOT Community Involvement Officer will arrange for at least two notices to be published in newspaper(s) described in Section R930-2-5. The first notice shall provide at least fourteen days for a request for public hearing to be submitted. The second notice shall provide for at least seven days for a request for public hearing to be submitted. Notices shall identify the proposed project or subject in a clear and easily understood manner. Deadlines stated will be postmark deadlines.

Affirmative consideration will be given to minorities in advertising all project opportunities for public hearings, where appropriate.

R930-2-8. Requests for Project Public Hearings.

When an opportunity for a public hearing is advertised, any person with a social, economic or environmental interest in the project may request in writing that a public hearing be held, provided the request is received by the UDOT Community Involvement Officer in accordance with the published instructions and before the published deadline. Requests shall describe the interest of the requesting party and what the requesting party hopes to discuss or examine at the public hearing.

When questions exist concerning a request for a public hearing, the UDOT Community Involvement Officer may contact the requesting party/parties to further determine their interest in the project. If, as a result of such contact it is determined that a public hearing is not necessary, or that the requesting party might better satisfy their needs in another way, the requesting party may withdraw their request. In the event of such a withdrawal the UDOT Community Involvement Officer may cancel the hearing or proceed with the hearing if in his/her judgment the goals of the Department would be better served or the requested hearing has already been publicized.

R930-2-9. Local Government Projects.

Public Hearings conducted on local government projects must be held and conducted in accordance with R930-2.

R930-2-10. Official Public Hearing Formats.

The Utah Department of Transportation may conduct public hearings using either of two formats. One is the formal meeting format public hearing where the public gathers as an audience and the meeting is conducted by a moderator. The other format is the open forum hearing where the public is allowed to review information in an open house type setting and provisions are made to record any testimony individuals wish to give. A combination Open Forum/Formal Meeting or Formal Meeting/Open Forum hearing may also be conducted.

R930-2-11. Transcript of Official Public Hearings.

The Utah Department of Transportation will prepare and distribute a transcript of the public hearing for the consideration of the Utah Transportation Commission and other interested agencies. The transcript may include a map or drawing illustrating the proposed project, when available. When a formal hearing is held, a verbatim record of the hearing proceedings will be included. When an open forum hearing is held, a record of individual statements, if any, submitted by the attendees will be included. Also included will be petitions and

written testimony pertaining to the proposed improvements submitted in accordance with the instructions published in the legal notice or submitted at the public hearing. Extensive petition signature pages or form letter mass mailings shall be preserved but need not become a part of the distributed transcript. Instructions will provide that written statements received from the time the hearing was first advertised to a postmark deadline at least ten days following the hearing will be included in the transcript. If the tenth day following the hearing falls on a Sunday or holiday an additional day shall be added.

The UDOT Community Involvement Officer may restrict written testimony to that which is 8-1/2 inches by 11 inches in size and can be reproduced on a standard photocopy machine.

R930-2-12. Other Meetings and Activities.

The Utah Department of Transportation may hold information meetings, supplemental public hearings or conduct additional community involvement activities other than those required above when the goals and objectives of this rule can be better fulfilled.

KEY: government hearings, highway hearings, public hearings

1993

72-1-201

Notice of Continuation November 14, 2011

R930. Transportation, Preconstruction.**R930-5. Establishment and Regulation of At-Grade Railroad Crossings.****R930-5-1. Purpose and Authority.**

(1) The Utah Department of Transportation (the "Department") oversees all Public Highway-Rail Grade Crossings ("Crossings") in the state of Utah. Railroads have jurisdiction over and are responsible for the safety of private crossings. The Department's goals are to improve the safety for all users of a Crossing and provide for the efficient operation of trains and vehicles and pedestrians access through those Crossings. As part of this effort, the Department promotes the elimination of Crossings and at regular intervals, the Department:

- (a) Reviews all existing Crossings in the state for safety deficiencies;
- (b) Evaluates and approves the location of a new Crossing;
- (c) Prescribes the type of improvements at a Crossing;
- (d) Defines maintenance responsibility for a Crossing; and
- (e) Determines funding apportionments for all Section 130 Crossing Projects.

(2) This rule describes procedures for evaluating and selecting a Crossing for improvement as well as for evaluating and selecting the type of improvements at a Crossing. Such improvements include, but are not limited to:

- (a) The evaluation and selection of the type of Passive and Active Warning Devices;
 - (b) The process for evaluating and determining whether a Crossing should be grade separated; and
 - (c) The process for evaluating Quiet Zones as outlined in 49 CFR 222.
- (3) This Rule outlines the responsibilities of the various parties with respect to the design, maintenance and funding for Crossing improvements.

(4) This Rule is authorized by Section 54-4-15 "Establishment and Regulation of Grade Crossings," Section 54-4-14, Section 72-1-201, Section 41-6a-1205 and Title 63G, Chapter 3 "Utah Administrative Rulemaking Act."

R930-5-2. Incorporation by Reference.

The following federal law, state law, federal agency manuals, association standards and UDOT technical requirements are incorporated by reference:

- (1) 23 CFR 148 "Highway Safety Improvement Program" (2005);
- (2) 23 CFR 646 "Railroads" (2009);
- (3) 23 CFR 655 "Traffic Operations" (2009) "Manual of Uniform Traffic Control Devices (MUTCD)" (2003, with revisions 1 and 2 incorporated, dated 2007);
- (4) 23 CFR 924 "Highway Safety Improvement Program" (2009);
- (5) 49 CFR 209 "Accidents and Incidents" (2009);
- (6) 49 CFR 212 "State Safety Participation Regulations" (2009);
- (7) 49 CFR 222 "Use of Locomotive Horns at Public Highway-Rail Grade Crossing" (2009)
- (8) 49 CFR 659 "Rail Fixed Guideway Systems; State Safety Oversight" (2009);
- (9) "A Policy on Geometric Design of Highway and Streets", American Association of State Highway and Transportation Officials (AASHTO) (2004);
- (10) "Railroad-Highway Grade Crossing Handbook", Federal Highway Administration (FHWA) (August 2007);
- (11) "Preemption of traffic signals near Railroad Crossings", Institute of Traffic Engineers (ITE) (2004);
- (12) "Manual for Railway Engineering", Chapter 28, Clearances, American Railway Engineering and Maintenance-of-Way Association (AREMA), 2007; and
- (13) "Standard Drawing ST-7 Pavement Marking and

Signs at Railroad Crossings", Utah Department of Transportation (UDOT) (2008).

R930-5-3. Definitions.

(1) "Active Warning Device" means traffic control devices activated by the approach or presence of a train, such as flashing light signals, automatic gates and similar devices, as well as manually operated devices and Crossing watchmen, all of which display to motorists positive warning of the approach or presence of a train.

(2) "Company" means any local district or utility company.

(3) "Diagnostic Team" means an appointed group of knowledgeable representatives of the parties of interest in a Crossing or group of Crossings.

(4) "FHWA" means the Federal Highway Administration, an agency within the United States Department of Transportation.

(5) "FRA" means the Federal Railroad Administration, an agency within the United States Department of Transportation.

(6) "FTA" means the Federal Transit Administration, an agency within the United States Department of Transportation.

(7) "Highway" means any public road, street, alley, lane, court, place, viaduct, tunnel, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the public, or made public in an action for the partition of real property, including the area within the right-of-way.

(8) "Highway-Rail Grade Crossing" ("Crossing") means the general area where a Highway and a Railroad cross at the same level within which are included the Railroad, Highway, and roadside facilities for public traffic traversing the area.

(9) "Highway Authority" means the Department or local governmental entity that owns or has jurisdiction over a Highway.

(10) "MUTCD" means the Manual of Uniform Traffic Control Devices as adopted in Section 41-6a-301.

(11) "Neutral Quadrant" means the quadrant that minimizes sight distance conflicts with immediate on-coming auto traffic. Generally, the neutral quadrant is on the far side of the tracks from the direction of vehicular travel.

(12) "Passive Warning Device" means those types of traffic control devices, including signs, markings and other devices located at or in advance of a Crossing to indicate the presence of a Crossing but which do not change aspect upon the approach or presence of a train.

(13) "Preliminary Engineering" means the work necessary to produce construction plans, specifications, and estimates to the degree of completeness required for undertaking construction, including locating, surveying, designing, and related work.

(14) "PSC" means the Public Service Commission of the State of Utah.

(15) "Quiet Zone" means a section of a rail line at least one half mile in length that contains one or more consecutive public Crossings at which locomotive horns are not routinely sounded, see 49 CFR 222.

(16) "Railroad" means all rail carriers, whether publicly or privately owned, and common carriers, including line haul freight and passenger railroads, public transit districts, switching and terminal railroads, passenger carrying railroads such as rapid transit, and commuter and street railroads.

(17) "Section 130 Crossing Project" means a project that eliminates hazards and improves the safe operation of trains, vehicles, and pedestrians through a crossing and is authorized and funded by United State Code, Title 23, Section 130 Program funds.

R930-5-4. Type and Selection of Crossing Projects.

(1) Section 130 Crossing Projects:

- (a) Section 130 Crossing Project types include, but are not

limited to:

- (i) Elimination of a Crossing by combining multiple Crossings;
- (ii) Elimination of a Crossing by the relocation of a Highway;
- (iii) Elimination of a Crossing by the construction of a new grade separation;
- (iv) New safety improvements;
- (v) Reconstruction of a Crossing grade separation structure; and
- (vi) Repair of Crossing material, that would otherwise be the responsibility of the Railroad as prescribed in Subsection R930-5-8-(1)(b), if the repair of the Crossing material affects or is an integral part of the Crossing safety devices.

(b) The Department has established a process for the evaluation and selection of Section 130 projects that considers the potential reduction in the number and/or severity of collisions, the cost of the Crossing projects, and available resources. Specific methods for selecting and prioritizing Crossings for improvement include:

(i) The collection and maintenance of data utilizing the USDOT Grade Crossing Inventory to record Crossing data including, but not limited to the current physical condition, average daily traffic, and collision data associated with a Crossing.

(ii) An engineering study conducted on a Crossing at the request of a Highway Authority, Railroad, or company or using a priority list developed using the USDOT Accident Prediction Model. The purpose of the engineering study is to review the Crossing and its environment, identify the nature of any deficiencies and recommend alternative improvements. Specifically, an engineering study reviews Crossing characteristics, the existing traffic control system, and the Highway and Railroad characteristics. Based on the review of these conditions, an assessment of existing and potential hazards is made, deficiencies are identified and countermeasures are recommended.

(iii) System or corridor evaluations consider a Crossing as a component of a larger transportation system. The objective is to improve both safety and operations of the total system or segments of the system. In such cases, all Crossings within a corridor are evaluated and can be programmed for improvements. The optimal outcome of a corridor study involves a combination of engineering improvements and closures such that both safety and operations are highly improved.

(2) Non-Section 130 Crossing Projects:

(a) Non-Section 130 Crossing Project types include, but are not limited to:

(i) Crossing projects that use Railroad properties or involve adjustments to Railroad facilities required by Highway construction, but do not involve the elimination of hazards at a Crossing; and

(ii) Construction of a new Crossing at or over a Railroad track where the new Highway is not a relocation of an existing Highway.

(b) Non-Section 130 Crossing Projects will be evaluated and selected as part of the Department's normal STIP evaluation and approval process.

R930-5-5. Diagnostic Team.

(1) The role of the Diagnostic Team is to make recommendations to the Department for needed safety improvements at a Crossing.

(2) The Diagnostic Team reviews and evaluates proposed improvements for all Section 130 Crossing Projects and Non-Section 130 Crossing Projects. The Diagnostic Team reviews a Crossing when requested by a Highway Authority, Railroad, or Company when changes in Highway traffic patterns are

proposed, when proposed Railroad traffic is determined to increase significantly, when complaints are made about a Crossing, when safety concerns arise, or when the Department receives a closure request. The Department will consider all recommendations made by the Diagnostic Team and, if appropriate, input received from the public at large (in accordance with Section R930-5-13) before issuing orders for the improvement of Crossings.

(3) The Department may also make formal findings and rulings as part of its process for evaluating Crossing improvements or during routine inspection of Crossings, independent of the Diagnostic Team.

(4) The Diagnostic Team is usually composed of the following team members:

- (a) Chief Railroad Engineer for the Department;
- (b) Representative from the Railroad;
- (c) Representative from the appropriate Company, if applicable; and

(d) Representative from the Highway Authority (preferably from engineering or public works), and when available, and where appropriate public school district, law enforcement agency and invites with an interest in the Crossing.

(5) The role of the Diagnostic Team is to:

- (a) Recommend the elimination of a Crossing;
- (b) Recommend the type of safety improvements including, but not limited to Passive Warning Devices, Active Warning Devices, the type of Crossing material, improvements to Highway approaches, removal of foliage and brush, pedestrian facilities (including compliance with ADA requirements), and improvements to street lighting;
- (c) Review all requests for a new Crossing;
- (d) Review all requests to reclassify a Crossing from private to public;

(e) Recommend the Department conduct an engineering study to evaluate the need for a new overpass or other grade separation structure(s); and

(f) Recommend any other safety related changes to improve vehicle and pedestrian safety.

(6) Duties of Diagnostic Team members generally include participating in Crossings reviews and providing input into the Diagnostic Team recommendations. Specific duties include, but are not limited to the following:

- (a) The Chief Railroad Engineer will, when applicable:
 - (i) Select a Section 130 Crossing Project from a corridor study, or based on a Highway Authority, Railroad, or Company request;
 - (ii) Schedule and notify Diagnostic Team members, and the FHWA, of the date and time of an upcoming review;
 - (iii) Conduct Crossing review and issue related reports in a reasonable time after the review and send copies to all those attending the review;
 - (iv) Review and approve Crossing improvements recommended by the Diagnostic Team;
 - (v) Determine Section 130 apportionments for Crossing projects;
 - (vi) Initiate all Notices of Intended Action for Crossing projects, as appropriate;
 - (vii) Review and approve the contractual requirements for Crossing projects using Section 130 Program funding;
 - (viii) Review all necessary field data obtained for the Crossing, including but not limited to site plan maps and photographs of the existing Crossing conditions.

(b) The Railroad representative shall provide all relevant data related to the Crossing, including, but not limited to train volumes, accident data and any other pertinent data regarding the Crossing;

(c) The Highway Authority representative shall:

- (i) Provide relevant data regarding the Crossing including, but not limited to Highway traffic volumes, planned road

construction activities, and an approved master street plan for the Highway;

(ii) Invite local school district if appropriate and request that the local school district representative provide child access and bus routing plan information; and

(iii) Invite local law enforcement agency if appropriate and request that the law enforcement agency provide relevant data, including, but not limited to any safety concerns about the Crossing.

R930-5-6. Design of a Highway-Rail Grade Crossing.

(1) The Department shall approve or disapprove, as appropriate, the design of all Crossing improvements, including the addition of a new Crossing and treatments for a closed Crossing. All design plans shall include, if available:

- (i) USDOT identification numbers;
- (ii) Street addresses;
- (iii) Highway milepost;
- (iv) Railroad subdivision; and
- (v) Railroad milepost for the Crossing.

(2) Design of Crossing related facilities that are the responsibility of the Railroad shall conform to the specifications and design standards of the Railroad.

(3) Design of Crossing related Highway approaches, those areas two feet outside of rail that are the responsibility of the Highway Authority shall conform to the specifications and design standards of the Highway Authority, subject to approval by the Department. Where a Highway Authority does not have an approved standard, Department standard drawings for the design of the Crossing approaches apply.

(4) Traffic control devices installed as part of any Crossing improvements shall comply with the MUTCD. Required clearances for all devices shall conform to the MUTCD and any variances from MUTCD requirements must be approved by the Department.

(5) When it is determined that the railroad crossing material needs to be extended or replaced, the agency doing the design of the crossing shall determine the minimum length of the crossing material. The length shall be determined based on the proposed width of the new roadway or from the approved master plan roadway width. The crossing material length shall extend at least two feet from the outer edge of the roadway, beyond the roadway clear zone area, or to the back of the concrete curb and gutter or out past the sidewalks.

(6) The Railroad is responsible for the design of Railroad Active Warning Devices, including the location, activation circuitry, hardware, and software in accordance with MUTCD.

(a) When Active Warning Devices are within 200 feet of a traffic signal, the Highway Authority and the Railroad shall coordinate the design of the interconnect between the traffic signal and Automatic Warning Device to ensure sufficient preemption time to clear potential vehicle stacking across a Crossing.

(b) Signal houses for Active Warning Devices shall be located in the Neutral Quadrant unless approved by the Department.

(7) The Railroad is responsible for the design of all required Railroad Passive Warning Devices located within the Railroad road right-of-way in accordance with the MUTCD, specific Passive Warning Devices include:

- (a) Sign R15-1 (Crossbuck);
- (b) Sign R15-2 (Number of tracks);
- (c) Sign R1-1 (STOP);
- (d) Sign R1-2 (Yield);
- (e) Sign R15-3 (Exempt);
- (f) Sign R8-9 (Tracks out of Service).

(8) Design and installation of all other Passive Warning Devices, signs, and pavement markings is the responsibility of the Highway Authority. Design and location of the devices shall

be in accordance with the MUTCD.

(9) For clearances, refer to the Manual for Railway Engineering, Chapter 28, Clearances, American Railway Engineering and Maintenance-of-Way Association (AREMA), 2007.

R930-5-7. Highway Authority and Railroad Responsibility to Request Approval and Arrange for the Installation of Crossing Improvements.

(1) When a Highway Authority widens or constructs a new Highway, the Highway Authority shall be responsible to request a Diagnostic Team review of the Crossing and arrange by agreement with the Railroad to design and install all required improvements concurrent with its request for approval from the Department:

(2) Prior to approving new residential, commercial, or industrial development within 1000 feet of a Crossing, the Highway Authority shall request a Diagnostic Team review to assess the potential traffic impacts at the Crossing.

(3) Before a Highway Authority approves increased development that changes the conditions of a Crossing by significantly increasing traffic volumes, the Highway Authority plans shall be approved by the Department.

(a) No new access openings can be opened within 250' of a Crossing unless approved by the Department.

(b) The Highway Authority shall arrange by agreement with the Railroad for any required Railroad facility changes ordered by the Department.

(4) The Highway Authority is responsible for the installation of all Passive Warning Devices outside the Railroad right-of-way, excepting those signs listed in Section R930-5-6.6, or unless a separate agreement applies.

(5) Before a Railroad modifies any safety related devices or the physical layout of a Crossing, the Railroad shall request a Diagnostic Team review of the proposed changes and request Department approval of all Crossing related designs.

(6) A Highway Authority, Railroad, or Company making a request for a new Crossing or the reclassification of a Crossing from private to public shall provide the Department with an approved master street plan from the appropriate jurisdiction showing the elimination or combination of existing Crossings and/or other safety improvements that enhance the overall safety of the corridor before a new Crossing or reclassification of a Crossing from private to public will be approved.

(a) A Highway Authority, Railroad, or Company requesting a new Crossing or reclassification of a Crossing from private to public will mutually arrange by agreement for the proposed new Crossing or reclassification of a Crossing before seeking Department approval of the change.

R930-5-8. Maintenance.

(1) Responsibility for maintenance is as described in this section unless a separate agreement applies.

(a) The Railroad is responsible for the maintenance of all Railroad Passive Warning Devices and Active Warning Devices within the Railroad right-of-way.

(b) If the Railroad has a property interest in the right-of-way, the Railroad is responsible for the maintenance of Crossing material within the Railroad right-of-way and two feet beyond each outside rail for Crossings without concrete crossing panels or edge of concrete crossing panel.

(c) On a temporary Highway Detour Crossing, the Railroad shall be responsible for the maintenance of pavement, Active Warning Devices, and Passive Warning Devices within the Railroad right-of-way at expense of the Highway Authority.

(d) When the Railroad alters the railway due to track and ballast maintenance, the Railroad shall coordinate their work with the Highway Authority so the pavement approaches can be adjusted to provide a smooth and level Crossing surface.

(e) When the Highway Authority changes the Highway profile, through construction or maintenance activities, the Highway Authority shall coordinate their work with the Railroad so the tracks can be adjusted to provide as smooth and level a Crossing surface as possible.

(f) Where a Highway structure overpasses a Railroad, the Highway Authority is responsible for the maintenance of the entire structure and its approaches.

(g) Where a Highway underpasses a Railroad and the Railroad owns the right-of-way in fee title, the Highway Authority is responsible for the maintenance of the Highway and the entire structure below and including the deck plate, girders, handrail, and parapets. The Railroad is responsible for the maintenance of the ballast, ties, rails and any portion of the supporting structure above the top of the ballast deck plate between parapets.

(i) If the Highway Authority owns the right-of-way in fee title, the Railroad is responsible for the maintenance of the entire structure unless a separate agreement applies.

(ii) Cost of repairing damages to a Highway or a Highway structure, occasioned by collision, equipment failure, or derailment of the Railroad's equipment shall be borne by the Railroad.

(h) Responsibility for maintenance of private industrial trackage not owned by a Railroad that crosses a Highway shall be as follows:

(i) When a facility, plant, or property owner receives goods and services from a Railroad over private industrial trackage that crosses a Highway, maintenance of the Crossing shall be the responsibility of the industry owning the trackage, or as agreed to by the parties.

(ii) When the Crossing becomes a safety hazard to vehicles and is not maintained, the Department and/or the Railroad shipping the goods and services shall notify the industry owning the trackage in writing to maintain or replace the Crossing material.

(iii) If the industry owning the trackage does not maintain or replace the Crossing material by a specified date, the Department shall order the Railroad to cease and desist operations across the Crossing.

(iv) If the industry owning the trackage does not respond to the order to maintain or replace the Crossing material the Department shall arrange to have the Crossing material replaced and bill the industry owning the trackage for the expenses to repair the trackage.

R930-5-9. Funding Authorization and Apportionment of Cost for Section 130 Crossing Projects.

(1) Funding Authorization.

(a) Section 130 Crossing Projects:

(i) Costs associated with a FHWA authorized and approved program are eligible for federal participation. Eligible costs incurred in an approved program prior to authorization by FHWA are not reimbursable, but may be included as part of the Railroad share of the project cost where such a share is required. Eligible costs include, but are not limited to cost associated with environmental clearance, Preliminary Engineering, and right-of-way acquisition.

(ii) Prior to FHWA issuing its authorization to advertise the construction of a Crossing project, the Crossing project must receive environmental clearance; the plans, specifications and estimates must be approved by FHWA; and any proposed agreement between the Railroad and the Department must be reviewed and approved by FHWA, as per FHWA's stewardship agreement with the Department.

(b) Non-Section 130 Crossing Projects:

(i) The Department will consider requests for funding of non-Section 130 Crossing Projects as part of its regular STIP evaluation and approval process.

(2) Apportionment of Costs.

(a) Section 130 Crossing Projects:

(i) Apportionment of costs for installation, maintenance, and reconstruction of safety related improvements at a Crossing shall be in accordance with 23 CFR 646 and Section 54-4-15.

(ii) When a Highway Authority widens a Highway, the Highway Authority shall fund all improvements including, but not limited to Passive Warning Devices, Active Warning Devices, Crossing material, and other improvements as ordered by the Department in consultation with the Diagnostic Team.

(iii) The Department will evaluate each Crossing project to determine the extent to which, if any, the Crossing projects benefits the respective parties. If a Crossing project is determined not to benefit a party, the party will not be required to participate in the funding.

(b) Non-Section 130 Crossing Projects.

(i) The Department will consider requests for funding of non-Section 130 Crossing Projects as part of its regular STIP evaluation and approval process.

R930-5-10. Railroad and Highway Authority Agreements.

(1) Where construction of a Section 130 Crossing Project requires use of Railroad properties or adjustments to Railroad facilities, the Department will prepare an agreement with the Railroad.

(2) Master agreements between the Department and a Railroad on an area wide or statewide basis may be used. These agreements shall contain the specifications, regulations, and provisions required in conjunction with work performed on all Crossing projects.

(3) On a project-by-project basis, the written agreement between the Department and the Railroad shall include the following minimum requirements:

(a) Reference to appropriate federal regulations;

(b) Detailed statement of the work to be performed by each party;

(c) The extent to which the Railroad is required to adjust its facilities;

(d) The Railroad's share of the project cost;

(e) An itemized estimate of the cost of the work to be performed by the Railroad;

(f) Method to be used for performing the work, either by Railroad forces or by contract;

(g) Maintenance responsibility;

(h) Form, duration, and amounts of any needed insurance; and

(i) Appropriate reference to or identification of plans and specifications.

(4) On matching fund agreements between the Department and a Highway Authority, the written agreement shall include the following minimum requirements:

(a) Description of work and location, city, county, and state;

(b) Reference to federal regulations that matching funds will be provided by the Highway Authority;

(c) Detailed statement of work to be performed by each party regarding design, agreements, inspection, and maintenance;

(d) Statement of finances of project and matching funds to be provided by Highway Authority, deposits, invoices, and cost overruns or under runs.

(5) Agreements for industry track Crossings are prepared between the Highway Authority and the industry.

(6) In order that a Crossing project shall not become unduly delayed, the Department shall consider a six-month period from issuance of the Railroad agreement to be adequate for completion of work by the Railroad involved. Should more than the specified period elapse, the Department shall require the Railroad to proceed with the work covered by the agreement

under the authority contained in Section 54-4-15 and approval from the FHWA will be solicited in conformance with 23 CFR 646.

R930-5-11. Crash Reporting.

A Railroad is required to report crashes resulting in injury or death to an individual or damage to equipment, roadbed, or autos occurring at a Crossing to the Department's Chief Railroad Engineer within 2 hours of the incident. Initial notification must include the USDOT Crossing number, street address, municipality, time of incident, train identifier, and contact phone number for further information. Written crash reports shall be submitted to the Department within 30 days of the incident. Current Federal Railroad Administration (FRA) form F 6180.57 shall be used to report a crash.

R930-5-12. Exemption of Railroad Crossings.

Under Section 41-6a-1205, certain vehicles are required to stop at all Crossings unless a Crossing is signed as exempt. Recommendation to exempt a Crossing is made by a Diagnostic Team and the Department is responsible for issuing the exemption order. The following Crossings are not eligible for exemption under this Section:

- (1) Mainline Crossings with Passive Warning Devices only;
- (2) Crossings within approved Quiet Zones; and
- (3) Crossings where insufficient sight distance exists.

R930-5-13. Notice of Intended Action.

(1) Public notification of a public hearing opportunity is required, in conformance with Section R930-2, when the Department is considering a proposal to permanently close a Crossing, add a track at a Crossing, or construct a new Crossing. It is the responsibility of the Highway Authority, Railroad, or Company requesting the proposed action, in consultation with the Department, to carry out the requirements of this section unless otherwise agreed to by the Department.

(2) In instances where the action proposed by the Department does not substantially affect the public, the Department may waive the requirement to notice a public hearing opportunity, provided the affected Diagnostic Team members concur in writing.

KEY: railroad, crossing, transportation, safety

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41-6a-1205

54-4-14

54-4-15

72-1-201

R930. Transportation, Preconstruction.**R930-6. Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights-of-Way.****R930-6-1. Incorporation by Reference.**

In order to implement its federally-mandated responsibility to ensure the safe use and protection of federal-aid highways, the department incorporates by reference the Manual of Accommodation of Utility Facilities and the Control and Protection of State Highway Rights-of-Way, January 2006 edition, copies of which are available at the department's headquarters, 4501 South 2700 West, Salt Lake City, Utah 84114, and on the department's Internet site, <http://www.udot.utah.gov/main/uconowner.gf?n=200402231315131>. The provisions of this Manual also apply to non-federal aid state highways.

KEY: utility rules, utilities access**July 28, 2006****Notice of Continuation November 14, 2011****72-3-109****72-6-116****72-7-102****72-7-108**

R933. Transportation, Preconstruction, Right-of-Way Acquisition.**R933-2. Control of Outdoor Advertising Signs.****R933-2-1. Purpose.**

The purpose of these rules is to implement the Utah Outdoor Advertising Act Section 72-7-501 et seq. Nothing in these rules shall be construed to permit outdoor advertising that would disqualify the State for Federal participation of funds under the Federal standards applicable. The Transportation Commission and the Utah Department of Transportation shall, through designated personnel, control outdoor advertising on interstate and primary highway systems.

R933-2-2. Federal Regulations.

The federal regulations governing outdoor advertising contained in 23 CFR 750.101 through 750.713, April 1, 1994 are adopted and incorporated by this reference.

R933-2-3. Definitions.

All references in these Rules to Title 72, Chapter 7, Part 5, are to those sections of the Utah Code known as the Utah Outdoor Advertising Act. In addition to the definitions in that part, the following definitions are supplied:

(1) "Abandoned Sign" means any controlled sign, the sign facing of which has been partially obliterated, has been painted out, has remained blank or has obsolete advertising matter for a continuous period of 12 months or more.

(2) "Acceleration and deceleration lanes" means speed change lanes created for the purpose of enabling a vehicle to increase or decrease its speed to merge into, or out of, traffic on the main-traveled way. As used in the Act, an acceleration or deceleration lane begins and ends at a point no closer than 500 feet from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way. On-ramps and off-ramps are part of the interchange and shall not be considered an acceleration or deceleration lane under the Act or these rules.

(3) "Act" means the Utah Outdoor Advertising Act.

(4) "Advertising" means any message, whether in words, symbols, pictures or any combination thereof, painted or otherwise applied to the face of an outdoor advertising structure, which message is designed, intended, or used to advertise or inform, and which message is visible from any place on the main travel-way of the interstate or primary highway system.

(5) "Areas zoned for the primary purpose of outdoor advertising" as used in the Act is defined to include areas in which the primary activity is outdoor advertising.

(6) "Commercial or industrial zone" as defined in of the Act is further defined to mean, with regard to those areas outside the boundaries of urbanized counties and outside the boundaries of cities and towns referred to in that subsection, those areas not within 8,420 feet of an interstate highway exit-ramp or entrance-ramp as measured from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way that are reserved for business, commerce, or trade under enabling state legislation or comprehensive local zoning ordinances or regulations, and are actually used for commercial or industrial purposes, including the land along both sides of a controlled highway for 600 feet immediately abutting the area of use, measurements under this subsection being made from the outer edge of regularly used buildings, parking lots, gate-houses, entrance gates, or storage or processing areas.

(7) "Conforming Sign" means an off-premise sign maintained in a location that conforms to the size, lighting, spacing, zoning and usage requirements as provided by law and these rules.

(8) "Controlled Sign" means any off-premise sign that is designed, intended, or used to advertise or inform any part of the advertising or informative contents of which is visible from any

place on the main traveled way of any interstate or federal-aid primary highway in this State.

(9) "Destroyed Sign" means a sign damaged by natural elements wherein the costs of re-erection exceeds 30% of the depreciated value of the sign as established by departmental appraisal methods.

(10) "Feeder systems" are secondary roads that bring traffic to the main-traveled way.

(11) "Freeway" means a divided highway for through traffic with full control access.

(12) "Grandfather Status" refers to any off-premise controlled sign erected in zoned or unzoned commercial or industrial areas, prior to May 9, 1967, even if the sign does not comply with the size, lighting, or spacing of the Act and these Rules. Signs only, and not sign sites, may qualify for Grandfather Status.

(13) "H-1" means highway service zone as defined in the Act.

(14) "Lease or Consent" means any written agreement by which possession of land, or permission to use land for the purpose of erecting or maintaining a sign, or both, is granted by the owner to another person for a specified period of time.

(15) "Legal copy" means the advertising copy on the sign that occupies at least 50% of the sign size.

(16) "Nonconforming Sign" means a sign that was lawfully erected, but that does not conform to State law or rules passed or made at a later date or that later fails to comply with State legislation or rules because of changed conditions. The term "illegally erected" or "illegally maintained" is not synonymous with the term, "nonconforming sign", nor is a sign with "grandfather" status synonymous with the term, "nonconforming sign."

(17) "Off-Premise Sign" means also, in supplement to the definition stated in the Act, an outdoor advertising sign that advertises an activity, service or product and that is located on premises other than the premises at which activity or service occurs or product is sold or manufactured.

(18) "On-Premise Sign", in supplement to the definition stated in the Act, does not include a sign that advertises a product or service that is only incidental to the principal activity or that brings rental income to the property owner or occupant.

(19) "Parkland" means any publicly owned land that is designed or used as a public park, recreation area, wildlife or waterfowl refuge, or historical site.

(20) "Point of the Gore" means the point of the area delineated by two solid white lines that is between a continuing lane of a through-roadway and a lane used to enter or exit the continuing lane, including similar areas between merging or splitting highways.

(21) "Property" as used in the definition of "On-Premise Sign" includes those areas from which the general public is serviced and which are directly connected with and are involved in assembling, manufacturing, servicing, repairing, or storing of products used in the business activity. This property does not include the site of any auxiliary facilities that are not essential to and customarily used in the conduct of business, nor does it include property not contiguous to the property on which the sign is situated.

(22) "Sale or Lease Sign" means any sign situated on the subject property that advertises that the property is for "sale" or "lease". This sign may not advertise any product or service unrelated to the business of selling or leasing the land upon which it is located, nor may it advertise a projected use of the land or a financing service available or being utilized in its development.

(23) "Scenic Area" as used in the Act includes a scenic byway.

(24) "Transient or Temporary Activity" means any industrial or commercial activity, not otherwise herein excluded,

that does not have a prior continuous history for a period of six months.

(25) "Un-zoned Area" in supplement to the definition stated in the Act, means an area in which no zoning is in effect. It does not include areas within comprehensive zoning or master plans adopted by local zoning authorities.

(26) "V-Type Sign" means any sign, the center pole of which is nearest the traveled portion of the highway and is a common pole to the two sign faces, or when a common pole is not used, a sign with the sign faces no further than 36 inches apart at the angle of the sign closest to the traveled portion of the highway, and the structure poles at the point nearest the traveled portion of the highway no further apart than 48 inches. Existing V-type signs now controlled and permitted are excluded from this definition.

(27) "Visible" means capable of being seen whether or not readable, without visual aid, by a person of normal visual acuity.

R933-2-4. Permits.

(1) All controlled outdoor advertising signs legally in existence prior to the effective date of the 1967 Act, or that are legally created thereafter, must have a permit. This includes off-premise signs located on the side of or on top of any fixed object or building and visible from the main traveled way of an interstate or federal-aid primary highway.

(2) Anyone preparing to erect a controlled sign shall apply for the permit before beginning construction of the sign. Permits shall be issued in the manner prescribed in the Act. Permits may be issued only for signs that are to be erected in commercial or industrial zones or in unzoned commercial or industrial areas, as defined by the Act. Inasmuch as a sign cannot lawfully be constructed or maintained unless there is legal access to the property on which the sign is proposed to be located, a permit may not be issued if the applicant does not have legal access to that property.

(3) Permits may be issued only for signs already lawfully erected or to be lawfully erected within 90 days from the date of the issuance of the permit. Within 30 days from the date of issuance, the permit must be affixed to the completed sign for which the permit was issued as provided in Subsection R933-2-4(5).

(4) A permit affixed to a sign other than the sign for which it was issued is unlawful, and remedial action shall be taken by the permittee by the proper affixing of the permit to the correct sign within 30 days of notice to the permittee.

(5) Permits shall be permanently attached to the sign in a position to be readily visible from the nearest highway in the direction of travel to the sign faces. If the sign is a single-face cross-highway reader, then the permit must be attached to the sign in a position readily visible from the nearest traveled portion of the highway. The permittee is responsible for the proper placement of the permit on the sign.

(6) Sign permits that have been lost or destroyed must be replaced, and new permits for signs otherwise lawful shall be issued upon the payment of a \$25 fee for each sign and the completion of a new permit application.

(7) Permits shall be issued on a one year fiscal basis, and shall be renewed on or before the first day of July of each year.

(8) The fee for a new permit is \$100 for the one-year fiscal period or any part thereof. The permit expires June 30 of the fiscal year. The fee for permit renewal is \$25 for the one-year fiscal period or any part thereof. Notwithstanding the specification in Subsections R933-2-4(8), (12), and (13)(a) of a \$100 fee for a sign permit, the fee for the sign permit for a non-profit public service sign shall be \$25, and the fee for renewal of the permit for that non-profit public service sign shall be \$10.

(9) The fee for permits issued within a one-year fiscal period shall not be prorated.

(10) One-year permit renewals shall be made on renewal

forms prepared by the Department. Completion of the renewal application and obtaining of the renewal permit prior to the expiration of the existing permit shall be the sole responsibility of the owner. The renewal may be applied for no sooner than 60 days prior to July 1 of the year in which the permit is to be renewed.

(11) Written proof of lease or consent from site owner to erect or maintain an outdoor advertising sign must be furnished by the applicant at the time of application for an original permit. This proof may consist of an affidavit showing the landowner's name and address, the sign owner's name, and the sign location by route, milepost, address, and county. On renewal of the permit the applicant must certify that the sign site is still under valid lease to the applicant.

(12) If a one-year permit on a conforming sign is not renewed on or before July 1 of the year of its term, a new permit application shall be required for a new permit, along with a fee of \$100.

(13) A permit is non transferable, and the permittee shall be liable for any violation of the law regarding the permitted sign. No new permit may be issued for a sign for which a permit has already been issued, except as follows:

(a) Transfer of ownership of a permitted sign shall require the holder of the valid permit to release, in writing, his rights to continue to maintain his sign or use his location for outdoor advertising. The new owner applicant shall then submit to the Utah Department of Transportation the written release and proof of having obtained sign ownership, and a valid lease or consent for the remainder of the permit term. A \$100 fee shall accompany the application and both application and fee must be received within 30 days of the ownership transfer.

(b) A conforming sign that is unlawful and forfeited by the permittee may be acquired and permitted, providing the new sign applicant submits the completed permit application and proof of possession of a valid land lease or consent to maintain a sign at the described location and providing the new application and the sign are otherwise lawful.

(14) A supplemental application fee of \$100 shall be charged to cover administrative and inspection costs for every sign that was erected without a sign permit, Form R-299, or altered without prior written approval of the department, Form R-407. This supplemental fee is in addition to the regular \$100 permit fee.

(15) Each application for a new permit must be accompanied by the approved building permit of the local governing authority or a written statement from that authority that building permits are not required under its ordinances.

(16) Where local authority has issued a building permit for construction of a sign, but construction is contrary to the Utah Outdoor Advertising Act, the action of the local authority does not require the State to issue a permit.

(17) Federal agencies, State agencies, counties, cities and towns that use outdoor advertising signs along the interstate or primary highway systems shall have a permit for each controlled sign as provided in the Act and these rules.

R933-2-5. Sign Changes, Repairs, and Maintenance.

(1) Sign changes or repairs, including those for signs in a commercial or industrial zone, are subject to the following requirements:

(a) The face of a controlled sign may be removed for maintenance and renovation or change of advertising copy using basically the same face material. The shape and size of advertising space may not be changed except as provided in these rules. Replacement of the sign face must be accomplished within a 60 day period from the date of its removal.

(b) A nonconforming sign with "Grandfather Status" may not be relocated, structurally altered, nor repositioned, including reversing the direction of the sign face.

(c) A conforming sign may be reshaped or modified as to height or size, or relocated upon proper written request, Form R-407, provided the change is in compliance with the Act and these rules. Any change shall be completed within 60 calendar days from the date of the approval of the request. A fee of \$100 shall accompany the R-407 application to change the sign, in addition to any applicable fee under Subsection R933-2-4(14).

(d) A conforming sign that is damaged by vandals, storms, wind, or acts of nature can be re-erected or changed, or both, upon proper written request and approval on Form R-407.

(e) A nonconforming sign that is damaged but not destroyed by vandals or acts of nature may be repaired to the same size or shape upon proper written application and approval. Normal maintenance may be included in the repair, but no structural changes affecting the sign's value may be allowed. The sign may be purchased by the State if agreement is reached by the State and the sign owner. The compensation to the sign owner shall be the depreciated value of the sign immediately before damage, less cost of re-erection or repair.

(f) Repairs and ordinary maintenance may be made on conforming and nonconforming signs so long as repairs do not alter the basic advertising space or illumination, or change the material of the sign structure.

(g) Nonconforming signs destroyed by natural disaster are not eligible for compensation, unless at the time of destruction they have been appraised and committed for removal and the State has approved a purchase agreement.

(2) The following provisions govern maintenance:

(a) A legally permitted nonconforming sign may remain standing subject to the provisions of the Act and these rules so long as it is not changed, except for advertising copy, and is not purchased or condemned pursuant to law.

(b) Signs shall be properly maintained. Improper maintenance is considered:

- (i) Paint faded or peeling extensively;
- (ii) Message not visible or illegible;
- (iii) Sheets or panels loose or sagging;
- (iv) Structural supports leaning;
- (v) Abandoned.

(c) A sign with any of the deficiencies listed in Subsection R933-2-5(2)(b) is not in a reasonable state of repair, is in violation of the law, and is subject to removal.

(d) The crossing of a right-of-way line of any State highway at other than an established access approach to erect or maintain a sign without the written permission of the Department, is unlawful.

R933-2-6. Commercial and Industrial Usage: Limitations in Zoned or Unzoned Areas.

(1) Controlled signs in zoned or unzoned industrial or commercial areas are subject to the following zoning and usage requirements:

(a) Commercial or industrial usage must be visible from a traveled portion of the highway and must be situated within 600 feet of the sign site, measured from the outer edge of the regularly used buildings, parking lot, storage or processing area of the activity.

(b) The sign site must be zoned commercial or industrial or be in an unzoned commercial or industrial area.

(2) Airport runways or parking or aircraft tie down areas are not zoned or unzoned commercial or industrial areas.

(3) Mining operations and related activities, including gravel pits are not zoned or unzoned commercial or industrial areas unless they are:

(a) Where the final and concentrated processing of mined or extracted minerals is effected; or

(b) Where the mined material which has been processed is regularly stored or held for sale or shipment.

(4) Farming or ranching areas or related dairy farm

facilities, of whatever nature, are not zoned or unzoned commercial or industrial areas.

(5) Municipal or private golf courses or cemeteries are not zoned or unzoned commercial or industrial areas.

(6) A trailer or mobile home park, court, or facility does not qualify under Subsection 72-7-504(1)(d) or (e) regardless of the local zoning. An RV Park does not qualify under either of those subsections unless at least 3/4 of the total available trailer parking spaces are not occupied or reserved for rental on a month-to-month basis.

(7) Where an occupied residence is located along the highway right of way within 600 feet of a commercial or industrial activity, no controlled sign may be erected closer than 100 feet of the residence unless the owner of the residence expressly waives in writing the foregoing restriction. The waiver must be submitted with the permit application prior to the erection of a new sign.

(8) Where the width of the right of way in a commercial or industrial area is more than 300 feet, and there is commercial activity on only one side of the highway, that activity does not qualify the opposite side of the highway as commercial or industrial usage for the purpose of erecting new outdoor advertising signs.

R933-2-7. Spacing For Permitted Signs.

(1) Spacing of permitted signs shall be as follows:

(a) Signs in unincorporated areas may not be spaced less than 500 feet apart on the interstate and federal-aid primary system, as measured parallel to the highway right of way. Any sign allowed to be erected in a highway service zone H-1 may not be less than 500 feet from an existing controlled sign adjacent to an interstate highway or primary highway except that signs may be erected less than 500 feet from each other if the sign faces on the same side of the interstate highway or limited access primary highway are not simultaneously visible.

(b) No sign may be erected more than 100 feet on the perpendicular from the edge of the right of way of an interstate or primary highway except where a non-controlled highway or railroad right of way runs contiguous and adjacent to the edge of the controlled highway. The 100-foot corridor shall then be measured from a point on the perpendicular not to exceed 200 feet from the edge of the right of way of the interstate or primary highway. In no case may the outer edge of the corridor exceed 350 feet from the controlled right of way.

(c) Any sign located within the controlled area of both the interstate system and a primary system must meet the spacing requirements of both highway systems.

(d) If a sign message may be read from two or more routes, one or more of which is a controlled route, the more stringent of applicable control requirements applies.

(2) Height Above Highway:

No new structure, including the sign face, may be more than 50 feet in height above the elevation of the edge of the traveled surface of the highway. Where local zoning requirements or ordinances are in effect, the stricter of any applicable zoning requirements or ordinances apply.

R933-2-8. Removal of Illegal Signs.

(1) Removal Costs: The cost for the removal by the Utah Department of Transportation of an illegal or abandoned sign shall be assessed jointly and severally against the sign owner, landowner, occupant of the land or other responsible person, or any combination thereof, in accordance with Section 72-7-508.

(2) Storage Charges: Illegal or abandoned signs that have been removed by the Department after proper notice to the sign and site owner or occupant of the land shall be stored at the nearest department shed. There shall be a charge of \$25 per month levied as the storage charges. The storage charges shall be in addition to the costs of the removal of the illegal or

abandoned sign.

(3) Redemption and Disposal: If the illegal or abandoned sign has not been claimed and redeemed within 30 days from the date of removal, notice to the sign owner, site owner, and occupant of the land shall be given. If the sign is not redeemed within 30 days thereafter, a designated Department official in the area in which the sign is stored shall proceed to dispose of the stored illegal or abandoned sign by either utilizing the material contained therein for Utah Department of Transportation maintenance purposes or destroying the sign. A statement of the sign disposal shall be made and filed with a designated person at the Department.

R933-2-9. Termination of Non-Conforming Use Status.

(1) The non-conforming use status of a controlled sign shall terminate under the following conditions:

- (a) Failure of the sign owner to apply for a renewal permit on or before the date on which the permit expires;
- (b) Structural alteration or change of the sign as to height, size, location or direction of sign face not constituting ordinary maintenance or a change of advertising matter;
- (c) Destruction by storm, wind, act of nature, fire or vandalism;
- (d) Abandonment;
- (e) Failure to correct after receiving proper notice pursuant to Section 72-7-508, or failure to ask for a hearing after receiving proper notice pursuant to Section 72-7-508, or failure to file a written response as required by law, or failure to appeal from an adverse decision of the Department, or exhaustion of all legal remedies under Section 72-7-508.
- (f) Purchase by the Department under Section 72-7-510.
- (g) Acquisition at any time by the Department for highway construction.

R933-2-10. Conforming Sign Becoming Nonconforming -- Removal.

(1) Any legal conforming sign that becomes nonconforming after May 9, 1967, by reason of law or route classification, may not be required to be removed under the Utah Advertising Act until after the end of the fifth year after it had become nonconforming, except as otherwise provided for by law or contract.

R933-2-11. On-Premise Signs -- Illegal Status - Removal.

An on-premise sign loses its on-premise status when the business or activity it advertises has ceased to exist for a period of at least 12 months at the site of the sign, the sign is located within 1,000 feet of a controlled highway, and the message thereon is visible to the traveling public from that controlled highway. This sign may be removed at the expense of the sign owner or land owner or both without compensation to the sign or site owner as provided in Section 72-7-508 of the Act.

R933-2-12. Directional Signs.

(1) Directional signs shall conform to federal standards concerning the lighting, size, number, and spacing of the signs. There are no zoning or usage requirements for directional signs.

(2) The following standards apply only to directional signs that are erected and maintained adjacent to the interstate and federal-aid primary highway system, and that are visible from the main traveled way.

- (a) A directional sign allowed under Sections 72-7-502 and 72-7-504 is subject to the following restrictions:
 - (i) No sign may exceed the following limits where all dimensions include border and trim, but exclude supports:
 - (A) Maximum area - 150 square feet;
 - (B) Maximum height - 20 feet;
 - (C) Maximum length - 20 feet.
 - (ii) A sign may be illuminated, subject to the following:

(A) Signs that are not effectively shielded so as to prevent light from being directed at any portion of the traveled way of an interstate or primary highway, or that cause glare or impair the vision of the driver of any motor vehicle, or that otherwise interfere with any driver's operation of a motor vehicle, are prohibited.

(B) No sign may be so illuminated as to obscure or interfere with the effectiveness of an official traffic sign, device, or signal.

(iii) Each location of a directional sign must be approved by the Department and is subject to the following restrictions:

(A) No directional sign may be located within 2,000 feet of an interchange or intersection at grade within the interstate system or other freeways or the primary system, measured from the nearest point of pavement widening at the exit from or entrance to the main traveled way.

(B) No directional sign may be located within 2,000 feet of a rest area, parkland, or scenic areas.

(C) Directional signs facing the same direction of travel shall be spaced no less than one mile apart.

(D) No more than one directional sign per activity facing the same direction of travel may be erected along a single route approaching the activity.

(E) Signs adjacent to the interstate or primary system shall be located within 15 air miles of the activity they advertise.

(iv) Any area of historical interest shall be approved by the Utah Historical Society before consideration for approval as an area for a directional sign.

(b) The following directional signs are prohibited:

(i) Signs advertising activities that are illegal under Federal or State law in effect at the location of those signs or activities;

(ii) Signs positioned in any manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or to obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic;

(iii) Signs erected or maintained upon trees or painted or drawn upon rocks, or other natural features;

(iv) Obsolete signs;

(v) Signs that are structurally unsafe or in disrepair;

(vi) Signs that contain or are illuminated by any flashing or moving light or animated by moving parts;

(vii) Signs located in rest areas, parklands, or scenic areas.

(3) Any directional sign erected or maintained under the Act and these rules may at any time be removed for cause upon order of the Department after notice and hearing, if requested and timely pursued, under Section 72-7-508.

R933-2-13. Official Signs.

(1) Prerequisites for erection and maintenance:

(a) Prior to erection of an official sign the public agency shall submit to the Department in the Region where the sign is to be located, a completed permit application form R-299 along with:

(i) Facsimile of the sign message to be erected;

(ii) Statement of the official duty or responsibility being performed;

(iii) Certified copy of the statute, resolution, or ordinance from the public body showing official action authorizing erection and maintenance of the sign.

(b) The sign must be erected off the highway right-of-way, owned and maintained by the public agency, and located within the zoning jurisdiction of the public agency.

(c) Standards, Criteria and Restrictions:

(i) Only information of general interest to the traveling public may be placed on an official sign. Commercial advertising of a particular service, product or facility is prohibited.

(ii) The sign must be within the zoning jurisdiction of the

city, town, or other public agency designated by the sign.

(iii) No city, town or other subdivision of the State may erect or maintain more than one sign at each approach to the off-ramp, facing oncoming traffic at the nearest point of turn off to a city, town or other subdivision and in no event may more than two official signs, one for each direction of travel upon the controlled highway, be erected and maintained by or for the purpose of designating a city or town or other subdivision.

(iv) No official sign may be located within 2,000 feet of an interchange or intersection at grade along the interstate or primary highway system, measured from the nearest point of pavement widening at the exit from the main traveled way.

(v) No official sign may be so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device, or signal.

(vi) Signs that are not effectively shielded so as to prevent light from being directed at any portion of the traveled way of an interstate or primary highway, or that cause glare or impair the vision of the driver of any motor vehicle, or that otherwise interfere with any driver's operation of a motor vehicle, are prohibited.

(vii) No sign may be located within 500 feet of a rest area, parkland, cemetery, or scenic area or other official sign.

(viii) No sign may be erected at a site prohibited under local zoning. The stricter commercial and industrial zoning and usage requirements applicable to controlled outdoor advertising signs do not apply to official signs, though all other relevant rules apply.

(ix) No sign message may be altered without prior written approval by the department.

(x) Any official sign erected or maintained under the Act and these Rules may at any time be removed for cause and without compensation after notice and hearing, if required. The owner of any official sign shall remove the sign at its own cost and expense.

R933-2-14. Department Hearings.

Any hearing regarding the legality of a sign shall be held in the region where the sign is located, and shall be held in accordance with the Act, and in accordance with the Utah Administrative Procedures Act and Rule R907-1 unless specifically stated otherwise in a governing statute.

KEY: signs

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Title 72, Chapter 7, Part 5

Notice of Continuation November 14, 2011

72-1-201

R933. Transportation, Preconstruction, Right of Way Acquisition.**R933-3. Relocation or Modification of Existing Authorized Access Openings or Granting New Access Openings on Limited Access Highways.****R933-3-1. Authority.**

The provisions of this rule are authorized by grants for rulemaking authority Utah Code Ann. Sections 72-1-201 and 72-7-102.

R933-3-2. Purpose.

To establish a procedure for allowing and establishing new or existing highways as limited access facilities, for the elimination of intersections and for the right to access restricted facilities.

R933-3-3. Definition.

Limited-access facility shall be defined as in Section 72-1-102.

R933-3-4. When Access is Controlled.

(1) Limited access control for classified principal arterial highways other than the interstate system and expressways shall be obtained in all rural areas and in urban areas if the highway is being constructed on new alignment or if the existing highway is in sparsely developed areas where control is desirable and economically feasible. Control in urban areas on existing alignment shall not be allowed unless approved by the Utah Transportation Commission.

(2) In addition to the limited access control of principal arterial highways, a limited mileage of high volume minor arterial highways may justify limited access control, especially on new alignment and if adjacent to a freeway interchange. Except for minor arterial highways adjacent to a freeway interchange, control shall not be established if the road is less than one mile in length. Access, if desirable and economically feasible, shall be determined on an individual basis and is subject to approval of Utah Transportation Commission.

(3) Under limited access control, the following limitations shall apply:

(a) The maximum feasible and economic access control shall always be obtained.

(b) On bypasses of cities and towns, all property access shall be prohibited except where the bypass is in a low population town with little or no business and inadequate public crossroads for property access.

(c) On other than bypass roads, a maximum of five accesses per mile on each side of the highway may be granted. Unless justified under this rule, accesses to property shall only be granted opposite to each other.

(d) Where any one property has access to another public road or roads, no access shall be given closer than 1/2 mile from the public road nor shall any two granted accesses be closer than 1/2 mile with the following exception: Where the proposed project involves reconstruction on or near an existing highway where a home, business or other property development is located and lack of direct access to a home, business or other property development would involve excessive property damage and added construction costs, in which case access openings may be provided within the other stated limitations.

(e) No property access shall be closer than 500 feet from another property or public road access.

(f) In order to eliminate public road access, study shall be made in conjunction with local authorities as to feasibility of dead ending or rerouting of intersecting roads.

(g) The maximum size of private access openings shall be 16 feet for residences, 30 feet for farms or other areas where large equipment is used, and 50 feet for commercial and industrial areas.

(4) Exceptions to the above limitations shall only be made if a careful appraisal reveals extensive damage or if needed frontage roads would involve excessive right of way costs or, in canyons, excessive construction costs. Detailed reports of costs and justification for variance shall be prepared and submitted to the assistant director for approval.

R933-3-5. Designation of Access Location.

(1) The Utah Department of Transportation Right of Way Division shall conduct a study and prepare detailed right of way maps, to be used by the Utah Transportation Commission to make final access location determination. The study shall include the location of and justification for current access openings and property owners shall be contacted to determine development plans for the property. The Right of Way Division shall prepare cost estimates for proposed and alternate access locations. The Utah Transportation Commission shall make final access location determination.

(2) The access openings granted shall be accurately described in the property deed and shown on right of way maps and roadway construction plans.

(3) After execution of the deeds, no change shall be made in the access location or additional access openings granted except as provided below.

(4) If a portion of a property which has no access to the highway is later sold, the department has no obligation to grant an access to the property and if inquiries are made, a prospective buyer should be definitely so advised.

R933-3-6. Revision of Access Openings.

(1) If a property owner desires to change location or size of an access opening, after execution of the deed, a written request shall be submitted to the department giving location of desired change and its justification. Changes shall comply with the limitations as to spacing in the limited access control policy.

(2) The region director, in cooperation with the engineer for safety, shall determine if the change in location will cause any adverse safety or other traffic operational effects and submit a report with recommendations to the assistant director.

(3) If the change is approved by the assistant director and on federal-aid roads by the Federal Highway Administration, new deeds shall be prepared and executed and all maps corrected.

(4) The property owner shall pay for all costs involved in closing or modifying an existing access opening.

R933-3-7. New Access Openings.

(1) Only in cases where significant public benefit will result will new access openings be granted. Access rights are purchased and are considered an asset, the same as purchased property, and can be disposed of the same as real property. Any additional access will not be considered if not in compliance with this rule.

(2) The request shall be submitted by the property owner or public agency in writing to the department, detail as to public benefit and other justifications.

(3) Before granting an opening, safety and other operational features shall be investigated by the region director and the engineer for safety and a written report and recommendations made.

(4) If the access opening is granted, the appreciation of the private property involved shall be determined by an appraisal from the Right of Way Division.

(5) Based on the findings, the executive director of transportation shall make a decision on the request. On federal-aid roads, concurrence of the Federal Highway Administration shall be obtained if the access opening is recommended by the executive director of transportation.

(6) If the access opening is approved and is to serve

private property, the property owner shall pay the department for property appreciation, resulting from the department's relinquishment of the access, as determined by the executive director and the Federal Highway Administration.

(7) On the federal-aid roads the property owner shall also pay all costs for construction of gates, approaches and any other incidental construction costs involved.

(8) The deed shall be executed describing the access opening and all maps and plans shall be revised. This procedure applies to roads constructed with federal-aid funds, which will remain on a federal-aid system and be transferred to local authorities.

(9) Requests for modification of access control shall be forwarded with recommendations to the Utah Department of Transportation by the local authority.

R933-3-8. Document Responsibility.

(1) The Right of Way Section shall prepare submittals, documents and maps to the Federal Highway Administration. The deeds shall be prepared by the region. The Right of Way Division will be responsible for all plan corrections.

(2) Federal Highway Administration's approval is required if construction of the road was a federal-aid project though the right of way was nonparticipating.

R933-3-9. Enforcement of Access Control.

(1) Highways with limited access control should be marked by the department with public property plates on fences at sufficient intervals to clearly indicate to maintenance personnel the limits of access control.

(2) The station foreman shall be responsible for surveillance of these sections of fence as to any activity in modifying existing access openings or construction of new openings. Any modifications to an access opening shall be immediately reported to the region director. The region director shall designate personnel to contact the property owner and require the owner to repair, remove or replace any fence damaged and also remove any roadway approach material placed.

KEY: limited access highways

1990

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